

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

**CWP No.9186 of 2016
Date of decision: 24.04.2019**

Ashok Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. M.K. Sood, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Parveen Gupta, Advocate,
for respondent No.3.

Ritu Bahri, J.

Petitioner is seeking quashing of order dated 02.09.2015 (Annexure P-10), whereby his claim for seniority has been rejected.

Ishwar Dass, father of the petitioner, was working as Clerk in respondent-department. He expired on 02.04.1967. At that time, petitioner was minor. After attaining majority, petitioner made an application for getting job on compassionate ground under ex-gratia scheme. Thereafter, the petitioner was appointed as Peon on compassionate basis vide appointment letter dated 16.08.2000 (Annexure P-3). He joined in the respondent-department as Peon on 25.08.2000. Petitioner made representations dated 12.09.2001 and 14.10.2002 for considering his case for appointment on the post of Clerk instead of Peon from the initial date of appointment i.e. 25.08.2000. His case was rejected keeping in view the instructions dated **08.05.1995**, which provide for giving one step lower

employment under the compassionate grounds. Petitioner is claiming parity with one Smt. Kulwanti-respondent No.3. Father of Smt. Kulwanti namely late Sh. Amir Singh was working on the post of Accountant. He expired on 24.05.1997. Respondent No.3 was minor at that time. After attaining majority in the year 2002, mother of respondent No.3 applied for service on compassionate grounds, whereupon, respondent No.3 was appointed as Peon w.e.f. 10.09.2002 as per Govt. instructions dated **08.05.1995**. Subsequently, she was given appointment to the post of Clerk w.e.f. 11.02.2009 with the condition that no benefit would be given to her from back date. She was only given notional benefit. Respondent No.3 again made a representation to give her appointment as Clerk w.e.f. 10.09.2002. The State Government vide order dated 19.12.2012 (Annexure P-9) granted her notional benefit of the post of Clerk from 10.09.2002 and fixed her pay as Clerk w.e.f. 18.02.2009 i.e. the date of joining the department vide order dated 01.01.2013 (Annexure R-2). Services of respondent No.3 were counted from 10.09.2002 as a Clerk for all further intents and purposes. Even the benefit of seniority was given to her from the date of initial appointment i.e. 10.09.2002. Relevant extract of order dated 01.01.2013 (Annexure R-2) is reproduced as under:-

“Accordingly, in compliance of above decision of the State Government, Smt. Kulwanti is hereby appointed as Clerk from the date of initial appointment as Peon i.e. 10.09.2002 and is given the notional benefits from that date and fix her pay as a Clerk w.e.f. 18.02.2009. Also, her services will be counted from 10.09.2002 as a Clerk for all further intents and purposes. Further, she would also be entitled to the deduction of GPF and pension under the old Government Pension Scheme to be counted for her pensionable service from 10.09.2002.”

Petitioner-Ashok Kumar joined as Peon in the department on

Government, which came into force w.e.f 01.01.1970 vide instructions dated 22.12.1970 after a period of more than three years of the death of his father. Petitioner was appointed in the year 2000 when instructions dated 08.05.1995 were in force.

Father of the petitioner was working as Clerk and as per policy dated 08.05.1995, for the purpose of giving job under the ex-gratia scheme, one step lower than the employee had to be given to the dependent. Petitioner's father was working as Clerk and one step lower than that is the post of Peon (Class IV). In the case of respondent No.3, her father was working as Accountant and one step lower than the post of Accountant was the post of Clerk and keeping in view this fact, she was given appointment to the post of Clerk vide order dated 19.12.2012 (Annexure P-9). Although respondent No.3 was appointed as Peon on 10.09.2002, yet she was granted notional benefit of the post of Clerk w.e.f 10.09.2002 and his actual pay was fixed at the time of joining as Clerk on 18.02.2009. The petitioner cannot claim parity with respondent No.3 as his father was working as Clerk, whereas father of respondent No.3 was working as Accountant and both have been given appointments under the compassionate ground. In this regard, Chief Secretary, Haryana, has given instructions vide letter dated 07.02.2001 (Annexure P-5), clarifying that if, Government employees are working on Class-III posts i.e. Constables, Clerks, Drivers etc., their dependents are to be offered the post of Class-IV only. Moreover, vide order dated 11.02.2009 (Annexure P-6), respondent No.3 was given appointment of the post of Clerk from the date when she joined as Clerk and no benefit was to be given to her from back date.

In view of the above discussion, this Court is of the view that

petitioner has no right to claim parity with respondent No.3-Kulwanti.

No merits.

Dismissed.

(RITU BAHRI)
JUDGE

24.04.2019
ajp

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