**Before The Hon'ble State Administrative Tribunal At Shimla**

O. A. No: \_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Application Under Section 19 of the Administrative Tribunals Act, 1985

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

Respectfully Sheweth:

1. Particulars of the Applicant:

As given in the Memo of Parties.

2. Particulars of the Respondents:

As given in the Memo of Parties.

3. Impugned Order:

That the applicant is aggrieved by the impugned action of the respondents whereby they \_\_.

The said impugned action is arbitrary, illegal, malafide, violative of the Constitutional Rights and natural justice and issued in colourable exercise of power

4. Jurisdiction:

That the applicant declares that the subject matter is within the jurisdiction of this Hon'ble Tribunal.

5. Limitation:

That the applicant further declares that the application is within the limitation.

6. Facts of the Case:

(a) That the facts leading to filing of the present case and the relevant facts are furnished hereunder in chronological order for the convenience of this Hon’ble court: -

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 (b) That \_\_\_\_\_

GROUNDS

(c) That feeling aggrieved by such an arbitrary, malafide, discriminatory and illegal actions of the respondents, the applicant seeks the indulgence of this Hon'ble Tribunal on the following grounds amongst others, which may be taken at the time of arguments, each one of which is without prejudice to and independent of others: -

(i) That the impugned action of the respondent is arbitrary, malafide, illegal, ultra vires, against the Article 39 (d) read with 14 and 16 of the Constitution of India, dehors the rules and regulations and against the natural justice.

(ii) That \_\_\_\_\_\_

(iii) That the term dependent has been defined in The Employees' State Insurance Act, 1948 as under:-

"[(6A) 'dependent' means any of the following relatives of a deceased insured person, namely: -

(i) A widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter;

(ia) A widowed mother;

(ii) If wholly dependent on the earnings of the insured person at the time of his death, a legitimate or adopted son or daughter who has attained the age of eighteen years and is infirm;

(iii) If wholly or in part dependent on the earnings of the insured person at the time of his death, -

(a) A parent other than a widowed mother,

(b) A minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or adopted or illegitimate if married and a minor or if widowed and a minor;

(c) A minor brother or an unmarried sister or a widowed sister if a minor,

(d) A widowed daughter-in-law,

(e) A minor child of a pre-deceased son,

(f) A minor child of a pre-deceased daughter where no parent of the child is alive, or

(g) A paternal grand-parent if no parent of the insured person is alive;"

(iv) That the word "dependent" has similarly been defined in The Workmen's Compensation Act, 1923 vide Section 2 (c).

(v) That the applicant is entitled for compassionate appointment even when his brother who is in employment but living separately right since the lifetime of his deceased father and is in no way supporting the family of the deceased employee.

(vi) That the object of Clause 5 (c) of the instructions is to mitigate the financial difficulties of the family of the deceased employee. The same object cannot bee annulled simply because one son of the deceased employee is already in service and in no way supporting the family of deceased employee. Such condition runs contradictory to the object behind the scheme. The Clause 5 (c) is reproduced hereunder:-

"5. Eligibility:-

(c) In all cases where one or more members of the family are already in Government service or in employment of Autonomous bodies/Boards/Corporations etc; of the State/Central Government, employment assistance should not under any circumstances be provided to the second or third member of the family. In cases, however, where the widow of the deceased Government servant represents or claims that her employed sons/daughters are not supporting her, the request of employment assistance should be considered only in respect of the widow. Even for allowing compassionate appointment to the widow in such cases the opinion of the Department of Personnel and Finance Department should specifically be sought and Finance Department should specifically be sought and the matter finally decided by the Council of Ministers"

(vii) That the law in this regard is well-settled as has been laid down in this regard by the Hon'ble High Court of \_\_\_\_\_\_ in \_\_\_\_\_\_decided on \_\_\_\_\_\_, wherein the Hon'ble High Court of HP while dealing with almost the similar situation has held in the penultimate paragraph that "Shri \_\_\_\_\_\_ had submitted that liberty should be reserved to the respondent to take action afresh against the petitioner in accordance with law. We do not think, on the facts and in the circumstances of the case, such liberty should be reserved. The petitioner was first employed in \_\_\_\_\_\_. Her services were terminated in \_\_\_\_\_\_ but the termination order was withdrawn and she continued in service till the impugned order was passed on \_\_\_\_\_\_. She has thus served for about \_\_\_\_\_\_years. Her conduct has been above reproach since she is not shown to have suppressed the material fact regarding the employment of her two brothers. Her version that the brothers were living separately and were not maintaining her and her widowed mother given out at the very first stage was not only duly verified by the Pradhan of the Gram Panchayat and the Executive Magistrate but has not been fond to be incorrect on the basis of any proper inquiry held so far. Even in the return it is not stated that upon any inquiry independently made by the respondent the version is found to be incorrect, although the petitioner has re-asserted on oath the same version in the petition. The case apparently is not covered by the relevant instructions governing the recruitment procedure having regard to the definition of the word "family". The petitioner has to support herself and her mother who widowed eleven years back when the petitioner's father died in a motor accident. Having regard to all the circumstances, we are of the view that the petitioner should be spared of any further agony and trouble and that the chapter must be treated as closed."

(viii) That the similar view has been taken by the Hon'ble High Court of \_\_\_\_\_\_ in CWP No. \_\_\_\_\_\_ decided on \_\_\_\_\_\_ while dealing with above provision in the penultimate para has held that "We have gone through the matter carefully with the kind help extended by the learned counsel for the parties. We have noticed that Shri. \_\_\_\_\_\_ is, of course, the son of the deceased but he has been living separately from \_\_\_\_\_\_ and her other issues. He was in the service of the Corporation even while the deceased was alive. The fact as to his separate living gains support from the certificate of Pradhan Gram Panchayat, \_\_\_\_\_\_ (Annexure-PE), affidavit of \_\_\_\_\_\_ (Annexure PC) and affidavit of \_\_\_\_\_\_ (Annexure PD). If these affidavits are read with the definition of 'family' contained in Rule 2 (e) (ii) of the Municipal Employees (Conduct) Rules, 1970, it is absolutely clear that a son who is living separate from the family is not a member of the family. Even otherwise, the facts of this case, as already notices above, demonstrate quite clearly that \_\_\_\_\_\_ was living separately and was in employment while the deceased was also in the employment of the respondent-Corporation. The widow of the deceased has also supported it and wants the present petitioner employed in the Corporation. So are the affidavits of other relations. Same is the position explained in Supplementary Rules, Section IV, Division II, SR 2(8). The view we have taken, has also been taken by the Karnatka High Court in 1992 (1) Labour Law Journal 129, Raja (K) Vs Karnatka Electricity Board."

(ix) That in the last para of the above judgment the Hon'ble High court has held that "The result of the aforesaid discussion is that this writ petition is allowed and the respondent Corporation is directed to employ the petitioner to the service of the Municipal Corporation against a post which is in consonance with his qualifications. In case no vacancy is available, the same be created to employ the petitioner. We allow the respondent Corporation three months time for this purpose."

(x) That the similar view has been taken by the Hon'ble High Court of Punjab & Haryana in case Motia Devi Vs LIC (1993 (3) Service Cases Today), Santosh Tuli Vs UOI (1995 (4) SCT 267), Hon'ble High Court of HP in Chhabi Sood Vs Chairman, Himachal Gramin Bank (1994 (3) SCT 724/725), Hon'ble Karnatka High Court in Shusheela B Bhakta Vs Karnatka State Road Transport Corporation (1995 (3) SCT 382), Hon'ble Jammu & Kashmir High Court in Anwar Farooqi Vs UOI (1998 (3) SCT 794/795).

(xi) That the underlying object of the policy framed by the state government dated \_\_\_\_\_\_ (Annexure R-I) is to provide employment assistance to the dependents of Govt. servants, who die while in Govt service, leaving their families in indigent circumstances as has been stated at outset of the policy. In the instant case too the family of the deceased employee was left in indigent condition by his death. His elder son has already severed his relations with his father and other family members during his lifetime. The wife of the deceased employee is illiterate and not in a position to serve in the respondent department. It is further submitted that the separation of brother of the applicant is not being used as ploy by the applicant for getting the appointment on compassionate basis but he is actually living separately since life time of the deceased employee due to restrained relations with the family and he is in no way supporting the family of the deceased employee and in this respect the overwhelming evidence was already brought before the respondent department and this tribunal.

7. Reliefs Sought:

That the applicant, therefore, prays that your Lordship be pleased to issue an appropriate writ, orders or directions to grant the following reliefs in favour of the applicant in the interest of justice: -

(a) Quash the impugned \_\_ being arbitrary, malafide and illegal;

(b) Direct the respondents to \_\_;

(c) Allow the cost of this O.A.;

(d) Pass such other order or directions as deemed fit and proper in favour of the applicant.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE APPLICANT AS IN DUTY BOUND, SHALL EVER PRAY.

8. Interim Orders, If Prayed:

It is prayed that during the pendency of this OA, the operation of the impugned order A-\_\_ may kindly be stayed in the interest of justice.

9. Details of Remedies Exhausted:

That the applicant submits that since the matter being of an urgent nature, there is no other alternative speedy and efficacious remedy available to him except to approach this Hon'ble Tribunal.

10. Matter not Pending with any Other Courts Etc:

That the applicant further declares that the matter regarding which this application has been made, is not pending before any court of law or any other Authority or any other bench of this Hon'ble tribunal.

11. Particulars of Court Fees:

Court fees worth Rs 50/- is attached herewith.

12. Details of Index:

An index containing the details of the documents to be relied upon is enclosed herewith.

Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Affidavit in support of O.A. under Section 19 of the H.P. Administrative Tribunals Act 1985.

I, \_\_\_\_\_\_, do hereby solemnly, affirm and declare as under: -

1. That the accompanying O.A. has been prepared under my instructions.

2. That the contents of paras 1 to 12 of the accompanying application are correct and true to the best of my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and true to the best of my knowledge and no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this \_\_\_\_\_\_.

Deponent

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No: \_\_\_\_\_\_ of 2004

Applicant

Versus

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 Shimla Applicant

\_\_\_\_\_\_ Through, Advocate

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

Case No:\_\_\_\_\_\_ of 2004

Petitioner

VERSUS

Respondents

KNOW ALL TO whom these presents shall come that I/We \_\_ the above named \_\_PETITIONER/RESPONDENT do hereby appoint: - \_\_\_\_\_\_\_\_\_\_\_\_ to be the advocate for the \_\_ PETITIONER/RESPONDENT in the above mentioned case, to be all following acts, deeds and things or any of them that is to say:

1. To act, appear and plead in the above mentioned case in this Court or any Court in which the same may be tried or heard in the first instance or in Appeal or Letters Patent Appeal or Review or Revision or execution or in any other stage of its progress until its final decision.

2. To present Complaints, Pleadings, O.A., M.A. Appeals, Letters Patent Appeals, Petitions for Appeal to High Court/Supreme Court, Cross-objections or Petition for execution, review, revision withdrawal compromise or other petitions or affidavit or other documents as may be deemed necessary or advisable for the prosecution of the said case in all it's stages.

3. To withdraw or compromise the said case or submit to arbitration any difference or disputes that shall arise touching or in any manner relating to the said cause.

4. To receive moneys and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in course of the prosecution of the said case.

5. To employ and instruct any other Legal Practitioner authorising him to exercise the powers and authorities hereby conferred on the Advocate whenever he may think fit to do so.

AND I/We hereby agree to ratify whatever the advocate or his substitute shall do in the premises.

AND I/We hereby agree not to hold the advocate or his substitute responsible for the result of the said cause in consequence of his absence from the court when the said cause is called up for hearing.

AND I/We hereby agree that in the event of the whole or any part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said cause until the same is paid.

IN WITNESS WHEREOF I/We hereupto set my/our hands to these presents the contents of which have been explained to me/us and understood by me/us the \_\_\_\_\_\_

Accepted

\_\_\_\_\_\_ Advocate Client