

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 21512 of 2015

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**CWP No. 21512 of 2015
DATE OF DECISION : 19.04.2018**

Balwan Singh

...Petitioner

versus

Haryana Housing Board, Haryana and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present : Mr. Karanvir Singh Khehar, Advocate,
for the petitioner.

Mr. Durgesh Aggarwal, Advocate,
for respondents No.1 and 2.

None for respondent No.3.

Mr. Jasbir Mor, Advocate,
for respondent No.4.

ANUPINDER SINGH GREWAL, J.

1. The petitioner has sought quashing of the list of draw of lots dated 27.08.2015 (Annexure P-6) wherein respondent No.4 has been shown as successful for allotment of EWS (Economic Weaker Section) Flat at Sector-42, Gurgaon. He has further sought direction to the respondents to declare the petitioner eligible for allotment of flat.

2. Respondent No.1 had invited applications for allotment of 54 EWS Flats at Sector-42, Gurgaon in the year 2014. The

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period of registration for applications was from 01.07.2014 to 31.07.2014. The last date for submitting the applications was further extended to 31.08.2014.

3. Learned counsel for the petitioner has contended that as per the brochure, the eligibility condition for allotment of EWS-I category Flat was that the family income of the applicant should be upto ₹1,00,000/- per annum. The annual gross salary of respondent No.4 was more than Rs.1,00,000/- and as such, he was ineligible for allotment of Flat under the EWS-I category.

4. Learned counsel for respondent No.4 has, however, contended that respondent No.4 was drawing basic pay of ₹7,640/- per month and therefore, his annual income was less than ₹1,00,000/- which would make him eligible for allotment of the flat.

5. We have heard learned counsel for the parties.

6. The relevant extract of the eligibility condition is reproduced hereunder :-

"Income group for eligibility of flat will be as under :-

<i>Category of flats</i>	<i>Family income</i>
EWS-I	Upto ₹1,00,000/- P.A.

Notes:

*(i) Annual **Income**" shall mean Annual income of an individual and that of his/her spouse and dependent relatives including unmarried minor children*

*(ii) **Salary income**" includes besides other items, basic pay, DA, ADA, DP, HRA (in excess of 10% of basic pay) CCA, fixed medical allowance, other allowances, special pay, interim relief, over time allowance and fee, commission, perquisites, profit in lieu of or in*

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addition to any salary or wages etc.

(iii) The applicant is required to furnish documentary proof in support of annual family income at the time of registration, to establish eligibility, if successful in draw of lots, failing which registration/allotment shall be cancelled without notice and 10% of the registration amount deposited shall be forfeited by the Board.

(iv) Suppression/concealment of facts at any stage would result in cancellation of registration/allotment of flat, besides forfeiture of the entire amount deposited.”

7. It is, thus, manifest that the eligibility criteria for allotment of flat under the EWS-I category was that the annual income of the applicant should be less than ₹1,00,000/-. The income, as described in the notes, would include basic pay, D.A., H.R.A, C.C.A and other allowances and therefore, the respondent No.4 cannot claim that only his basic pay should be taken into account while determining his annual income.

8. Indisputably, the total salary of the petitioner including Dearness Allowance and other allowances, would be over ₹1,00,000/- which would make him clearly ineligible for allotment of the flat.

9. In reply filed by respondents No.1 and 2, it has been stated that petitioner is also ineligible for allotment of the flat as earlier he was not a regular government employee and his services have been regularized only on 13.08.2014. It is also stated that annual income of the petitioner as regular employee would be more than ₹2,00,000/-. This is seriously disputed by learned counsel for the petitioner who contends that only income of the petitioner prior to the invitation of applications is to be

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taken into account and as he was not a regular employee, his salary was much less and, therefore, he was fully eligible. He has also contended that even the employees of the government whose services have not been regularized, were eligible for allotment of the flats under the EWS category.

10. In the absence of any cogent material, it is difficult for us to decide the eligibility of the petitioner, at this stage. Therefore, we refrain from expressing any opinion regarding eligibility of the petitioner which would be determined by the respondents in accordance with the eligibility criteria laid down in the advertisement.

11. In any event, respondent No.4 was not eligible for allotment, as his income had exceeded ₹1,00,000/- per annum. Consequently, the impugned order dated 27.08.2015 (Annexure P-6), allotting flat to respondent No.4 is set-aside. The flat which was allotted to respondent No.4 shall be allotted after holding a fresh draw of lots for eligible applicants who had applied in terms of the brochure/advertisement.

12. The petition stands disposed of accordingly.

(AJAY KUMAR MITTAL) (ANUPINDER SINGH GREWAL)
JUDGE JUDGE

APRIL 19, 2018

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Whether speaking/reasoned :

YES/NO

Whether reportable :

YES/NO