

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

CWP No.22663 of 2017 (O&M)

Date of decision:04.10.2017

Jaspreet Singh

... Petitioner

Vs.

State of Punjab & another

... Respondents

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

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

...

TEJINDER SINGH DHINDSA, J.

Petitioner assails the order dated 06.07.2012 (Annexure P-2) passed by the Assistant Director O/o Director Education Officer (SE), SAS Nagar Mohali and whereby claim of the petitioner for appointment to the post of Master on compassionate basis was rejected.

Counsel submits that father of the petitioner, who was serving as Math Master died in harness on 03.08.2009. Petitioner without any delay submitted an application dated 26.10.2009 for consideration of appointment to the post of Master on compassionate basis. Further contended that the petitioner at that point of time possessed the requisite qualifications for the post.

Perusal of the impugned order dated 06.07.2012 (Annexure P-2) would reveal that claim of the petitioner seeking compassionate appointment as Punjabi Master has been rejected on the ground that compassionate appointments can only be considered against post falling under Group 'C' and 'D' whereas the master cadre with a grade pay of Rs.10300-34800+5000

(GP) falls in Group 'A'.

Counsel would vehemently argue that the very basis of passing of the impugned order dated 06.07.2012 (Annexure P-2) is perverse. It is urged that the post of Punjabi Master is a Group 'C' post. Counsel also contends that information has been received under the Right to Information Act and which would clearly indicate that a number of other candidates have been appointed as Masters on compassionate basis. In this regard, a document placed on record at Annexure P-4 is adverted to.

Having heard counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that the writ petition merits dismissal both on the ground of delay as well as on merits.

During the course of arguments, counsel concedes that even though his claim seeking appointment to the post of Master had been rejected, yet the petitioner had been appointed as Senior Laboratory Attendant on 06.11.2012 and such appointment was on compassionate basis itself. On a specific query having been put, counsel has further conceded that the petitioner had joined on the post of Senior Laboratory Attendant in the month of November, 2012 itself and without protest.

In matters relating to public appointment the 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 Senior Laboratory Attendant in the year 2012 on 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 for being appointed as a Master would be in the nature of asking for endless compassion. The same is not permissible in law.

The observations of the Hon'ble Supreme Court in case of **State of Rajasthan Vs. Shri Umrao Singh, 1995 (1) S.C.T 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.”

Such view was, thereafter, followed by this Court in CWP No. 14282 of 2007 titled as **Jang Bahadur Singh Vs. State of Punjab and others** decided on 7.1.2013 and which decision even stands affirmed by the L.P.A Bench in L.P.A No. 617 of 2013 decided on 9.5.2013.

That apart, there is the aspect of delay which has also weighed with this Court while declining to interfere in the matter. The impugned order rejecting the claim of the petitioner for appointment as Master on

compassionate basis was passed on 06.07.2012 (Annexure P-2) and was duly communicated to the petitioner. An attempt has been made by counsel to explain delay of 5 years in having approached the writ Court by contending that information as regards other aspirants having been appointed as masters on compassionate basis was received under the provisions of Right to Information Act only in the year 2017. Even such justification would not suffice. It is being so observed for the reason that Mr. Vivek Sharma, Advocate during the course of arguments has stated that the information received under the Right to Information Act in the year 2017 was sought for only by virtue of an application having been preferred in the year 2016 i.e. four years after the passing of the impugned rejection order.

For the reasons recorded above, the instant writ petition is dismissed on merits as well as on the ground of delay.

04.10.2017*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| (i) Whether speaking/reasoned? | Yes |
| (ii) Whether Reportable? | Yes |