

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

CWP No.16211 of 2017 (O&M)

Date of Decision:26.07.2017

Ravinder Kumar

--Petitioner

Versus

State of Punjab & others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Rajneesh Gupta, Advocate for the petitioner.

TEJINDER SINGH DHINDSA, J.

Petitioner, who is serving on the post of Patwari under the Revenue Department, State of Punjab having been appointed as such on compassionate basis, has filed the instant petition seeking issuance of a writ of mandamus directing the respondents to consider his claim for appointment on a higher post as Naib Tehsildar.

Briefly noticed, father of the petitioner, namely, Mulakh Raj was a regular employee in the Revenue Department, State of Punjab and was working as Patwari. He unfortunately died on 15.02.2003. An application seeking appointment on compassionate basis having been preferred by the petitioner, the same was processed leading to his appointment as Patwari vide order dated 14.07.2004.

Counsel would submit that the petitioner ought to have been appointed on a higher post i.e. Naib Tehsildar on the basis that he possessed higher qualifications i.e. of B.Tech. (Mechanical Engineering). It has been submitted that the petitioner having submitted an application for

compassionate appointment, recommendations had been made by the Deputy Commissioner, Patiala. However, the Collector, District Patiala issued appointment orders for the post of Patwari instead and thereby ignoring the qualifications that the petitioner possessed. Reliance has been placed upon Clause 9(d) and Clause 17(b) of the Policy issued by the State Government dated 21.11.2002 (Annexure P-8) on the subject of grant of employment in the State service on compassionate grounds to contend that consideration for appointment on compassionate basis is not confined to the department/offices in which the deceased government servant had been working and such an appointment can be given under any Government Department depending upon the availability of a suitable vacancy. As per Clause 17(b), if a Group 'D' government servant dies in harness, a family member of such deceased employee can be considered for appointment on compassionate grounds even to a Group 'C' post for which he/she is educationally qualified. Argument raised is that the petitioner possessed the qualification of B.Tech (Mechanical Engineering) even on the date of submitting of his application seeking compassionate appointment and even though his father was serving as a regular Patwari on the date of his demise, yet under the relevant policy governing compassionate appointment, there was no bar in having considered the petitioner for a higher post. Discrimination has also been alleged by citing instance of Gurpreet Kaur who was given the post of Kanungo i.e. a higher post, whereas her father died while working as Patwari. In the same line, counsel cites the names of Raminderpal Singh as also Amandeep Kaur.

Counsel for the petitioner has been heard at length and the pleadings on record have been perused.

In matters relating to public appointment, State is obligated to give effect to the constitutional scheme of equality as enshrined under Articles 14 and 16 of the Constitution of India. All appointments, therefore, have to be effected in terms of an open invitation of applications and consideration of the same, strictly in order of merit. Certain exceptions in the nature of compassionate appointment with the sole objective to mitigate the sudden financial hardship that has fallen upon the family of a bread winner, who dies in harness, would be in the nature of a concession and cannot be asserted as a right.

The petitioner having been offered appointment to the post of Patwari in the year 2004 on a compassionate basis and he having accepted the same and having joined without protest, the objective of compassionate appointment stood achieved. The claim raised in the present writ petition in being adjusted/appointed as Naib Tehsildar instead on the basis of higher qualifications possessed 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 Versus Shri Umrao Singh, 1995 (1) SCT 46**, wherein a similar claim was rejected 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.”

As regards plea of discrimination, 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 grounds 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 Apex Court in **General Manager, State Bank of India & others Vs. Anju Jain, 2008 (4) SCT 305**. A plea of discrimination to sustain pre-supposes a right. Compassionate appointment having been held to be a concession and not a right, it would not be open for the petitioner to agitate a claim seeking appointment on compassionate basis to a higher post on the plea of discrimination.

For the reasons recorded above, the present writ petition is found to be devoid of merit and is dismissed.

26.07.2017*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |