

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

CWP No. 14472 of 2006 (O & M)

Date of decision: 13.11.2017

Surender Kumar

....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present: Mr. Ashwani Verma, Advocate,
for the applicant-petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Surender Dhull, Advocate,
for respondent no. 6.

G.S.SANDHAWALIA, J. (Oral)

C.M. No. 16225-CWP of 2017

Application for placing on record affidavit of the petitioner is allowed, subject to all just exceptions.

The same is taken on record.

CWP No. 14472 of 2006

The petitioner seeks directions to respondents no. 2 to 5 to consider and give appointment to him to the post of Class III/IV employee on the basis of compassionate appointment.

It is the case of the petitioner that his father Sant Lal had joined the service of the respondent-department as Linesman in the year 1979. He had expired on 19.09.2003 at the age of 50 years leaving behind his legal heirs including the present petitioner who was dependant on the earnings of his father. In view of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (Annexures P-1 and P-2), the claim was made. It is the case of the petitioner that he made an application on 09.10.2003 seeking appointment as he was the elder son and educated upto 10+2. Necessary affidavits were given also of the mother and the petitioner also submitted an affidavit dated 30.06.2004

that he was ready to work on the post of Lower Division Clerk. Vide memo dated 17.09.2004 (Annexure P-7) addressed from respondent no. 3 to respondent no. 4 which was also forwarded to the petitioner, it was noted that the minimum qualification for the Class III post, LDC, Stenographer was 10+2 with working knowledge of computer. That the petitioner having passed his senior secondary examination in third division, was held ineligible for Class-III post. Necessary affidavits were accordingly submitted and the petitioner opted for Class IV post vide affidavit dated 01.03.2005 (Annexure P-10).

Thereafter, vide communication dated 31.05.2005 (Annexure P-12), on account of the provisions in Rule 9(b) that the appointments would only be made upto a maximum 5% of the sanctioned posts (falling under direct recruitment quota in Group C & D categories), it was noticed that his case could only be considered for financial assistance for Rs.2.5 lacs. Thereafter, the petitioner filed various representations that he had done his computer course and passed the senior secondary examination in April, 2006 in second division and completed his course of computer education in the year 2006. Thereafter, the present writ petition was filed for the relief of appointment.

The defence as such which has been taken is that an affidavit had already been submitted on 01.03.2005 that he would have no objection if he was appointed as Class IV employee. He did not, on an earlier point of time, have the requisite qualification for Class III employees.

Even if it is the case of the petitioner that he had acquired the requisite qualifications at a later point of time, the improvement of the qualification at a subsequent stage would not benefit the petitioner. It is settled principle and time and again the Apex Court has held that appointments on compassionate basis are not a matter of routine and such appointments are not another source of recruitment. The Supreme Court in ***Umesh Kumar Nagpal vs. State of Haryana and others, 1994 (4) SCC 138; Shreejith L. vs. Deputy Director (Education) Kerala and others, 2012 (7) SCC 248*** has held that appointment on compassionate basis after a long time is not liable to be granted. The said view has been further reiterated in ***Union of India vs. Sima Banerjee, 2017 (1) RSJ 351***. It is not

disputed that at that point of time, the petitioner had given his consent and opted for the class IV post. It is on account of the fact that as per the Rules since the number of vacancies for compassionate appointment had been pegged at 5%, he could not be granted appointment and, therefore, the sum of Rs.2.5 lacs has been offered to him.

Resultantly, this Court, at this belated stage, after a period of 14 years would not direct the appointment on compassionate basis. Keeping in view the fact that the petitioner and the legal heirs were entitled for a sum of Rs.2.5 lacs but since they had not opted for it though had been asked to put in the necessary papers vide order dated 31.05.2005, the respondents are, thus, under a bounden duty to pay the said amount to the petitioner as per their assessment themselves.

Resultantly, the writ petition is disposed of with directions to the respondent-Nigam to pay the sum of Rs.2.5 lacs as per the terms of the 2003 policy within a period of 2 months from the date of receipt of certified copy of the order. In case the amount is not paid by the said period, the respondents shall be liable to pay interest @ 7% per annum from 31.05.2005.

13.11.2017
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No