

(101) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDGIARH

CWP No.14602 of 2004

Date of decision: 24.05.2019

Bhupinder Singh.

.... Petitioner

Versus

State of Haryana and another.

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Raman B. Garg, Advocate and
Ms. Gitanjali Chhabra, Advocate for the petitioner.
Mr. Harish Rathee, Sr. DAG, Haryana.

B.S. WALIA, J. (ORAL)

[1] Prayer in the writ petition is for the issuance of a Writ of Certiorari for quashing order Annexure P-6 dated 29.07.2004 rejecting the claim of the petitioner for appropriate appointment / placement and pay-scale.

[2] Brief facts of the case leading to the filing of the instant petition are that the father of the petitioner who was working as Reader in the Printing and Stationery Department, Haryana expired in September, 2000. Thereupon, the petitioner made an application for compassionate appointment. On the basis of the application made by the petitioner, he was granted compassionate appointment as Packer (i.e. Class-IV post) vide order Annexure P-2 dated 13.09.2001. The petitioner joined on the same. Subsequently, the petitioner learnt that the Department had given appointment to similarly situated wards of deceased employees on a pay-scale one step lower than the pay scale which was held by the deceased employees. Aggrieved with the discrimination, the petitioner submitted a representation (Annexure P-3) dated 04.04.2003 praying for grant of similar

treatment as had been granted to other similarly situated employees. The

same was followed by reminder Annexure P-4 dated 26.06.2003. However, the prayer of the petitioner for grant of similar treatment and for being appointed on a scale one step lower than the scale which the father of the deceased was holding at the time of his death, was rejected vide order Annexure P-5 dated 16.07.2003.

[3] Aggrieved against the same, the petitioner filed CWP No.18971 of 2003 which was disposed of vide order dated 08.03.2004 directing the respondents to reconsider and take a fresh decision in accordance with law with liberty to the petitioner to submit a fresh representation. Pursuant to the order of this Court dated 08.03.2004, petitioner submitted fresh representation dated 21.05.2004. However, the same was also rejected by the Department vide order Annexure P-6 dated 29.07.2004.

[4] Short grievance of the petitioner is that as per instructions Annexure P-8 dated 31.08.1998, compassionate appointment is to be offered one step lower than what the deceased employee was holding except in cases where the deceased employee was working at the lowest level under Government and that the term one step lower had been interpreted in the said instructions as “One Pay Scale Below” than that of the deceased employee keeping in view only the pay scale which the deceased employee was drawing at the time of his death and not pay scale of the post held by the deceased employee.

[5] Learned Sr. DAG on the other hand contended that the claim of the petitioner was misconceived since the petitioner had already been appointed in the initial scale of the post which was held by his father. Therefore, the appointment granted to the petitioner vide order Annexure P-2 was in consonance with the instructions Annexure P-8.

[6] The same is vehemently disputed by learned counsel for the petitioner who contends that Example given in the instructions illustrates that if a Clerk was drawing pay scale of Rs.1200-2000/1400-2600 by virtue of first Higher Standard Scale/ACP scale/Second High Standard Scale/Second ACP scale, then after his death his dependent would be entitled for employment on the post of Clerk in the initial scale.

[7] Learned counsel for the petitioner contends that the petitioner's father was working as a Reader initially in the pay scale of Rs.3050 – 4590. However, at the time of death, the petitioner's father was drawing Higher Standard Pay Scale of Rs.5000 – 7850. Consequently, in terms of the instructions applicable, the petitioner was entitled to be appointed in the initial scale of the post of Reader i.e. Rs.3050 - 4590 whereas a perusal of the order Annexure P-2 of appointment of the petitioner as Packer reveals that the petitioner was appointed in the scale of Rs.3050-75-3950-EB-80-4350 along with other usual allowances in the Department of Printing and Stationery Govt. of Haryana. Leaned counsel contends that in the circumstances, the appointment of the petitioner was to be in the pay scale of Rs.3050-4590 i.e. the initial scale of the post which the petitioner's father was holding at the time of his death and the same not having been granted to the petitioner, the petitioner was entitled to a direction to the respondents to appoint him in the initial scale of the post which was held by his father.

[8] Learned counsel for the petitioner contended that he was entitled to same relief as had been granted to two other persons namely Reena daughter of Mangat Ram and Vipin Bose son of Sube Singh. Learned counsel elaborated on the same by submitting that one Sh. Mangat Ram was working as Computer in the pay scale of Rs.3050 – 4590 + 50 as special pay

the pay scale of Rs.3050 – 4590 but said post could not be offered to the daughter of the deceased since she was not having the required experience for the said post. Therefore, she was appointed as a Clerk in the pay scale of Rs.3050-4590 i.e. equivalent to the post of Compositor. On the other hand, Sh. Vipin Bose was appointed as Clerk on the lower post in the pay scale of Rs.3050-4590 on account of the death of his father i.e. Sh. Sube Singh who was working as Assistant in the pay scale of Rs.5000 – 7850. Learned counsel for the petitioner contends that in both the aforesaid cases, compassionate appointment was in the scale lower than the scale which was held by the deceased employee at the time of his death.

[9] Learned Sr. DAG has not been able to controvert the factual position.

[10] I have heard learned counsel for the parties and in view of the position noted above, am of the considered view that the writ petition is liable to be allowed for as per instructions Annexure P-8, compassionate appointment is to be made in a scale lower than the scale which was held by the deceased employee at the time of his death. In other words as per instructions Annexure P-8 dated 31.08.1998, compassionate appointment is to be offered one step lower than what the deceased employee was holding except in cases where the deceased employee was working at the lowest level under Government and that the term one step lower implies “One Pay Scale Below” than that of the deceased employee keeping in view only the pay scale which the deceased employee was drawing at the time of his death and not pay scale of the post held by the deceased employee.

[11] In the circumstances, impugned order (Annexure P-6) dated 29.07.2004 rejecting the claim of the petitioner is liable to be quashed.

Accordingly, while allowing the writ petition, impugned order (Annexure P-6) dated 29.07.2004 is quashed. Respondents are directed to pass a fresh

order in accordance with law by taking into account the instructions applicable i.e. (Annexure P-8) within a period of three months from the date of receipt of certified copy of this order.

(B.S. Walia)
Judge

24.05.2019
amit

1.

Whether speaking/reasoned

:

Yes/No.
2.

Whether reportable

:

Yes/No.