

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

CWP No.23489 of 2017

Date of Decision: 12.10.2017

Gurdeep Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

DAYA CHAUDHARY, J.

The petitioner is aggrieved by impugned letter dated 05.07.2016 (Annexure P-12), whereby, his claim for appointment to the post of Clerk on compassionate ground has been rejected.

Briefly, the facts of the case, as made out in the present petition, are that his father was working as Surveyor in the respondent Department and had expired on 12.11.1987 while in service. Petitioner was minor at that time and on attaining majority, he applied in the year 2006 for appointment to the post of Clerk in terms of policy dated 21.11.2002 (Annexure P-1). However, when no action was taken on the said application, he submitted a representation dated 16.07.2008. Thereafter, a reminder dated 15.12.2008 was also sent to the respondents, whereafter, a letter dated 22.04.2009 was sent to the petitioner asking him as to whether he was ready to do the job of Driver and was even appointed as Driver.

Thereafter, he moved application for appointment to the post of Clerk.

Vide impugned letter conveyed to the petitioner, he was informed that the cadre of the petitioner from Driver to Clerk could not be changed. Being aggrieved by the action of the respondents for not appointing him as Clerk as he was appointed as Driver, said communication has been challenged by the petitioner.

Learned counsel for the petitioner submits that the petitioner applied for the post of Clerk but he was appointed to the post of Driver, whereas, he should have been appointed to the post of Clerk. The claim of the petitioner is covered by judgments of this Court in cases **CWP No.8155 of 2009** titled as **Deepak vs State of Punjab and another** decided on **28.01.2010** and **CWP No.10859 of 2009** titled as **Sunita Devi vs State of Punjab and others**, decided on **08.02.2010**. Learned counsel also submits that an another employee of the same department, namely, Shri Gaganpreet Singh also applied for the post of Clerk and he was appointed. He further submits that the claim of the petitioner has wrongly been rejected, whereas, the action of the respondents is not only illegal but unlawful and discriminatory in not treating the petitioner at par with similarly situated employee.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned letter dated 05.07.2016 as well as other documents available on the file.

Facts relating to death of father of the petitioner on 12.11.1987, while in service; making representation and appointment of the petitioner on the post of Driver, are not disputed.

The grievance of the petitioner is that his request was for

appointment to the post of Clerk, whereas, he was appointed as Driver and another similarly situated person has been appointed on the post of Clerk. It is also not disputed that the petitioner is working as Driver since his appointment and now he is claiming his right over the post of Clerk. The minimum qualification required for appointment to the post of Clerk is *Bachelor's Degree from a recognized University or institution and the requirement of at least one hundred and twenty hours course with hands on experience in the use of Personal Computer or Information Technology in Office Productivity applications or Desktop Publishing applications from a Government recognized institution or a reputed institution, which is ISO 9001 certified or a Computer Information Technology course equivalent to 'O' level certificate of Department of Electronics Accreditation of Computer Courses of Government of India.*

The appointment on compassionate ground cannot be claimed as a matter of right. Petitioner has accepted his appointment on the post of Driver. Now, he is claiming parity on the ground that one similarly situated employee was given appointment as Clerk and hence, he should also be appointed as Clerk. It is held that a wrong precedent cannot be claimed on the ground of parity as the petitioner has no right to claim the higher post by considering the example of another employee. The post of Driver was accepted by the petitioner and he has worked on that post since long. Moreover, he is having experience on the post of Driver only and he does not fulfil the qualification for the post of Clerk. The object of compassionate appointment is to mitigate the financial crises occurred due to sudden death of the employee while in service. Once the appointment has been accepted, the petitioner has no right to claim the higher post as has also been held in

judgment of this Court in case titled as ***Daljit Singh Bhullar vs State of Punjab and others 2017(1) S.C.T. 562.***

In said judgment, various judgments i.e the judgments rendered by Hon'ble the Supreme Court in ***Surya Kant Kadam vs State of Karnataka and others 2002(1) SCT 244, Umesh Kumar Nagpal v. State of Haryana 1994(3) SCT 174, State of Haryana v. Ankur Gupta 2004(1) SCT 165, State of Haryana v. Rani Devi 1996(4) SCT 63, Steel Authority of India Limited v. Madhusudan Das and others 2009(1) SCT 449, MGB Gramin Bank v. Chakrawarti Singh 2013(4) S.C.T 541, State of Manipur v. Md. Rajaodin, 2003(4) S.C.T 242, Sanjay Kumar vs State of Bihar and others 2000(4) S.C.T 323, Bhawani Prasad Sonkar v. Union of India and others 2011(4) SCC 209*** as well as judgments rendered by this Court in ***Rajiv Kumar Sharma v. State of Haryana 1995(3) SCT 643, Rajinder Kumar Khera v. State of Haryana and another 1996(3) SCT 99, CWP No.4636 of 1998 titled as Gulbahar Singh v. State of Punjab and another decided on 10.01.2002, CWP No.21444 of 2010 titled as Harwinder Singh v. State of Punjab and others decided on 30.01.2013, CWP No.3974 of 2012 titled as Harbhajan Singh v. State of Punjab and others decided on 18.09.2015, CWP No.3953 of 2013 titled as Karnail Singh v. State of Punjab and others decided on 24.09.2015 and CWP No.23931 of 2015 titled as Tarsem Singh v. State of Punjab and others decided on 06.11.2015***, have been relied upon, which are relevant for deciding the controversy in hand.

Hon'ble the Apex Court in case ***State of Rajasthan vs Shri Umrao Singh 1995(1) S.C.T. 46*** has held that once the candidate accepted an appointment on lower post, his right to be considered on compassionate ground is consummated and no question of further consideration on

compassionate ground would ever arise.

In the present case also, the petitioner himself has accepted the post which was offered to him and he is working since then on the said post. Now he is claiming higher post for which he is not fulfilling even the requisite qualification.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed.

12.10.2017
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No