

IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH

CWP No.7549 of 2015

Date of Decision:27.05.2015

Manish Sharma

...Petitioner

Versus

Punjab Mandi Board and another

... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Mohit Jaggi, Advocate for the petitioner.

1. To be referred to the reporters or not?
2. Whether the judgment should be reported in the digest.

DEEPAK SIBAL, J. (Oral)

Through the present writ petition, the petitioner seeks quashing of order dated 4.11.2014 (Annexure P-19) through which the claim of the petitioner for appointment to the post of Supervisor on compassionate basis has been rejected. The petitioner further prays for issuance of a direction to the respondent-Punjab Mandi Board (hereinafter referred to as “the Board”) to appoint him on the post of Supervisor.

A few facts may be noticed.

The petitioner's father who was an employee of the respondent-Board died in harness on 27.10.2009. On the death of his father, the petitioner filed an application seeking appointment on compassionate basis. After consideration of his application, the petitioner was asked whether he would accept appointment on a Class-IV post and if he did, he should file an affidavit to that effect. It is the admitted position that the petitioner filed an affidavit with the respondent-Board that he would have no objection if he was appointed on a Class-IV post. On filing of such affidavit by the petitioner, he was offered appointment to the post of peon which he

accepted and joined in June 2011. After about four years, through the present petition citing cases of some other persons who according to the petitioner were similarly placed, the petitioner seeks appointment as a Supervisor instead of a peon.

I have heard learned counsel for the petitioner and had gone through the record of the case.

It is settled position of law that appointment on compassionate basis cannot be claimed as a matter of right. It is in the form of a concession. In this regard, following observations made by the Apex Court in **Steel Authority of India Limited v. Madhusudan Das** (2008) 15 SCC 560 can usefully be referred to:

“15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. That the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said rule. It is a concession, not a right.”

Admittedly, the petitioner after accepting the offer of appointment as peon joined on the post about four years ago. It is further the undisputed position that before joining the post of peon, he submitted an affidavit that the post of peon was acceptable to him. Having accepted the post of peon, he now cannot be allowed to claim a higher post on compassionate basis as he would have no legal right to make such a claim.

In this regard, the following observations made by the Apex Court in **State of Rajasthan v. Shri Umrao Singh**, 1995 (1) S.C.T. 46. in somewhat similar circumstances would be relevant and read in the following terms:

“Admittedly the respondent's father died in harness while working as Sub-Inspector, C.I.D. (Special Branch) on 16.3.1988. The respondent filed an application on 8.4.1988 for his appointment on compassionate ground as Sub-Inspector or L.D.C. According to the availability of vacancy. On a consideration of his plea, he was appointed to the post of L.D.C. By order dated 14.12.1989. He accepted the appointment as L.D.C. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise.”

To the same effect is a recent judgment of this Court rendered in the case of **Jang Bahadur Singh v. State of Punjab and others**; 2014 (1) RSJ 295, wherein it has been held as under:

*“8. The petitioner having been appointed to the post of Peon in the year 1991 and, that too, on a priority basis and under a Rehabilitation Scheme, the objective of such scheme stood achieved. The claim as raised in the present writ petition would be in the nature of asking for endless compassion. The same is not permissible. The observations of the Hon'ble Supreme Court in the case of **State of Rajasthan v. Shri Umrao Singh**, 1995 (1) S.C.T. 46. in somewhat similar circumstances would be relevant and read in the following terms:*

“Admittedly the respondent's father died in harness while working as Sub-Inspector, C.I.D. (Special Branch) on 16.3.1988. The respondent filed an application on 8.4.1988 for his appointment on compassionate ground as Sub-Inspector or L.D.C. According to the availability of vacancy. On a consideration of his plea, he was appointed to the post of L.D.C. By order dated 14.12.1989. He accepted the appointment as L.D.C. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of 'endless

compassion'. Eligibility to be appointed as Sub-Inspector of Police is one thing; the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.

Since both the sides relied on Naresh Kumar Bali's case (supra), we will now refer to the same. We had indicated our mind in that very ruling in paragraph 15 of the said judgment. It reads as under:"

"Though the respondent claimed that he had applied for the post of a teacher the Subordinate Service Selection Board had not chosen him for the post of a Teacher because he did not have the requisite qualification. In fact, the respondent did not object to his appointment as a Clerk and his claim for consideration for the post of Teacher was one year after his appointment. Thus, the appointment on compassionate ground as per the scheme had been completed

Therefore, once the right has consummated as we indicated earlier, any further or second consideration for a higher post on the ground of compassion would not arise.

It is true that in the decision cited, the direction by the High Court was a positive direction to make the appointment but here the direction was to consider the case. Nevertheless, we find that the High Court was not legally justified in directing a further consideration of the candidature of the respondent for the post of Sub-Inspector. The Civil Appeal will stand allowed and in reversal of the orders of the courts below respondent's writ petition is dismissed. There shall be no order as to costs."

*9. Even otherwise, the Hon'ble Supreme Court in a catena of judgments has categorically held that Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment to the post which had fallen vacant. Appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said Rule. It is a concession and not a right. Such view was taken by the Hon'ble Apex Court in **General Manager, State Bank of India and others v. Anju Jain, 2008 (4) SCT 305**. Such view was reiterated in **Steel Authority of India Limited v. Madhu Sudan Das and others, 2009***

(1) SCT 449. As such having held that the claim as regards appointment on priority basis towards rehabilitation of a family member affected by terrorists violence would not be a right but a matter of concession, the plea of discrimination would not be open to the petitioner.” (Emphasis supplied)

In view of the above settled position of law, finding no merit in the present case, the same is ordered to be dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

27.05.2015
rajeev