

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

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**CWP-14032-2013 (O&M)
Date of decision: 13.02.2017**

Naresh Kumar

....Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr.Kamal Sharma, Advocate for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has questioned the order dated 14.02.2013 vide Annexure P8 by which his claim for appointing him on compassionate ground to the post of Clerk from the date of sanctioning vide order dated 02.01.2003.

2. Petitioner's father while working as a Hindi Teacher passed away on 09.10.2001. Petitioner submitted an application on compassionate ground to appoint him in the Department on 15.11.2001. The same was duly considered by the Head of the Department of the Education Department on 02.01.2003 vide Annexure P1 while sanctioning for appointment of the petitioner. Thereafter, on 25.03.2004, sanction order dated 02.01.2003 was withdrawn and supplementary order was also passed on 20.07.2004.

Withdrawal and passing of supplementary order was the subject matter in writ petition No. 15336 of 2004. This court was pleased to set aside the order dated 25.03.2004 and supplementary order dated 20.07.2004 on 30.08.2006 in CWP No. 15336 of 2004. Further this court was pleased to observe that sanctioned order dated 02.01.2003 shall be deemed to have come into operation and petitioner is entitled to be appointed for the post of Clerk in the subordinate office of the Education Department, Haryana. Despite such an order of this court, the respondents failed to implement the orders of this court. In the year 2007, they preferred a special leave to appeal before the Supreme Court and the same was dismissed stating that delay condoned, we see no reasons to interfere on 20.07.2007. Thereafter, the respondents have not implemented the order passed by this court on 30.08.2006. It was only implemented on 14.01.2009. Appointing the petitioner as Clerk is prospective in nature. Thus, the petitioner feeling aggrieved by the order of appointing him prospectively w.e.f. 14.01.2009, he preferred an application/representation before the competent authority. The competent authority has rejected petitioner's claim vide Annexure P8 dated 14.02.2013. Hence the present petition.

3. Learned counsel for the petitioner submitted that this court has held that petitioner is entitled for appointment with reference to sanction order which would come into operation and the petitioner is entitled to be appointed for the post of Clerk. Such an order was passed on 30.08.2006. But still the respondents have not appointed the petitioner. Even the respondents have suffered an order before the Supreme Court on

20.07.2007. Thus, there is an inordinate delay on the part of the respondents in appointing the petitioner on 14.01.2009 that too, it is a prospective. Having regard to the orders passed by this court, the petitioner is entitled for appointment w.e.f. 02.01.2003.

4. On the other hand, learned counsel for the respondents submitted that petitioner's appointment was subject matter of litigation. It was finalized only on 20.07.2007 and for want of vacancy, petitioner could not be appointed between 2007 to 2009. Thus, there is no infirmity in appointing the petitioner as a Clerk from prospective date w.e.f. 14.01.2009 and the petitioner is not entitled for the retrospective appointment.

5. Heard learned counsel for the parties.

6. Short question for consideration in the present petition is whether the petitioner is entitled for appointment on compassionate ground to the post of Clerk w.e.f. 02.01.2003 or from 14.01.2009. Having regard to the observations made by this court while quashing the orders dated 25.03.2004 and 20.07.2004, the sanction order dated 02.01.2003 is required to be given effect. An extract of the order of this court passed in CWP No. 15336 of 2004 on 30.08.2006 reads as under:-

“For the reasons aforementioned, this petition succeeds. We hereby quash orders dated 25.03.2004 (P-7) and 20.07.2004 (P-11). The order dated 02.01.2003 shall be deemed to have come into operation and accordingly, the petitioner becomes entitled to be appointed on the post of Clerk in the subordinate office of the Education Department, Haryana in terms of order dated 02.01.2003 (P-6).

We further direct that all the necessary steps leading to the joining of the petitioner be taken within two months from the date of receipt of a certified copy of this order. The petitioner shall have his costs, which are quantified at Rs.5000/-."

7. Further the respondents have approached the Supreme Court by filing special leave to appeal which was dismissed on 20.07.2007 which reads as under:-

"Petitioner(s) for special Leave to Appeal (Civil) CC 6062/2007

*(From the judgment and order dated 30.08.2006 in CWP 15336/2004 of the HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH)
SECY. TO GOVT. OF HARYANA EDUCATION DEPT.
& ANR.*

..... Petitioner(s)

VERSUS

NARESH KUMAR

..... Respondent(s)

With I.A.No.1 (for c/delay in filing SLP)

Dated 20/07/2007 This petition was called on for hearing today.

CORAM:

**HON'BLE MR. JUSTICE H.K.SEMA
HON'BLE MR. JUSTICE LOKESHWAR
SINGH PANTA**

For Petitioner(s)

Mr. T.V.George, Adv.

For Respondent(s)

**UPON hearing counsel the court made the following
ORDER**

Delay condoned.

Heard.

We see no reason to interfere. The special leave petition is dismissed.”

8. Thereafter, the respondents have taken almost 2 years to appoint the petitioner as a Clerk. In this background, the petitioner is entitled to be appointed with reference to sanctioned order dated 02.01.2003 which deemed to have come into operation. The above order of this court has attained finality before the Supreme Court and respondents suffer order before this court and Supreme Court. Therefore, the impugned order dated 14.02.2013 vide which the petitioner's application for considering his appointment w.e.f. 02.01.2003 rejection is illegal and arbitrary and contrary to decision of this court and Supreme Court. Moreover, no reasons have been assigned except stating that application has been perused and department is rejecting petitioner's claim. The respondents have filed affidavit on 31.01.2017 reiterating the stand while relying on number of decisions of the Apex Court stating that the compassionate appointee has no legal right to seek appointment etc. Here, the question is not whether the petitioner has a legal right or not. Legal right has been created on 02.01.2003 vide Annexure P1. Only thing is it has to be given effect. Having regard to the order passed by this court, in CWP No. 15336 of 2014 dated 30.08.2006 read with Supreme Court order dated 20.07.2007, the petitioner is entitled for appointment on compassionate ground w.e.f. 02.01.2003 on notional basis. Hence, Annexure P8 communication dated 14.02.2013 is set aside.

9. The respondents are directed to consider name of the petitioner for appointment on compassionate ground w.e.f. 15.01.2003 the date on which similarly situated persons were appointed on 15.01.2003. The respondents are directed to extend the service benefits from 15.01.2003 to 14.01.2009. Notional fixation of pay during the period from 15.01.2003 to 20.07.2007. Petitioner is entitled to monetary benefits from 20.07.2007 the date on which Supreme Court rejected the respondents' petition. The respondents are directed to calculate monetary benefits and disburse the same. The above exercise shall be completed by the respondents within a period of 4 months from today.

10. CWP stands allowed.

13.02.2017

pooja saini

**(P.B.BAJANTHRI)
JUDGE**

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No