

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

286 (13 connected cases)

Date of Decision: 08.08.2023.

**CWP-12836-2018 (O&M)
VIKUL JAKHAR AND ORS V/S STATE OF HARYANA AND ORS**

**CWP-11913-2017 (O&M)
YOGESH (MINOR) THRU HIS FATHER SH. AJAD SINGH V/S
HARYANA POWER GENERATION CORP & ORS**

**CWP-12207-2017 (O&M)
SUNIL KUMAR V/S STATE OF HARYANA AND ORS**

**CWP-15321-2021 (O&M)
SUDHIR V/S STATE OF HARYANA AND ORS.**

**CWP-15407-2020 (O&M)
RAJESH KUMAR V/S STATE OF HARYANA AND ORS**

**CWP-20274-2018 (O&M)
KARAMVIR V/S HARYANA POWER GENERATION
CORPORATION LTD AND ORS**

**CWP-20311-2018 (O&M)
RAJESH KUMAR V/S HARYANA POWER GENERATION
CORPORATION LTD AND ORS**

**CWP-21418-2021 (O&M)
DINESH V/S STATE OF HARYANA AND OTHERS**

**CWP-24678-2019 (O&M)
BALA DEVI AND OTHERS V/S STATE OF HARYANA AND
OTHERS**

**CWP-26995-2018 (O&M)
JASBIR V/S STATE OF HARYANA & ORS**

**CWP-7056-2018 (O&M)
DEEPAK (MINOR) THRU HIS FATHER KRISHAN KUMAR V/S
HARYANA POWER GENERATION CORP LTD AND ORS.**

CWP-28487-2018 (O&M)
ASHOK KUMAR V/S STATE OF HARYANA & ORS

CWP-912-2018 (O&M)
PRADEEP GHALAWAT V/S HARYANA POWER GENERATION
CORPORATION LIMITED AND ANOTHER

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. R.K. Malik, Sr. Advocate, with
Mr. Sandeep Dhull, Advocate,
for the petitioner in CWP-15407 of 2020.

Mr. Rajiv Sharma, Advocate,
for the petitioner in CWP-12836 of 2018.

Mr. Vineet Jakhar, Advocate, and
Mr. Vishal Sheoran, Advocate,
for the petitioner in CWP-24678 of 2019.

Mr. Bhuwan Vats, Advocate,
for the petitioner in CWP-21418 and 15321 of 2021.

Mr. Suresh Ahlawat, Advocate,
for the petitioners in CWP No.20274, 20311, 7056 and 912 of
2018.

Mr. Kamal Sharma, Advocate,
for the petitioner in CWP-12207-2017.

Mr. Sandeep K. Sharma, Advocate,
for the petitioner in CWP No.28487 and 26995 of 2018.

Dr. D.S. Chahal, Advocate,
for the petitioner in CWP-11913-2017.

Mr. B.R. Mahajan, Sr. Advocate, with
Mr. Anil Chawla, Advocate
Ms. Nikita Goel, Advocate,
Ms. Chavi Sharma, Advocate,
Mr. Hitesh Pandit, Advocate,
Ms. Suman Rani, Advocate,
for the respondents HPCGCL.

Mr. Vikas Singh, Advocate,
for respondent No.4 in CWP-15321 of 2021.

Mr. Pankaj Mulwani, DAG, Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

The present batch of 13 writ petitions involving similar questions of fact and law have been filed for seeking issuance of directions to the respondents to grant employment to the petitioner in Indira Gandhi Super Power Project, Jharli (Jhajjar) as per the communication bearing Memo No.12/3/2007 – 3 Power dated 05.07.2007 (Annexure P-3) of the Power Department, Government of Haryana read with decision of the Cabinet circulated vide U.O. No.9/84/2020-2 Cabinet dated 06.07.2020 (Annexure R-7) the policy notified by the respondents.

For the facility of reference, facts are referred from CWP-12836 of 2018 titled as ‘Vikul Jakhar and others Vs. State of Haryana and others.’

The petitioners who are residents of villages Mohanbari, Gorla and Khanpur Khurd claim employment in terms of State Rehabilitation and Resettlement Policy. Notification for acquisition of land in above villages under Section 4 of the Land Acquisition Act, then in force, was issued in the year 2007 for the public purpose, namely for setting up of a power project. In order to counter the resentment and to provide for a source of livelihood to the farmers’ whose land was acquired, the State offered to provide employment in the power plant to be set up. The initial policy claimed was to give employment to one member per each family whose land was acquired but eventually decided to restrict it to one member per family where land acquired is for 2 acres or more. Similar policy was also followed for land acquired for another Thermal Plant of village Khedar. The prayer is that appointment be given in terms of the policy and the assurance given to them. It has been averred that having been deprived of their source

of earning, they are entitled to employment in the plant and that they would not have agreed to part with land, but for the said assurance.

In their reply, the respondents have submitted that land for setting up of Thermal Power Plant in Hisar was acquired in 1998 and an announcement to give employment to one member of a family whose land was acquired was also made on 09.05.2007. Applications were then invited of which 527 applications were received. Finding the applications to be large in number, it was decided to re-determine the terms of the policy when decision revised to the criteria of 2 acres of land.

The above said decision was subject matter of challenge in CWP No.6757 of 2014 titled as 'Balwant Singh and others Vs. State of Haryana and others.' The writ petition was decided in favour of the State vide judgment dated 22.11.2017.

The decision as above was decided to be followed for employment to land oustees of Aravali Power Corporation Pvt. Ltd. A list of land oustees as per the revised and approved decision was called from Deputy Commissioner, Jhajjar.

A list of 293 land oustees whose more than 2 acres of land was acquired was sent by the Deputy Commissioner, Jhajjar. Out of the above 212 oustees, who submitted application were provided employment with the approval of Council of Ministers on 29.01.2014.

No replication or rejoinder was filed by the petitioners.

Learned counsel for the petitioners contend that the petitioner(s) are the residents of villages mentioned above in Tehsil Matanhail, District Jhajjar and the Haryana Power Generation Corporation Limited intended to set up Indira Gandhi Super Power Project, Jharli

(Jhajjar). The land was accordingly acquired by the Land Acquisition Collector for above public purpose. It is averred that to facilitate acquisition, various rehabilitatory announcements were made by the Chief Minister reflected from Memo No.12/3/2007-3 Power dated 05/06.07.2007, wherein following decisions were conveyed:-

“To implement the announcements made by Hon'ble Chief Minister, Haryana on 19.05.2007 in Distt. Hissar, the State Government have decided item wise as under-

(a) Employment would be provided to one member of each of the families of village Khedar (Hisar) in the Thermal Plant, whose land has been acquired for the Thermal Power Plant Khedar, (Hisar) on the basis of qualification and eligibility criteria.

The following steps may kindly be initiated to implement the above decision:-

(i) The first stage will be to make a list of families whose land had been acquired. Family would mean as it stood on the date the land was acquired and not further subdivisions and subsequent families created on the basis of partition. This will mean that a member of family as existing on the date of acquisition will be given a job on the basis of qualification and eligibility.”

It is submitted that as per the said decision one member of each of the families of the villages namely Jharli, Mohanbari, Khanpur Khurd and Gorla whose land has been acquired for Indira Gandhi Super Power Project was to be given employment on the basis of qualification and eligibility criteria. ‘Family’ was defined to mean as it stood on the date

when the land was acquired and no further sub divisions or subsequent partition was admissible.

Pursuant to the aforesaid Chief Minister Announcement, the matter was put up before the Council of Ministers for laying down the Rehabilitation and Resettlement Scheme. In the said scheme, the condition of providing job to a family member of each of the family was reiterated.

The relevant extract of the same reads thus:-

20. The Record note of the meeting was circulated to all the concerned departments vide this office memo no. Ch-4/Rectt-333/RN dated 06.11.2013 after approval of the CM, Haryana. The relevant portion of the record note is detailed as under:

- "Hon'ble CM, Haryana discussed the matter with the Chairman, APCPL and Informed him that they should provide the regular employment and not contractual jobs, directly or through its subsidiary i.e. UPL, to the oustees who are Matric or 10+2 with the condition that their service shall be regularized only after completing ITI training course, which shall be sponsored by APCPL.*
- Chairman, APCPL explained to Hon'ble CM that around 25 thousand non-executive work force is presently deployed in the different power plants of NTPC through its subsidiary i.e. UPL and framing different set of terms & conditions of employment for land oustees of IGSTPP would not be possible or it will create legal implications for UPL.*

To resolve the issue, Hon'ble CM has proposed as under:

- (i) *Regular employment may be given to the 104 nos. land oustees who are 10th & 10+2 by the Power utilities and shall be deployed in APCPL/UPL on deputation basis.*
- (ii) *The pay & allowances and promotional aspects of these persons shall be governed as prevailing in the respective Power Utilities, so that there would not be any difference in the terms & conditions of employment to be provided by the APCPLUPL & HPUS. be signed between APCPL.*
- (iii) *For this proposal, an MOU If required can and all HPUS.*

Chairman, APCPL conveyed that it appears to be feasible solution, however, it needs to be reviewed & decided by BODS of APCPL & NTPC before any confirmation/consent can be given by APCPL to the proposal.

Hon'ble CM directed that as decided in the meeting dated 18.03.2013, the admission, education expenses of ITI course has to be borne by APCPL and the candidates shall be considered as under training and shall be given stipend from the date of start of the course. The amount of the stipend shall be decided separately.

Chairman, APCPL agreed to the proposal and conveyed that the expense and stipend may be paid by HPUS which shall be reimbursed by APCPL."

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29. As brought out at point no. 7, Hon'ble CM, Haryana had approved to follow the Policy for employment to the land oustees in the case of IGSTPP which was followed in the case of RGTPP with the modifications regarding agencies which will grant the employment.

However, as per recommendations of the Committee above, the requirements of APCPL / qualifications of oustees, the policy followed in case of RGTPP and provisions of R&R Policy, 2010, a comprehensive policy for providing employment against Class-III/IV posts to one member of such families whose more than 2 acre land has been acquired for IGSTPP, Jharli, as a special dispensation in HPUS, is proposed as under:

- (i) To provide employment to the applicants who are Son, Daughter, Wife, Daughter-in-Law, Grandsons/Grand Daughters (Pola, Poli), Nephew (Bhatija) and maternal grandchildren (Dyola / Dyoti) etc*
- (ii) The employment to the underage i.e below 18 years age, applicants will be provided as per their qualifications after they attain the age of 18 years.*
- (iii) The applicants who are graduate with less than 60% marks, would be adjusted against the post of LDC in relaxation of % age of marks.*
- (iv) The applicants who are illiterate / under middle / under matric, would be adjusted against the post of Peon in relaxation of qualification.*
- (v) To provide employment to the applicants who are over-age i.e above 40 years in relaxation of age.*
- (vi) To provide employment to the 91 Nos. applicants who have been admitted into ITIs under relaxation for trade / stream of ITI course and percentage (%) of marks, for making them eligible for adjustment in the respective utility.*

- (vii) *The land oustees admitted into ITIs but fail to complete the ITI course within the time frame as per the instructions of the ITI Department would be considered for employment for the post of Peon/Helper etc. in Class-IV category by the respective utility.*
- (viii) *The stipend for the land oustees admitted in the ITIS is fixed @Rs.6580/- PM+ DA@90% and the same shall be borne by M/s APCPL during the ITI course i.e 02 years.”*

Learned counsel for petitioners contend that as a family, they held more than or equal to 2 acres of land as on the date of acquisition and thus were fully eligible for appointment in terms of the announcement dated 05.07.2007 read with the policy decision approved by the Cabinet as per which one member of the family which has been so defined in the policy was entitled to the appointment. It is contended that the petitioners are seeking the appointment under the aforesaid policy. It is also submitted that other members of the family had specifically given affidavits/undertakings that they would not stake claim for seeking appointment and would have no objection to the appointment being offered to the petitioner/identified member of the family. The claim had been filed in terms of the decision taken by the Council of Ministers.

It is also argued that the issue with respect to entitlement of the residents of village for appointment as well as definition of ‘family’ was subject matter of consideration in **CWP No.6505 of 2013, titled as Dharmender Singh Vs. State of Haryana and others which was decided vide judgment dated 26.11.2015.** While allowing the writ petitions filed by the petitioners therein, the Single Bench of this Court observed as under:-

“The question which arises for consideration is as to whether this can be a valid ground to reject his claim?”

In the written statement the contents of the Special Scheme have been reproduced as under:

“Hon'ble Chief Minister has approved the special scheme of employment to one eligible member of each of the families of oustees of Thermal Power Plant, Khedar (Hisar). Based on the proposal, the scheme be formulated and submitted for ex-post facto approval of the Cabinet. This scheme emanates out of CM announcement dated 19.05.2007 as a special dispensation for the families whose more than 2 acres of land has been acquired for Rajiv Gandhi Thermal Power Plant, Khedar (Hisar). He has also approved the proposal except that no relaxation in the educational qualification is to be given who are under middle or illiterate for the post of Peon. These people be employed as Beldar or unskilled workers for which no educational qualification is required.

He has also ordered that necessary relaxation from CS and FD be obtained in due course. Meanwhile the appointment letters be given as has been proposed in the note of FC, Power on pre-page 35/N.”

The aforesaid indicates that this is a special Scheme for providing employment to 'one eligible member' of 'each of the families' where more than 2 acres of land of the family has been acquired for the Rajiv Gandhi Thermal Power Plant.

As per the communication Annexure P-6 sent to the respondent-Corporation detailing the steps required to be taken, the first step to be taken was to make a list of the families whose land had been acquired. It is specified therein that family would mean as it stood on the date the land was acquired and not the further sub-divisions and the separate family units created on the basis of partition.

It indicates that the focus of the Scheme is 'family' and not the individual members thereof. Accordingly, the total land of the family that has been acquired is to form the basis of the eligibility for employment and not the land acquired of each individual member thereof. It has been provided that only one member of the family will be provided employment even if the land belonging to the family that has been acquired is in excess of 2 Acres. The Scheme does not contemplate that if more than two acres of land of more than one member of a family is acquired, each one of them will be given employment. This is because the Scheme envisages employment for only one member in the family. Conversely, the Scheme cannot be interpreted in a manner that for availing the benefit of the Scheme, more than two acres of land of each individual member thereof should have been acquired. Such an interpretation is contrary to the plain terms of the Scheme. Besides, it would render the Scheme totally illusory, as it would deny the benefit of the Scheme to the small and marginal farmers who are most in need of such a beneficial Scheme.

Thus, the ground for denying the benefit of the Scheme to the petitioner on the ground that only 6 kanal 11 marla of his land has been acquired, which is less than 2 acres cannot be sustained. As 26 kanals 8 marlas land of the family of the petitioner has been acquired, it is held that one member of the family of the petitioner is entitled to claim employment under the Scheme.

Accordingly, both the petitions are allowed.

It is directed that the petitioners be considered for employment under the Scheme. The needful be done expeditiously and subject to fulfilling the other necessary conditions, the petitioners be offered employment within a period of two months from the date of receipt of certified copy of this order.

As there is no averment in CWP No.13142 of 2014 that any affidavit has been furnished by other members of the family of the petitioner that they have no objection to the employment under the Scheme being given to the petitioner and that they would not raise any separate claim for employment under the Scheme, his case would be considered subject to his furnishing such an affidavit.

The above said judgment was challenged by the Haryana Power Generation Corporation in **LPA No.1297 of 2016 titled as Haryana Power Generation Corporation Limited and others Vs. Dharmender Singh and another, which was decided vide order dated 18.10.2016.** The judgment passed by the Single Judge was affirmed with partial modifications. The said judgment is extracted as under:-

“The controversy pertains to eligibility of the Ist respondent for appointment in the Thermal Power Plant in lieu of acquisition of the land of his family as per State Government Policy. Learned Single Judge has allowed the claim of respondent No.1 but the uncertainty arising due to multiple claims has prompted the Power Generation Corporation to file this appeal.

Following order was passed by the Court on 28.9.2016.

“It is contended, inter alia, that one member of the family is entitled to employment in the Thermal Plant if more than two acres of land of such family has been acquired. In the case of the respondent (s), it is stated that if land of the entire family is taken into account, then the acquired land is more than two acres. It is further stated that the Corporation has no objection against appointment of one of the family member but the respondent as well as his brother both are claiming such employment. It is contended that respondent's brother has filed a separate

writ petition seeking employment under the Scheme. It is explained that the acquired land belongs to the entire family of the respondent and was not exclusively owned by him.

Notice of motion for 18.10.2016.

Notice re: condonation of delay as well.

The claim of the respondent for appointment shall be considered provided that all his family members including his brother (s) give consent affidavits to the satisfaction of the Competent Authority.

Let a copy of this order be placed on the file of connected matter.”

In deference thereto, it is stated by counsel for the Ist respondent that all his family members have already given affidavits and they are still ready and willing to give affidavits in support of the fact that (i) the acquired land of their family is more than two acres (ii) no other family member except respondent No.1 (Dharmender Singh) has applied or will apply in future to claim employment.

In this view of the matter, the appeal is disposed of with a direction that on fulfillment of the above-stated requirements, the claim of respondent No.1 for appointment be considered within one month.”

Learned counsel for the petitioner(s) contend that they have no objection to the present petitions being disposed of in terms of the order dated 18.10.2015 passed by a Division Bench of this Court in **LPA 1297 of 2015** titled as **Haryana Power Generation Corporation Limited and others (supra)**.

Learned counsel for the respondents, on the other hand, contend that there are certain disputed questions of fact that would arise and the eligibility of the petitioner(s) as per the terms and conditions of the

Scheme is still to be determined. It is also suggested that there are certain families where more than one member of the family has already been given appointment.

I have heard the learned counsel for the respective parties and have gone through the documents appended with the petitions and the judgments cited by them in support of their contentions.

Even though the initial claim was to give employment as per the policy of 2007, however, it is evident that the policy of 2007 was revised and the said revision has already been upheld by this Court vide judgment dated 22.11.2017 in CWP No.6757-2014 titled as 'Balwant Singh and others Vs. State of Haryana and others.' The final decision taken in the present case was in 2013. Relevant extract of the minutes and resolve has already been reproduced above. The petitioners have not raised a challenge to the said decision and have also not disputed the decision about Khedar to fix eligibility norm of minimum 2 acres of land for employment has already been upheld. They fairly also conceded that their claims be considered as per the approved policy. Besides, no specific ground for rejection of the claim of the petitioners has been mentioned in the reply. It is definitely not the pleaded case of the respondents in the reply referred to above that either the petitioners do not fall in the definition of 'family' as approved or that their land holding was less than 2 acres or that they do not possess the qualification or even that any member of the family has been granted employment. The plea raised during the course of argument is that in certain cases, the respondents have wrongly granted employment to more than one member per family as land oustees. Such a plea of defence is entirely untenable in law. It is not a case of multiple employment in the family of

petitioners herein. The respondents cannot undo a wrong committed by them by doing another and to decline the benefits of the welfare aimed rehabilitation policy to the eligible persons.

Instead of taking remedial action to undo the illegality, the respondents have adopted a strange stand of seeking protection of their failure in the folly committed by them. Under any other circumstance, this Court would have directed action against the persons and the beneficiaries who committed fraud for securing public employment. However, this aspect is being left to the State. However, this order be also brought to the notice of the Government for appropriate action/decision.

Learned counsel for the respondents also could not dispute that the issue as regard 'family' was examined by this Court in **CWP No.6505 of 2013 (supra)** and was finally decided vide judgment 26.11.2015. The **LPA No.1297 of 2016 (supra)** preferred against the said judgment also stands disposed of vide order dated 18.10.2016 affirming the judgment. The above said order has thus attained finality.

In so far as the objection with respect to the disputed questions of fact is concerned, the said objection is untenable since the LPA Bench had only directed that the respondent Haryana Power Generation Corporation to *consider the claims of the petitioner(s) in terms of the policy and after* obtaining affidavits from the other family members including the brothers for appointment to be offered to only one member of the family. The affidavits were required to state the following:-

- (i) Acquired land of the family is more than 2 acres and
- (ii) No other family member has applied or will apply in future to claim employment.

Once the petitioner(s) are submitting that they are eligible as per the Scheme and are willing to submit the affidavits/undertaking as per the judgment, there is no reason why the claim be not considered for their appointment, subject to their fulfilling the conditions.

Since the lists were prepared by the State itself about the family whose acquisition was of more than 2 acres of land, the primary responsibility is ex-facie on the State/respondents to fulfill their obligation in terms of their own decision.

The above said judgments having attained finality, there is no reason as to why the cases of the petitioner(s), who claim to be similarly placed, ought not to be considered by the respondent-Corporation under the Policy.

The present petitions are accordingly disposed of, without commenting on merits of the claim of the petitioners, with a direction to the respondents Corporation to examine the eligibility of the petitioner(s) in terms of the judgment dated 26.11.2015 read with the order dated 18.10.2016 and the policy decision taken by the Government. The applicant/petitioners shall also furnish the requisite documents/affidavits as required in terms of the order within a period of 02 months of the receipt of certified copy of this order. On receipt of such applications/affidavits, the respondents shall take a considered decision thereupon in terms of policy and judgment, after affording an opportunity of hearing to the concerned respondents, and pass a speaking order within a period of 03 months thereafter.

Needless to mention that in case the applicants/petitioner(s) are found entitled to the appointment as per the decision taken by the respondents, appropriate necessary action shall be taken by the respondent within a further period of 04 months thereafter.

Pending misc. applications, if any, in the present batch of writ petitions shall also stand disposed of accordingly.

A photocopy of the order be placed on the file of each connected case.

August 08, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No