

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

207/A

CWP-4862-2015

Date of decision: 31.01.2020

DALER SINGH

...PETITIONER

V/S

STATE OF PUNJAB & OTHERS

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Kapil Kakkar, Advocate,
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab,
for the State.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court impugning the order dated 16.01.2015 (Annexure P-13) passed by the Director, Public Instructions (Secondary Education), Punjab-respondent No. 2, whereby the claim put forth by the petitioner for appointment to the post of a Clerk/Steno was rejected on the ground that he had already been issued a letter of appointment on the post of Senior Laboratory Attendant on 12.12.2011 (Annexure P-8).

2. It is the contention of the learned counsel for the petitioner that the father of the petitioner, who was working on the post of Junior Assistant

in the office of the Block Primary Education Officer, Sirhind-I, Fatehgarh

Sahib, died on 09.02.2011 while in service. Petitioner put forth his claim for appointment on compassionate ground as per the Instructions dated 05.02.1996 (Annexure P-4). On 21.11.2002 (Annexure P-5), further Instructions were issued by the department. He applied for the post of Clerk/Steno on 04.04.2011 (Annexure P-7). Petitioner, at the time of submission of the application, possessed educational qualification of B.A. and had also passed the Punjabi Stenography Course from the Language Department, Punjab. Apart from that, he had passed his Punjabi Type Test from the Department of Language on 22.09.2006 (Annexure P-2). It is on this basis that the petitioner had claimed appointment to the post of Clerk/Steno.

3. The claim of the petitioner was duly forwarded by the District Education Officer, Fatehgarh Sahib. The Director, Public Instructions proceeded to consider the claim of the petitioner for appointment and offered him an appointment on the post of Senior Laboratory Attendant on compassionate ground instead of appointing him on the post of Clerk/Steno. Petitioner, who was facing acute financial crunch, had no option but to grab the said opportunity and accepted the said offer to make the ends meet. In pursuance to the appointment letter dated 12.12.2011 (Annexure P-8), petitioner had joined service.

4. An application was submitted by the petitioner for supplying information under the Right to Information Act when he came to know that similarly placed persons, who had applied on compassionate ground for appointment, were appointed as Clerks. Two of such appointment letters dated 16.11.2012 (Annexure P-10) and 13.02.2014 (Annexure P-11) have been placed on record.

5. It is on the basis of these appointments having been made, where similarly placed persons were appointed on the post of Clerk, that the petitioner moved an application before the Principal Secretary, Department of School Education, Punjab, for appointing him on the post of Clerk. On consideration of the said claim the Director, Public Instructions (Secondary Education), Punjab-respondent No. 2, has proceeded to reject the claim of the petitioner merely on the ground that he had already been issued an appointment letter for the post of Senior Laboratory Attendant in the year 2011.

6. Counsel, however, contends that the said appointment taken by the petitioner was because of the situation then prevalent and in any case, his claim for the post of Clerk/Steno could not have been rejected by the respondents especially in the light of the fact that the petitioner was fully eligible for appointment to the said post. Not only did he possess the educational qualifications for appointment to the post of Clerk/Steno but also had passed the Punjabi Type Test from the Language Department. Assertion has also been made with reference to appointment letters dated 16.11.2012 and 13.02.2014 (Annexures P-10 and P-11 respectively) that the appointments on compassionate grounds, when made qua the similarly placed employees, they were required to pass the type test within a period of one year and if they fail to do so, they were not entitled to claim the annual increments etc. He, therefore, contends that the passing of the type test was not a pre-requisite/condition for appointment to the post of Clerk and that too, on compassionate ground. He, therefore, contends that the petitioner has been discriminated against by the respondents while treating him differently from the similarly placed employees.

7. It is the further contention of the learned counsel for the petitioner that at the time when the petitioner was appointed in the year 2011, there were posts available of the Clerk, against which he could have been easily appointed but the said appointment was not given to him. He, therefore, asserts that the petitioner is entitled to the grant of said benefit. He, in support of his contentions, has placed reliance upon a judgment of the Supreme Court in the case of **Surya Kant Kadam vs. State of Karnataka and others**, 2001 (4) PLJR 19 and two judgments of this Court passed in CWP No. 21444 of 2010 titled as **Harwinder Singh vs. State of Punjab and others**, decided on 30.01.2013 and CWP No. 19031 of 2011 titled as **Harsimran Singh vs. State of Punjab and others**, decided on 25.03.2013. Prayer has, thus, been made that the impugned order dated 16.01.2015 (Annexure P-13) passed by the Director Public Instructions (Secondary Education), Punjab-respondent No. 2 be quashed and the petitioner be appointed on the post on Clerk.

8. On the other hand, learned counsel for the State although does not dispute the facts, as have been pleaded in the writ petition and the other assertions but contends that the petitioner had given an undertaking on 07.10.2011 wherein he has himself given an affidavit that the Punjabi type test was fixed for his appointment but he did not appear in the test and he has no objection if he is appointed as Senior Laboratory Attendant in lieu of Clerk. It was further stated that he has no objection to the same. He asserts that once the petitioner has himself given an affidavit to that effect that he would have no objection for appointment to the post of Senior Laboratory Attendant, he could not now turn around and claim appointment to the post of Clerk. He, therefore, contends that the appointment, which was given to

the petitioner on the post of Senior Laboratory Attendant, was at his own request although the department had considered his claim for appointment to the post of Clerk. He, thus, asserts that the prayer made in the writ petition cannot be accepted. He, however, could not dispute the factual assertion that the appointment has been given to other persons on compassionate grounds on the post of Clerk on 16.11.2012 (Annexure P-10) and 13.02.2014 (Annexure P-11). He also could not dispute the fact that passing of the type test was not a pre-requisite condition for appointment to the post of Clerk in the light of the period granted to the similarly placed employees for passing the type test within a period of one year, failing which, there were certain other consequences which would follow.

9. I have considered the submissions made by the learned counsel for the petitioner as also the counsel for the respondents and with their assistance, have gone through the records of the case.

10. The only objection, which has been pressed into service, is that the petitioner had himself given an affidavit giving up his claim for appointment to the post of Clerk and had further given a consent for he being appointed to the post of Senior Laboratory Attendant. The respondents have, in the light of the said affidavit, proceeded to appoint him on the post of Senior Laboratory Attendant. This plea, as has been taken by the respondents, cannot be accepted as the petitioner, at that peculiar situation where he was suffering from acute mental distress, was left with no option but to take up whatever assignment was given to him.

11. It is true that the petitioner's claim for appointment on compassionate grounds to the post of Clerk appears to have been under consideration but as the language of the affidavit indicates he was being

forced to pass the Punjabi type test as a pre-condition/pre-requisite for appointment to the post of Clerk, which, as is apparent from the orders of appointment issued to Sh. Gagandeep dated 16.11.2012 (Annexure P-10) and Miss Malika Rani dated 13.02.2014 (Annexure P-11), who were similarly placed and appointed on compassionate grounds, was not a pre-requisite for appointment to the post of Clerk. Petitioner, in these circumstances, had no option but to take up the appointment which was offered to him to save the family from starvation. The said plea, therefore, of the State counsel cannot be accepted.

12. As far as the plea with regard to the hostile discrimination which the petitioner has faced when similarly placed persons have been appointed on compassionate grounds on the post of Clerk especially Sh. Gagandeep son of Late Sh. Shambu Nath vide order dated 16.11.2012 (Annexure P-10) which is during the same period when the petitioner was being considered for appointment, the plea of the respondents that the petitioner could not have been appointed because of his undertaking cannot be accepted. Petitioner has been wrongly denied the benefit of appointment on the post of Clerk. There has been discrimination meted out to the petitioner and as has been held by this Court on the principle of discrimination in appointment on compassionate grounds in Harwinder Singh's case (supra) and Harsimran Singh's case (supra) as also a judgment of the Supreme Court in Surya Kant Kadam's case (supra), as referred to above, the claim of the petitioner for appointment to the post of Clerk deserves to be accepted.

13. In view of the above, the present writ petition is allowed. The impugned order dated 16.01.2015 (Annexure P-13) passed by the Director

Public Instructions (Secondary Education), Punjab-respondent No. 2 is, hereby, quashed.

14. Direction is issued to the respondents to appoint the petitioner on the post of Clerk, which is stated to be available, within a period of eight weeks from today. Petitioner shall be entitled to the benefit of the said post with effect from the date of his appointment. He shall, however, be entitled to the counting of service which he had rendered on the post of Senior Laboratory Attendant for the purpose of the pensionary benefits.

January 31, 2020
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No