

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

Civil Writ Petition No. 5136 of 2012(O&M)

Date of Decision: December 19 , 2015.

Prabhdeep Singh

..... PETITIONER (s)

Versus

State of Punjab and others

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. TPS Tung, Advocate
for the petitioner.

Mr. Anil Sharma, Addl.AG, Punjab.

Mr. R.C.Chaudhary, Advocate
for respondents No.6 to 8.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

Prayer in this writ petition is for directing respondents No.1 to 6 to appoint the petitioner as a Salesman (Fertilizer) with respondent No.6 i.e., Mana Singh Wala Multipurpose Cooperative Agriculture Service Society on compassionate basis due to death of petitioner's father on 03.10.2010. Further prayer is for quashing resolution dated 03.12.2010, Annexure P7 and Agenda dated 10.03.2012, Annexure P11 vide which it was resolved to make appointment to the post of Salesman (Fertilizer).

Brief facts as enunciated by the petitioner are that, petitioner's father Jaspal Singh died in harness on 03.10.2010 while working as a Salesman (Fertilizer) with respondent No.6 – Society. Application dated 28.10.2010 was submitted by him to the President of respondent No.6 – Society for being afforded appointment on compassionate basis. Resolution dated 12.10.2010, Annexure P6, was passed by respondent No.6 – Society to the effect that the petitioner aged 20 years, was still pursuing his studies and till the time he completes his studies and fulfills the conditions as laid down by the department, a post of Salesman (Fertilizer) be kept reserved for him.

However subsequently another resolution dated 03.12.2010 was passed for filling up of the post of Salesman (Fertilizer) by constituting a Sub Committee of three members.

Petitioner approached this Court by preferring CWP No.23006 of 2010 which was decided on 19.08.2011, Annexure P9. He was directed to make a representation before the department mentioning his qualifications including that of clearing 10+2 examination within a period of two weeks and respondent-authorities were directed to consider his case in view of the policy.

Representation Annexure P10, was submitted by the petitioner. It is submitted that without taking a conscious decision on his application, agenda dated 10.03.2012, Annexure P11, was circulated in respect to appointment to the post of Salesman(Fertilizer). It is urged that respondents are acting in a *mala fide* manner, only with a view to appoint one Rajpal Singh against the said post as he is a relative of Gurparkash Singh, a member of the Committee. Hence aggrieved, petitioner has preferred this writ petition.

Categoric stand of the respondents is that the Mark-sheet in respect of the 10+2 examination submitted by the petitioner is not genuine. When sent for verification, it was reported vide Annexure R4 that Board of Higher Education, Delhi, which has issued the Mark Sheet is not recognized nor established by the Govt. of India for the purposes of further higher study or employment as per Council of Boards of School Education. Petitioner is stated to have submitted a fictitious certificate and FIR No.129 dated 28.09.2012 was registered against him at Police Station Ghal Khurd. In the reply filed on behalf of respondents No.6 to 8, it is submitted that there is no person in the name of Rajpal Singh nor has any Rajpal Singh submitted an application for appointment to the post of Salesman (Fertilizer). All allegations of *mala fides* are denied.

Petitioner in his replication submits that FIR No.129 dated 28.09.2012 has been registered on the basis of a complaint submitted by Rajpal Singh, respondent No.9 thus, *mala fides* are clear. Furthermore, the Investigating Agency has recommended cancellation of this FIR on the ground that the petitioner probably had no hand in forging of 10+2 Mark Sheet. He had appeared in 10+2 examination through one Krishna Senior Secondary School at Jalandhar which had issued this fraudulent certificate to him. However, it is an admitted position that the cancellation report till date has not been accepted.

Learned counsel for the petitioner vehemently argues that once resolution dated 12.10.2010 had been passed keeping the post of Salesman (Fertilizer) vacant and the petitioner duly fulfilled the conditions of eligibility, there is no question of denying appointment to him. Petitioner had not

perpetuated any fraud inasmuch as he himself is a victim of a fraudulent institute. Furthermore, he has obtained a Diploma of three years in Electrical Engineering from the Punjab State Board of Technical Education and Industrial Training which is equivalent to 10+2 examination of Punjab Board. Reference is made to communication dated 29.08.2012, Annexure P17. Petitioner has been agitating his claim since the year 2010 and has been unnecessarily victimized.

All averments made on behalf of the petitioner, claiming appointment to the post of Salesman, are denied by learned counsel for respondents. While refuting the abovesaid averments and reiterating the stand in the written statement, it is prayed that this writ petition be dismissed as appointment on compassionate basis is not a vested right and there is no ground to grant the relief claimed by the petitioner. Mr. R.C.Chaudhary, learned counsel for respondents No.6 to 8 submits that though not a part of the pleadings, it has come to light that the petitioner is an owner of about 57 Kanals 15 Marlas of land therefore, in any case, he does not deserve appointment on compassionate basis.

I have heard learned counsel for the parties and gone through the file.

It is an admitted position that appointment on compassionate basis is not a vested right neither is it an alternative mode of recruitment. It is a measure adopted by an employer to help family members of a deceased employee to tide over an immediate crises, if any, on the uncertain and unexpected death of an employee. It is not in dispute that certificate/mark sheet

in respect to 10+2 examination submitted by the petitioner, is not genuine. Even if the stand of the petitioner is accepted to the extent that he has not perpetuated any fraud and neither is he involved in the submission of fake certificate but a victim of fraud himself, it does not lend genuineness to the certificate issued by the Board of Higher Secondary Education, Delhi which is neither recognized or established by the Govt. of India. The verification certificate, Annexure P14, referred to by learned counsel for the petitioner is of no help to the petitioner as it is issued by the Board of Higher Education, Delhi itself.

Similarly, reference to communication dated 29.08.2012, Annexure P17 from Director Academics, Punjab School Education Board, Mohali to show equivalence of the Diploma obtained by the petitioner to +2 Senior Secondary examination, is of no avail as the said communication clearly mentions that this equivalence is valid only for taking admission in higher classes. Therefore, it cannot be held that the petitioner is in possession of the requisite qualification.

Furthermore, it is relevant to note that learned counsel for respondents No.6 to 8 has produced in Court today, the Jamabandi for the year 2007-08 in respect to village Bajewala Tehsil and District Ferozepur reflecting the petitioner to be owner of agriculture land. Said Jamabandi for the year 2007-2008, village Bajewala, Tehsil and District Ferozepur is taken on record as Annexure RR-1 subject to just exceptions. Learned counsel for the petitioner while disputing ownership of 57 Kanals 15 Marlas of land however agrees that petitioner is an owner of about 20 Kanals of agriculture land in the said village.

Death of petitioner's father took place in the year 2010. Petitioner

and his family, in the interregnum, have been able to make two ends meet. It is not denied that he owns agricultural land as well. No vested right accrues to the petitioner to be appointed to the post of Salesman (Fertilizer) on compassionate basis with the respondent – Society. There is nothing on record to suggest that the post of Salesman could even have been kept reserved by the respondent Society to await the gaining of necessary qualifications by the petitioner. Petitioner's case regarding *mala fides* on the part of the respondents to adjust one Rajpal Singh falls to the ground in view of the categorical averment in the written statement filed on behalf of respondents No.6 to 8 that, firstly, no Rajpal Singh has applied for the post of Salesman (Fertilizer) with the respondent – Society and secondly, there is no person of the said name who is a relative of Gurparkash Singh, committee member.

Keeping in view the factual matrix of this case, there is no ground for issuance of a direction to respondents to afford appointment to the petitioner on compassionate basis.

Consequently, this writ petition is dismissed.

December 19 , 2015.
'om'

(**LISA GILL**)
JUDGE