

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

CWP No.19417 of 2019

Date of Decision: July 19, 2019

Pawan Kumar

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

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

AMIT RAWAL, J. (Oral)

Prayer in the present writ petition is for issuance of a writ of mandamus directing the respondents to consider the case of the petitioner for grant of deemed date of appointment w.e.f. 28.08.2006 with all consequential benefits.

Mr. Kamal Sharma, learned counsel representing the petitioner submitted that owing to the demise of his father, in view of the promulgation of the scheme for appointment on compassionate ground, option was given to the family of the petitioner either to opt for a Class-IV post or accept ₹ 2.50 lacs in lump sum. The aforementioned option was dated 28.08.2006. Petitioner gave option as per the averment in the previous writ petition in 2009, but no action was taken compelling him to approach this Court vide CWP No.17718 of 2011. Noticing all these facts, this Court vide order dated 16.08.2012, allowed the writ petition and directed the respondents to consider the case of the petitioner for appointment to Class-IV post for which he was eligible when the offer was made to him vide letter dated 28.08.2006. The petitioner, vide order dated

03.02.2018 (Annexure P-3), was given appointment after having approached this Court in COCP No.1236 of 2013. This Court treated him as appointed w.e.f. 03.02.2014. In Civil Writ Petition No.14032 of 2013 (Annexure P-6), a person whose similar case was to be implemented from 2007, was, in fact, implemented in 2009. In view of the directions, the Director Elementary Education, Haryana vide order dated 09.07.2018 (Annexure P-7) appointed the petitioner (in that petition), i.e., Naresh Kumar w.e.f. 15.01.2003, the date on which similar situated person was appointed. The case of the petitioner is, thus, to be considered at par with the aforementioned person. When the request of the petitioner was not acceded to, approached this Court through the instant petition.

On 18.07.2019, this Court called upon the learned State Counsel to apprise this Court and also directed the Director Elementary Education to be present in Court. Learned State counsel submitted that the writ petition is not maintainable and is liable to be dismissed on the ground of delay and laches, for, in COCP No.1236 of 2013, petitioner did not raise any objection with regard to the deemed appointment, which was disposed of. According to the averment, petitioner did not avail the option given in 2006, but opted in 2009. A person cannot be granted appointment according to whims and wishes. The case of Naresh Kumar is on different footings as sanction was given w.e.f. 15.01.2003, but he was appointed after the dismissal of the Special Leave Petition. It is in these circumstances, the department had granted him deemed appointment w.e.f. 15.01.2003 and, thus, prayed for dismissal of the writ petition.

I have heard the learned counsel for the petitioner and appraised the paper book.

It would be apt to reproduce the operative part of the order dated 16.08.2012. The same reads thus:-

“It appears from communication dated 28.8.2006 (Annexure-P-1), addressed by the Director Elementary Education, Haryana, to the District Education Officer, Jind, the claim of the petitioner was being considered under the 2003 Rules and it is under these provisions only when it was found that there was no post of Clerk available within the quota prescribed for appointment on compassionate ground, an option was sought from the petitioner to either opt for a Class-IV post or to accept Rs. 2.50 lakhs in lumpsum as compensation. Since the petitioner had opted for appointment on Class-IV post, the claim of the petitioner was required to be considered on the said post. It is apparent from the above letter dated 28.8.2006 that Class-IV post(s) was/were available with the department to which petitioner was found eligible for appointment, otherwise response of the Director Elementary Education, Haryana, would have been totally different. Since the post of Class-IV was available with the department and the petitioner had immediately responded to the communication dated 28.8.2006, respondents should have considered the claim of the petitioner against Class-IV post and granted him appointment to the said post if he was found eligible. Instead the respondents proceeded to consider the claim of the petitioner under 2005 Rules and 2006 Rules, which had come into force after the death of the petitioner's father as also the submission of the application form of petitioner for grant of compassionate appointment. This action of the respondents is violative of the Full Bench judgment of this Court in Krishna Kumari's case (supra) and the ratio laid down therein. In view of the above, the present writ petition is allowed. A direction is issued to the respondents to consider and thereafter appoint the petitioner to a Class-IV post for which he was eligible when the offer was made to him vide letter dated 28.8.2006 (Annexure-P-1) within

a period of two months from the date of receipt of certified copy of this order.”

Concededly, the petitioner was issued appointment letter on 03.02.2018 after undergoing ordeal of writ and COCP. The contempt Court on 05.02.2014 passed the following order:-

“It is not disputed that the order of this Court has been complied with and the appointment given to the petitioner which is to his satisfaction.

In view of the above, the contempt petition is disposed of as having become infructuous.”

On cumulative reading of both the orders and noticing the appointment in 2014, the petition is bereft of reasoning as to how and under what circumstances, petitioner approached the respondents for his deemed appointment in 2006, whereas had given option in 2009 and the writ petition was allowed only in 2012. The writ petition, in such circumstances, is hit by doctrine of delay and laches. As regards similar case of Naresh Kumar, the same was on different footings. The contents of Annexure P-7 reveal the same, which is not pari materia to the present case. I do not find any substance and intend to issue any direction to the respondents. No ground for interference is made out.

Writ petition stands dismissed.

July 19, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No