

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

**CWP No. 24612 of 2016
Date of decision: 30.11.2016**

Sukhwinder Singh

.....Petitioner

Vs.

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. HPS Ishar, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Through the present petition under Articles 226/227 of the Constitution of India, the petitioner prays for quashing the impugned order dated 2.6.2016, Annexure P.1 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, "the Tribunal") dismissing the application filed by him and order dated 13.5.2016, Annexure A.1 passed by respondent No.3 terminating his services.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The father of the

petitioner was working as an Auditor with respondent Nos. 2 and 3. He expired on 10.6.2009 while he was in service. The petitioner submitted an application for appointment on compassionate grounds. Vide letter dated 23.12.2010, Annexure A.2, the respondents issued appointment letter as Trainee (Multi Tasking Staff Group C). The petitioner is under Matric. As per the compassionate appointment scheme, he was appointed as Trainee (Multi Tasking Staff) (in short, "MTS"). He was allowed pay band IS ₹ 4440-7440 including allowances like dearness, house rent and transport as per admissible rates. The petitioner continued to perform the duties of Trainee to the entire satisfaction of the respondents. He was also granted commendation certificate by the department due to his good service. On 1.1.2016, Annexure A.3, the petitioner submitted a petition to the respondents to grant him extension of time to pass the Matriculation examination till declaration of result of examination which was to be held in March 2016. Thereafter, the respondents issued office order dated 13.5.2016 whereby the services of the petitioner were directed to be terminated on the ground that he being Trainee was required to acquire minimum qualification for the post of MTS in five years from the date of appointment and government instructions dated 3.4.2012 and 16.1.2013. According to the petitioner, it has nowhere been mentioned in the instructions that in case of not acquiring the requisite qualification within five years from the date of appointment that the services are liable to be terminated. The petitioner filed original application before the Tribunal. Vide order dated 2.6.2016, the Tribunal dismissed the application. The petitioner further asserts that the power to relax the required minimum educational qualification was given vide office memorandum dated 11.12.2009, Annexure P.2. The petitioner was appointed while memorandum dated 11.12.2009 was in operation

wherein there was no prescribed limit to acquire the minimum prescribed qualification. The respondents have engaged a number of individuals, on compassionate grounds, who are illiterate. Still further, according to the petitioner, the condition of acquiring the minimum qualification within five years has to be prospective in nature and cannot be applied to him who was appointed prior to the issuance of memorandum dated 3.4.2012. Further, no opportunity of hearing was given to the petitioner before issuance of the impugned order. Hence the instant petition by the petitioner.

3. We have heard learned counsel for the petitioner.

4. On perusal of the findings recorded by the Tribunal, we find that the services of the petitioner were terminated on his failure to acquire the minimum educational qualification within the stipulated period. It has been categorically recorded by the Tribunal that in the appointment letter, it was stipulated that the petitioner had to acquire minimum educational qualification within two years. The period was extended to five years by office memorandum dated 3.4.2012. The petitioner failed to acquire the said minimum educational qualification within the prescribed period of five years. He did not even appear in the examination to be held in March/April 2016. With regard to the contention that some individuals were appointed on compassionate grounds and they are still continuing on the post of MTS, it has been recoded by the Tribunal that as per the instructions dated 3.4.2012 read with instructions dated 16.1.2013, in case of appointment of a widow not fulfilling the requirement of educational qualification against the post of MTS, she will be placed in Group C pay Band I directly without insisting on fulfilment of educational qualification norms. Thus, the petitioner cannot claim parity with them. With regard to the principles of natural justice, it has

been recorded by the Tribunal that the petitioner was issued show cause notice dated 31.12.2015 stipulating that his services would be terminated w.e.f 3.1.2016 on completion of five years service due to non acquisition of minimum educational qualification. He was allowed to continue in service to await the result of matriculation examination which was to be held in March/April 2016. However, he did not even appear in the said examination. It was only thereafter, that the impugned order dated 13.5.2016 was issued terminating his services. Thus, the application was rightly dismissed by the Tribunal. The relevant findings recorded by the Tribunal read thus:-

“6. It is also worth mentioning that the applicant was even granted grace period beyond period of five years to acquire the minimum educational qualification. In his application dated 1.1.2016 (Annexure A.3), the applicant has mentioned that vide office order dated 19.8.2015, he has been granted permission to pass matriculation examination to be held in March/April 2016. He completed five years service as Trainee MTS on 3.1.2016 but he was granted further grace period to pass the examination which was to be held in March/April 2016. However, he did not even appear in the said examination, what to talk of qualifying the same. Thus, even after grant of grace period, the applicant failed to acquire the minimum educational qualification for the post. He has vaguely mentioned that due to unavoidable family circumstances, he could not appear in the said examination. However, there could be no more pressing circumstances for the applicant than to save his job by passing the said examination.

7. The applicant has alleged in the OA that individuals like Mrs. Hansa Dev, Mrs. Satya Devi, Mrs. Salochana Devi, Mrs. Nisha etc., who are illiterate, were appointed on compassionate ground and are still continuing on the post of MTS and therefore, action of the respondents against the applicant is discriminatory. The contention is completely untenable.

Concluding paragraph of OM dated 3.4.2012 (Annexure A.4), as also reiterated in paragraph 6 B(d) of OM dated 16.1.2013 (Annexure A.5), provides that in case of appointment of a widow not fulfilling the requirement of educational qualification, against the post of MTS, she will be placed in Group C pay Band I Rs.5200-20200 + Grade Pay of ₹ 1800 directly without insisting on fulfilment of educational qualification norms. Thus, the applicant cannot claim parity with Mrs. Hansa Devi etc. who might have been granted compassionate appointment as widows and therefore, they were not required to fulfil condition of minimum educational qualification.

8. It is mentioned in the OA that no show cause notice was given to the applicant before terminating his services as required by paragraph 17 of OM dated 16.1.2013 (Annexure A.5). This plea is also without substance because application dated 1.1.2016 (Annexure A.3) moved by the applicant reveals that he was issued notice dated 31.12.2015 stipulating that he would be terminated w.e.f 3.1.2016 on completion of five years service, due to non acquisition of minimum educational qualification. Application (Annexure A.3) also reveals that various other letters were issued to the applicant from time to time in this regard. The applicant submitted his version vide application (Annexure A.3). Consequently, his services were not terminated w.e.f 3.1.2016 and he was allowed to continue in service to await the result of matriculation examination which was to be held in March/April 2016. However, he did not even appear in the said examination. It was only thereafter that the impugned order dated 13.5.2016 (Annexure A.1) was issued terminating the service of the applicant. Thus, the principles of natural justice have been duly complied with in the instant case.”

5. Learned counsel for the petitioner has been able to point out any illegality or error in the findings recorded by the Tribunal warranting

interference by this Court in writ jurisdiction under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

November 30, 2016
‘gs’

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned
Whether referred to reporter or not

Yes/No
Yes