

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

226

CWP No. 11297 of 2015

Date of decision: 22.05.2017

Jaswinder Kaur

...PETITIONER

VERSUS

State of Punjab and others

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Anish Batra, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Additional Advocate General, Punjab,
for the State.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court with a grievance that she being a widow of a martyr was entitled to the benefit of the Policy dated 19.08.1999 (Annexure P-1) to the post of Senior Assistant whereas she has been appointed on the post of Clerk despite there being a post available in District Sangrur at the relevant time. She contends that she had no option but to follow the dictates of the respondents and, therefore, had filed an affidavit dated 09.06.2005, so that she could at least get some source of livelihood, agreeing for appointment to the post of Clerk although she was entitled to be appointed on the post of a Senior Assistant.

A positive assertion has been made in para-11 of the petition that out of 39 posts earmarked for the Senior Assistants in District Sangrur, 9 posts were to be filled through direct recruitment, out of which, 7 posts were lying vacant and were being occupied by persons holding officiating charge but despite that, she had not been appointed on the said post.

with regard to the assertion made by the petitioner in the writ petition. What has been stated is that the petitioner was offered the appointment as per the norms, which she duly accepted. In the preliminary submissions, it has been admitted that the petitioner was offered appointment as per the Circular letter dated 19.08.1999 known as 'Appointments of Honour and Gratitude', where widow or a dependent member of the family of a War Hero, who achieved martyrdom, could be given the benefit. On 13.06.2005, in the meeting under the chairmanship of the Chief Secretary to the Government of Punjab, a decision was taken to appoint the petitioner on the post of a Clerk. She was selected at Sr. No. 7 vide letter dated 19.12.2005 and the appointment letter was issued on 13.03.2006 on the post of Clerk. Prior to the said appointment, she had sworn-in an affidavit dated 04.01.2006 giving her consent for appointment to the post of Clerk. In pursuance to the meeting, it is stated that the Committee recorded that the candidates opted for the job of Clerk because they did not want to go to district head quarter or anywhere away from their home town and the post of Senior Assistant was not available in the field (Tehsil). It is because of this reason that the petitioner was offered the post of Clerk, which she has accepted and joined.

The stand, therefore, primarily, as has been projected by the respondents, is that she had been offered the appointment of Clerk on her own asking as she did not want to move out of the Tehsil and did not want to go to the district head quarters.

Counsel for the petitioner contends that the petitioner, from the very inception, is working in the head quarters, which fact has not been disputed by the respondents.

If that be so, the basic plea, which has been taken in the reply filed by the respondents, is false and cannot be accepted.

As regards the plea that the petitioner had opted for the post of Clerk also cannot be accepted for the same reason as the option for the post of Clerk, as asserted by the respondents, has been given because of non-posting in the head quarters, which has been found to be, on the face of it, false as the petitioner was and is continuing in the head quarters on the post of Clerk. It is apparent that the employees who were holding the vacant direct quota posts on officiating capacity did not want to leave these posts and thus, did not either inform the authorities about the correct facts or gave wrong information regarding the vacancy position. The action, therefore, of the respondents offering the petitioner the post of Clerk despite she being eligible for appointment to the post of a Senior Assistant despite there being a post of Senior Assistant available in district head quarters cannot sustain.

In view of the above, the present petition is allowed. It is held that the petitioner being eligible for appointment to the post of Senior Assistant shall be deemed to have been appointed on the post of Senior Assistant from the date of her appointment to the post of Clerk and shall also be granted all the consequential benefits. The arrears, if any, shall be, however, restricted to 38 months prior to the date of filing of the writ petition, which shall be released to her within a period of two months.

May 22, 2017
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No