

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

**CWP No.5040 of 2019 (O&M)
Date of Decision:08.01.2020.**

Gagandeep Singh Rekhi

.....Petitioner

Versus

Punjab State Power Corporation Limited and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. J.S. Ghumman, Advocate for the petitioner.

TEJINDER SINGH DHINDSA J.(Oral)

Petitioner who is currently serving on the post of Additional Assistant Engineer under the Punjab State Power Corporation Limited has filed the instant petition seeking a mandamus for directing the Corporation to appoint him to the post of Assistant Engineer w.e.f.14.07.1999 alongwith all consequential benefits.

Brief facts as pleaded are that father of the petitioner who was serving as Assistant Engineer in the erstwhile Punjab State Electricity Board, was killed by terrorist on 19.09.1991. In the year 1998 petitioner secured admission in a three years diploma course in Electrical Engineering at Ramgarhia Polytechnic, Phagwara. On completion of such diploma course, petitioner through his mother submitted a representation dated 09.07.1999, seeking the appointment on compassionate basis. Apparently the claim of the petitioner was dealt with and he was offered the post of Junior Engineer-II (Testing) i.e. Class-III Post vide appointment letter dated 09.07.1999. In pursuance thereto petitioner duly joined the post. Thereafter petitioner has earned promotion to the post of Additional Assistant Engineer in the year 2013.

Even though the relevant policy has not been placed on record yet counsel during the course of hearing has made available for perusal of this Court a circular dated 05/08th of February 1988 issued by the Government of Punjab, Department of Personnel and Administrative Reforms on the subject of grant of Government employment in the State Service Class-II on priority basis to members of families of State Government gazetted Class I and II Officers, killed in terrorist violence.

It is the assertion made by counsel that such circular/policy is applicable even to the respondent-Corporation. A bare perusal of such circular would shed light that a decision was taken that if a State Government Gazetted Class I or Class II Officers, is killed in terrorist violence while in harness then a member of the family may be considered for a Government job on priority basis on a Class-II post. Such consideration and offer of appointment was to be made subject to the condition that the member of the deceased family/dependant fulfilled the basic qualification and condition of experience prescribed for the post in question.

In the instant petition prayer is for the petitioner to be appointed to the post of Assistant Engineer i.e. the Class-II post .w.e.f 14.07.1999. Concededly, as on such date petitioner was only a diploma holder and did not possess qualifications required for appointment to the post of A.E. Under such circumstances, prayer made in the instant petition cannot be accepted.

At this stage, counsel has advanced the submission that in the year 1999 when the petitioner was actually appointed on compassionate basis on the post of JE-II, the petitioner ought to have been offered the post of JE-I which is also a Class-III post and for which the petitioner was duly

qualified. Counsel accordingly makes a submission that he would confine the scope and prayer in the instant petition for the petitioner to be offered the post of JE-I .w.e.f. 1999 instead of JE-II. As per counsel if the petitioner were to be considered and appointed as JE-I .w.e.f.the year 1999 it would be beneficial as regards advancement in his career.

In the considered of this Court, even such alternate prayer is without merit.

Concededly, petitioner had been offered the post of JE-II (Testing) in the year 1999 which he accepted. A specific query has been put to counsel as to whether the petitioner had joined on the post of JE-II under protest or at that point of time any claim had been put forth to be offered the post of JE-I. The categoric response forthcoming is that no such protest was filed and the petitioner in the year 1999 had accepted the post of JE-II(Testing) in pursuance to the appointment letter dated 09.07.1999.

The petitioner having been offered appointment to the post of JE-II in the year 1999 on a compassionate basis and he having accepted the same and having joined without protest, the objective of compassionate appointment stood achieved. The claim now being raised for being adjusted/appointed as JE-I would be in the nature of asking for endless compassion. The same is not permissible. 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 07.01.2013** and which decision even stands affirmed by the LPA Bench in LPA No.617 of 2013 decided on 09.05.2013.

For the reasons recorded above, I find no merit in the present writ petition and the same is accordingly dismissed.

Petition dismissed.

**(TEJINDER SINGH DHINDSA)
JUDGE**

January 08, 2020

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No