

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CWPOA No.1487 of 2019
Decided on: 30th July, 2026

Barley Kumar

...Petitioner

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner: Mr. Karan Singh Parmar, Advocate.

For the respondent: Mr. Sumit Sharma, Deputy Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

By way of present petition, the petitioner has
prayed for the following substantive reliefs:-

"i) That the respondent be directed to give similar treatment to the petitioner as has been given to Shri Surinder Kumar in CWP (T) No.14121 of 2008 decided on 5.7.2010 titled as Surinder Kumar Versus State of H.P. and another.

ii) That the respondent may be directed to appoint the petitioner as Clerk from the date of his initial appointment with all consequential benefits."

2. The facts as emerge from the pleadings are that
the petitioner was offered appointment on compassionate

¹ Whether reporters of Local Papers may be allowed to see the judgment?

grounds as Peon in the Treasuries and Accounts Organization H.P., vide office memorandum dated 03.11.2004 (Annexure P-1). Since the petitioner had acquired the qualification of 10+2 at the time of offering him appointment on compassionate grounds, he made a representation for offering him appointment as Clerk, which came to be rejected vide communication dated 20.10.2011 (Annexure P-3), stating therein that the petitioner has joined his duties as Class-IV Peon on 22.11.2004 and as per the provisions of Rule 17(1) 14, contained in the Handbook on Personnel Matters (Vol-I) (Second Edition), once a person had accepted the appointment, his case cannot be considered for appointment to the higher post.

3. The petitioner has further averred that after coming to know about the rejection of his claim for appointment to the post of Clerk, he submitted the copy of judgment passed by this Court in CWP-T No.14121 of 2008, titled, ***Surinder Kumar vs. State of Himachal Pradesh and another***, decided on 05.07.2010, whereby the ground on

which the case of the petitioner was rejected by the respondent, was held to be illegal, but still nothing was done by the respondent. It has further been averred that one Sh. Ashwani Kumar was also appointed as Clerk in the respondent-Department, who had lost his father in harness. However, the representation made by the petitioner came to be rejected on the ground that he cannot be offered appointment as Clerk as he had accepted Class-IV appointment. The contention raised by the respondent-State once not accepted by this Court in ***Surinder Kumar's*** case (supra) and he has been appointed as Clerk along with Sh. Ashwani Kumar, the petitioner being similarly situated is also entitled to the same reliefs, especially when the vacancies of Clerks are available with the respondent-Department. The petitioner could not have been discriminated in any manner whatsoever and the action on the part of the respondent by rejecting his representation for appointment as Clerk is in sheer violation of his Fundamental Rights and as such sought directions to the respondent to give him similar treatment as

given to Surinder Kumar and Ashwani Kumar and offer him appointment as Clerk from the initial date of his appointment with all consequential benefits.

4. The respondent filed short reply to the petition and averred that the petitioner was offered appointment as Peon as per the Rules laid down in Handbook on Personnel Matters (Vol-I) (Second Edition) Annexure 17.9, para-4, which provides that appointments on compassionate grounds can be made only to the lowest rung of Class-IV and Class-III posts. It has further been averred that the petitioner was appointed as Peon, vide Memorandum dated 03.11.2004 and he accepted the post and submitted his joining on 22.11.2004. It has further been averred that the petitioner had made the representation after seven years of joining his duties and requested for his appointment as Clerk, from the date of his appointment as Peon. As per Rule 17(1) 14 of Handbook on Personnel Matters (Vol-I) (Second Edition), it has been held that once a person has accepted compassionate appointment on any post, his request for

change in post should not be allowed.

5. It has been admitted that Sh. Surinder Kumar was also appointed as Peon on compassionate grounds, but he has been offered appointment as Clerk since 21.06.2003, when this Court had passed the judgment on 05.07.2010, from the date of his appointment as Peon. Sh. Surinder Kumar was given appointment as Clerk in compliance with the order passed by this Court.

6. I have heard the learned counsel for the parties and also perused the record carefully.

7. Learned counsel representing the petitioner has vehemently argued that once in the cases of other employees, who were also appointed in the same Department where the petitioner was offered the appointment as Peon, have been appointed as Clerk from the initial date of their appointments, though in the case of Surinder Kumar as per the direction of this Court, the petitioner is also entitled to the same relief. However, the said submission cannot be accepted for the reason that the

petitioner cannot claim negative parity. Firstly, the petitioner, when offered the appointment to the post of Peon, accepted the same and joined the post on 22.11.2004 and thereafter did not rake up the matter for almost seven years and made the representation only in the year 2011, which came to be rejected, specifically mentioning therein that as per Rule 17(1) 14, contained in the Handbook on Personnel Matters (Vol-I) (Second Edition), once a person had accepted compassionate appointment on any post, his request for change in post should not be allowed. The petitioner has not laid challenge to the said para of the instructions and thus, the petitioner cannot be granted the relief as claimed in the petition.

8. No doubt, in the cases of Surinder Kumar and Ashwani Kumar, though they were initially appointed as Peons, but subsequently have been appointed as Clerks from the initial date of their appointment, but as per the pronouncements of the Hon'ble Supreme Court on the similar facts in case of ***Director of Town Panchayat and others vs. M. Jayabal and another***, 2025 SCC OnLine SC 2794, it has been

held that no one can approach the Court and base his claim on negative discrimination merely because some relief has been granted to a person, who may not be entitled to the same. In the said judgment, the Hon'ble Supreme Court has also considered the effect of delay in approaching the Court and after taking the note of the judgment passed in ***State of Orissa and Another v. Laxmi Narayan Das (Dead) through Legal Representatives and Others***, (2023) 15 SCC 273, has held that the inordinate delay on behalf of any litigant to do an act required by law shall stand in his/her way of getting relief. It has also been observed that the claim for appointment on compassionate grounds is belated, for reasons of prolonged delay, the sense of immediacy is diluted and lost. The relevant paras of the judgment read as under:-

"DELAY AND LACHES

13. *The claim of the respondents/M. Jayabal & S. Veeramani also deserves to be rejected on the ground of delay and laches as has been noticed in the previous part of the judgment. Both the respondents had approached the Court belated after they had joined on the post they were offered appointment on compassionate basis. Reference for this purpose can be made to the judgment of this Court in State of Orissa v. Laxmi Narayan Das wherein it was held*

that delay reflects the indolence of a litigant and the Court must scrutinise whether such belated lis must be entertained or not. Therefore, inordinate delay on behalf of any litigant to do an act required by law shall stand in his/her way for getting relief.

14. This Court in *Debabrata Tiwari's case (supra)* has opined that in a case where the claim for appointment on compassionate grounds is belated, for reasons of prolonged delay, the sense of immediacy is diluted and lost. The relevant paragraphs are extracted below:

"35. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee.

xxx xxx xxx

41. Applying the said ratio to the facts of the present case, we hold that the respondent-writ petitioners, upon submitting their applications in the year 2006-2005 did nothing further to pursue the matter, till the year 2015 i.e. for a period of ten years. Notwithstanding the tardy approach of the authorities of the appellant State in dealing with their applications, the respondent-writ petitioners delayed approaching the High Court seeking a writ in the nature of a mandamus against the authorities of the State. In fact, such a prolonged delay in approaching the High Court, may even be regarded as a waiver of a remedy, as discernible by the conduct of the respondent-writ petitioners. Such a delay would disentitle the respondent-writ petitioners to the

discretionary relief under Article 226 of the Constitution."

15. It is a settled principle of law that delay in filing of writ petition before the High Court is fatal for grant of relief to the party. This principle is more applicable in the cases of compassionate appointments. The idea behind compassionate appointment is to take care of immediate financial crisis in the family of the deceased employee. In such case, the delay would mean that the family could survive even after death of the employee, as they may be having another source of income. In such circumstances, the party approaching the court with a significant delay can be denied the relief.

NEGATIVE DISCRIMINATION

16. Another argument raised by learned counsel for the respondents/M. Jayabal & S. Veeramani was to claim parity with another employee who had been granted similar benefit. The law on the subject is well-settled. No one can approach the court and base his claim on negative discrimination merely because some relief has been granted to a person who may not be entitled to the same. This Court in Tinku's case (supra) opined that wrongful conferment of a right or claim on someone would not entitle a similar claim to be put forth before a court and nor would the court be bound to accept such a plea. The relevant paragraph is extracted below:

"11. The very idea of equality enshrined in Article 14 is a concept clothed in positivity based on law. It can be invoked to enforce a claim having sanctity of law. No direction can, therefore, be issued mandating the State to perpetuate any illegality or irregularity committed in favour of a person, an individual, or even a group of individuals which is contrary to the policy or instructions applicable. Similarly, passing of an illegal order wrongfully conferring some right or claim on someone does not entitle a similar claim to be put forth before a court nor would court be bound to accept such plea. The court will not compel the

authority to repeat that illegality over again. If such claims are entertained and directions issued, that would not only be against the tenets of the justice but would negate its ethos resulting in the law being a causality culminating in anarchy and lawlessness. The Court cannot ignore the law, nor can it overlook the same to confer a right or a claim that does not have legal sanction. Equity cannot be extended, and that too negative to confer a benefit or advantage without legal basis or justification."

(emphasis supplied)

17. Reference for the purpose can also be made to the judgment of this Court in Jyostnamayee Mishra v. State of Odisha 12. The relevant extract is reproduced herein below:

"31. Another argument was raised while referring to two communications dated 28.06.1999 appointing Ms. Jhina Rani Mansingh and Sri Lalatendu Rath as Tracer on promotion, claiming to be from the post of Peon, on the basis of which the petitioner is claiming violation of Article 14, namely the discrimination. Suffice to add, this Court cannot put a stamp on the illegalities committed by the department while perpetuating the same. A litigant coming to the Court cannot claim negative discrimination seeking direction from the Court to the department to act in violation of the law or statutory Rules. It is a settled proposition of law that Article 14 does not envisage negative equality. Reference for the purpose can be made to a judgment of this Court in R. Muthukumar v. The Chairman and Managing Director TANGEDCO. Relevant para thereof is extracted below:

"28. A principle, axiomatic in this country's constitutional lore is that there is no negative 12 2025 INSC 87 : 2025 SCC Online SC 117 equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit

cannot multiply, or be relied upon as a principle of parity or equality. In Basawaraj v. Special Land Acquisition Officer, this court ruled that:

“8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated.”

(emphasis supplied)

18. From the position of law as enunciated above, it is evident that the foundation of any claim based on equity has to be devoid of the element of negative discrimination. The respondents in the present case are heirs of the deceased employees who were appointed on compassionate basis upon the death of their fathers. Their appointment, in its own self, was a sufficient relief to serve the actual purpose behind compassionate appointments. The further claim of seeking appointment on a higher post cannot be based on the sole premise that another similarly placed person was granted such benefit. It is a settled proposition of law that an illegality committed by an authority cannot be validated and further perpetuated by its extension to other similarly placed persons. Thus, the contention of respondents that they may be appointed on a higher post in view of similar benefit being granted to another person is wholly misplaced and unsustainable in the eyes of law.

19. From the law on the issue which we have referred to in the aforesaid paragraphs, it is clearly culled out that illegal orders, passed in case of similarly situated person, will not confer any right upon the other person to come to the court

and enforce the same claiming discrimination. Such plea cannot be accepted as the authorities cannot be directed to perpetuate the wrong committed by them. The party in such cases may have different remedies. We are not dilating on the same."

9. In the present case, the petitioner is not entitled to any relief, firstly on the ground that he has approached the Court very late and his petition is hit by the principle of delay and laches and secondly, the petitioner cannot claim negative parity, in view of the fact that he had accepted the post of Peon as per Memorandum dated 03.11.2004 and after about seven years, he cannot claim that he ought to have been offered the appointment as Clerk, more especially, when he has not laid challenge to the provisions contained in the Handbook on Personnel Matters (Vol-I) (Second Edition).

10. Consequently, I do not find any merit in the present petition and the same is accordingly dismissed. No order as to costs. Pending application(s), if any, shall also stand disposed of.

30th July, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**