

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

**CWP No.6830 of 2013
Date of decision : 28.11.2015**

Dishok Kumar

....Petitioner

Versus

State of Punjab & anr.

....Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. R.D.Bawa, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

G.S.Sandhawalia, J. (Oral)

The petitioner seek quashing of order dated 14.08.2012/16.08.2012 (Annexure P-13) wherein his claim for appointment on compassionate ground for the post of Clerk has been rejected on the ground of Government instructions dated 18 .07.2005 (Annexure P-3).

The petitioner's case is that his father, who was working as Lab Technician died in a road accident on 29.11.2008 leaving behind his wife, four daughters and two sons. The mother of the petitioner is admittedly working on the post of Dai. On account of the death of his father, an application for compassionate appointment was filed, which was processed by the respondents to find out whether any dependent member of the family was doing job or not for an appointment on Class IV post. The Civil Surgeon, Bathinda also wrote to this effect on 19.06.2009 (Annexure P-4). The petitioner's mother accordingly specifically in her application on 26.11.2009 (Annexure P-5) brought to the notice of respondent No.2 that on account of working as Dai in

Aurvedic Department, she was getting very meager income and her daughters were of marriageable age. She had no other property except the salary of her husband and thus, the job was sought on compassionate grounds since the family would face financial difficulty.

It would be apparent that the petitioner appeared before the Principal Secretary to Govt. of Punjab, Department of Health and Family Welfare, which is clear from letter dated 28.02.2011 (Annexure P-6). On account of the fact that the petitioner was studying in B.A. Part III, his appointment was deferred on the ground that if he completed his graduation, he would be considered for the post of Clerk after completion of his graduation in July 2011. It is also clear that the petitioner belongs to SC category being Chamar by caste as per Annexure P-7. The petitioner thereafter was successful in getting his graduation degree from Sikkim University on 30.01.2012.

On 10.06.2011, the petitioner was asked to supply further information in pursuance to letter dated 28.02.2011 and thereafter rejection order has been passed on the basis of instructions dated 18.07.2005. The petitioner vide letter dated 29.11.2012 (Annexure P-14) had also brought to the respondents' notice that as per government instructions dated 18.07.2005 he was liable to be considered. Perusal of the above facts and circumstances would go to show that the petitioner had applied initially for the post of Class IV employee. On what account the respondents started offering and suggesting the petitioner that he would be entitled to the post of Clerk and the delay in his appointment is not apparent from the record. Assurance was sought to be given to him that if he would complete his graduation, he would be considered for appointment on the post of

Clerk, which does not seem to be in consonance with the policy of compassionate appointment. In such circumstances, there is a delay in consideration of the petitioner for the appointment on compassionate ground on account of the conduct of the respondents. The judgment of **Umesh Kumar Nagpal vs. State of Haryana & ors.**, (1994) 4 SC cases 138 which has been relied upon by the State would thus, not be applicable on the the facts and circumstances of the present case as the delay, which has been occasioned was only on the account of State itself holding out a promise to the petitioner and thereafter rejecting the case on the ground that he was ineligible as per instructions dated 18.07.2005.

A perusal of the policy dated 21.11.2002 (Annexure P-2) would go to show that as per Clause 11(a), in case of earning members, the deserving cases had to be considered with prior approval of the Secretary of the Department concerned, after consulting the department of personnel after satisfying himself with regard to justification of compassionate appointment. The satisfaction had to be after taking into account the number of dependents, assets and liabilities left by the government servant and whether the earning member was residing with the family and whether he should not be a source of support to other members of the family. This clause was thereafter modified on 18.07.2005 and now reads as under:

"(a) In deserving cases even where there is already an earning member may be considered for compassionate appointment with prior approval of the Secretary of the Department concerned, who before approving such appointment will satisfy himself that grant of compassionate appointment justified having regard to number of dependents, assets and liabilities left by the

Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the government servant and whether he should not be a source of support to other members of the family.”

It is apparent that consultancy from the department of personnel has been taken away as per amended clause. Thus, the Secretary of the Department is to satisfy himself regarding the number of assets, liability left by the government servant and income of the earning members etc. This exercise apparently has not been carried out in any manner while rejecting the case of the petitioner. The impugned order reads as under:

“Reference your representation dated 31.10.2011 on the abovesaid subject.

As per the terms of government instruction dated 18.07.2005, it is not possible to appoint you on the post of Clerk on compassionate ground.”

Perusal of the impugned order reveal that there is no application of mind in passing the order keeping in view the fact that government servant had six children at the time of his death out of which four were daughters and mother was only working as Dia.

In these circumstances, this Court is of the opinion that rejection is without any basis and has not kept in mind the object of Clause 11(a) duly amended and the petitioner's case is liable to be reconsidered.

Keeping in view the fact that the employee died on 29.11.2008, let the necessary exercise be carried out within a period of three months from the date of receipt of certified copy of the order. It is further made clear that the petitioner would be considered for the

post for which he has applied i.e. Class IV post, since the date of death is the relevant date which shall be taken into consideration and the qualification is also to be seen for appointment at that point of time.

The present writ petition is accordingly, allowed.

28.11.2015
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(G.S.Sandhawalia)
Judge