

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

110

CWP No.19547 of 2017

Date of Decision: August 31, 2017

Nishi Kant

....Petitioner

vs.

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Ashok Kumar Nabhewala, Advocate
for the petitioner.

TEJINDER SINGH DHINDSA, J. (Oral)

Petitioner having been appointed on the post of Senior Laboratory Attendant in the year 2011 on compassionate basis under the Punjab State Education Department, is aggrieved of the order dated 19.06.2017 (Annexure P-10), whereby, his request for adjustment/amendment as regards his initial appointment against the post of Clerk, has been declined.

Brief facts as emanate from the pleadings may be noticed.

Father of the petitioner was working as Vocational Master under the State Education Department and died in harness on 18.09.2010. Petitioner possesses the qualification of M.Sc. (Computer Science). Even though, the application seeking appointment on compassionate basis has not been placed on record, yet, counsel submits that an application had been

submitted without any delay for the post of Clerk. Apparently, the application submitted by the petitioner seeking compassionate appointment on the post of Clerk, was processed and vide memo dated 04.10.2011 (Annexure P-5), a number of persons including the petitioner, seeking appointment on the post of Clerk on compassionate basis, were called upon to appear in a type test (Punjabi). Counsel submits that the petitioner did not appear in the type test (Punjabi).

Placed on record, is copy of order dated 25.10.2011 (Annexure P-6), whereby, petitioner was appointed on the post of Senior Laboratory Attendant on compassionate basis, in the pay scale of Rs.5910-20200+1900 (Grade Pay). Counsel concedes that the petitioner joined on the post of Senior Laboratory Attendant forthwith. On 06.04.2017 (Annexure P-9), an application was moved by the petitioner seeking adjustment on compassionate basis as a Clerk instead and it is such request, which has been declined vide impugned memo dated 19.06.2017 at Annexure P- 10. It is against such brief factual backdrop that the instant writ petition has been filed.

Counsel would vehemently argue that the respondent-authorities have acted arbitrarily insofar as considering the claim of the petitioner on compassionate basis for the post of Clerk. In this regard, counsel refers to the Punjab Civil Services (General and Common Conditions of Service) Rules 1994. Under Rule 15

providing for the minimum educational and other qualifications for direct appointment to the post of Clerk, under the State Government, Clause 2 thereof, mandates that the person appointed as Clerk, shall have to call for a test in Punjabi type writing, either on computer or on manual typewriter, within a period of one year from the date of appointment. Precise argument raised is that the petitioner had been called upon to appear in a type test (Punjabi) vide memo dated 04.10.2011 at Annexure P-5, even prior to issuance of an appointment letter on the post of Clerk. It is contended that the mandate of passing a test, could not have been imposed as a condition precedent to the appointment as a Clerk but such condition was liable to be fulfilled by the petitioner within a period of one year after issuance of appointment letter on the post in question. In a nut shell, argument raised is that claim of the petitioner for compassionate appointment on the post of Clerk in the year 2010 itself, suffered from the vice of arbitrariness and being violative of Article 14 of the Constitution of India. Counsel further adverts to the averments made in Para 10 of the writ petition to urge that such methodology adopted by the respondent-authorities in calling upon the petitioner to appear in a type test(Punjabi) in the year 2011, was brought to the notice of the respondent-authorities and in spite thereof, the petitioner was offered appointment on the post of Senior Laboratory Attendant (SLA) instead. Yet another argument raised by counsel is that the

petitioner had been appointed as Senior Laboratory Attendant in the pay scale of 5910-20200+1900 (Grade Pay) and even the post of Clerk, upon which, the petitioner was seeking adjustment/ amendment carries identical pay scale and such aspect has been overlooked while issuing the impugned memo dated 19.06.2017 (Annexure P-10).

On a query having been put to the counsel, as to why, the petitioner was seeking adjustment on the post of Clerk when it carries identical pay scale, the response is that, if the petitioner was to be adjusted on the post of Clerk, it would enhance his promotional prospects.

Having heard counsel for the petitioner at length, this Court is of the considered view that no interference in the matter is warranted.

The purpose and objective of compassionate appointment was considered by the Hon'ble Supreme Court in **Umesh Kumar Nagpal vs. State of Haryana, 1994 SCC(4)138** wherein, It was held that the object of compassionate appointment is to enable the family of the deceased employee to tide over the sudden financial crisis and not to provide employment. Mere demise of an employee in harness would not entitle a family member for compassionate appointment. The competent authority would be obligated to consider as to whether family of the deceased employee is unable to meet the financial crisis. In a catena

of judgments delivered by the Apex Court, as also by this Court, it has been repeatedly held that compassionate appointment is not a right but is a concession. Compassionate appointment has also been held to be an exception to the normal mode of recruitment.

Adverting back to the facts of the present case, the submission advanced by the counsel as regards the petitioner being called upon to qualify a type test (Punjabi) even prior to appointing the petitioner to the post of Clerk and the same being contrary to the Statutory Rules cannot be said to be without substance. Be that as it may, it cannot be ignored that the petitioner was immediately thereupon in the year 2011 itself, offered appointment on the post of Senior Laboratory Attendant vide appointment letter dated 25.10.2011 (Annexure P-6). Petitioner accepted the offer and joined as Senior Laboratory Attendant in the year 2011 itself. It is not the case of the petitioner that he had joined on such post under protest. Averments in the petition are only to the fact that in the year 2011 itself petitioner had brought to the notice of the respondent-authorities that calling upon him to appear in type test (Punjabi) even prior to offering an appointment to the post of Clerk is illegal and arbitrary.

The petitioner having been appointed to the post of Senior Laboratory Attendant in November 2011 and he having joined on such post, the objective of grant of appointment on compassionate basis stood achieved. The claim as raised in the

present writ petition would be in the nature of asking for endless compassion and the same is not permissible in law. The observations of the Hon'ble Supreme Court in the case of **State of Rajasthan vs. Shri Umrao Singh 1995(1) SCT 46**, 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.”

There is even the aspect of delay that has weighed with this Court while declining to interfere in the impugned memo dated 19.06.2017 (Annexure P-10).

Petitioner was appointed on the post of Senior Laboratory Attendant on compassionate basis vide order dated 25.10.2011 (Annexure P-6) and he joined immediately thereafter. Even if it is taken as factually correct that he had brought to the notice of the respondent-authorities in the month of October 2011 that he cannot be called upon to appear in a type test (Punjabi)

prior to issuance of an appointment letter on the post of Clerk yet for six long years, petitioner has chosen not to agitate the issue . It is only by virtue of an application dated 06.04.2017 at Annexure P-9 that a request was forwarded for change of designation/amendment as regards the post, on which, he had been appointed on compassionate basis. Such application was filed in the year 2017 seeking adjustment on the post of Clerk instead of Senior Laboratory Attendant. The request has been declined vide impugned memo dated 19.06.2017 (Annexure P-10).

This Court finds that the entire writ petition and the prayer raised therein is founded on a fallacious premise that compassionate appointment itself is a right. As per settled law, such appointment is merely a concession. Prayer for adjustment on the part of Clerk, on compassionate basis, instead of Senior Lab Attendant merely on the ground that it would enhance his promotional prospects, cannot be accepted.

In view of the discussion above, no infirmity is found in the impugned memo dated 19.06.2017 (Annexure P-10). Petitioner would have no vested right to seek an amendment/adjustment as regards the post, on which he had been offered compassionate appointment and which he had accepted as Senior Laboratory Attendant in the year 2011.

In view of the above, petition is found to be devoid of merit and is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

31.08.2017
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***Whether speaking/reasoned* : Yes/No**
***Whether reportable* : Yes/No**