

Sr. No.750

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-9949-2001 (O&M)
Date of decision: 26.05.2022

Dinesh Kumar

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: None for the petitioner.

Mr. R.D. Sharma, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petitioner herein, *inter alia*, seeks issuance of a writ in the nature of Mandamus, directing the respondents to appoint him on the post of *Gram Sachiv* under Ex-Gratia Scheme and not as a peon.

2. Petition was admitted for hearing on 11.03.2002.

3. When taken up for final adjudication, there is no representation on behalf of the petitioner. It seems that by sheer effluxion of time and pendency of the writ petition for more than 21 years before this Court, either it has been rendered infructuous or even otherwise the petitioner seems to have lost interest in pursuing the same.

4. In any case, from perusal of record/pleadings, it appears that even on merits, claim of the petitioner is not admissible. Reference may in particular be had to the stand taken in Para-1 of reply filed on behalf of respondents No.1 to 3, which is reproduced herein below:-

"1. That the petitioner has filed this writ petition for issuance of a writ in the nature of mandamus directing the respondents to appoint the petitioner on the post of Gram Sachiv instead of Peon under Ex-gratia Scheme from the date of his joining on the post of Peon. In this regard it is submitted that father of the petitioner was working as Gram Sachiv in the pay scale of Rs.5000-7850. But the

scale of the post of Gram Sachiv is Rs.3050-4590. On the death of his father, petitioner has been appointed on the post of Peon in accordance with the policy decision of the State Government issued vide letter dated 8th June, 1999, copy of which is annexed as Annexure R-1.”

5. Learned State counsel has canvassed arguments on the similar lines as per the defense taken in the written statement.

6. I am in agreement with the stand taken by the respondents. Neither any replication has been filed to the afore-noted stand of the respondents nor any additional affidavit of any kind to controvert the same.

7. Furthermore, reference may be had to Supreme Court judgment rendered in **CA-4718 with CA-659-2000 (arising out of SLP (C) No.13719-2000** titled **State of Haryana and others versus Vipin Kumar**, wherein the principle of “One Step Below” in the case of compassionate appointments was dealt with and in Paras-2 and 3 thereof, it is opined thus:-

*“2. xx xx xx. In an identical matter this Court had occasion to examine the scope of the said rules in **State of Haryana and others v. Rajeev Deshwal, SLP (C) No. 778/1999 disposed of on 22-3-1999** and interpreted the expression that “appointment should be one step below” as follows:*

“In our opinion this interpretation of the said clause by the High Court is erroneous. This clause means that the offer of appointment to the deceased employee's dependant is not to be on post equivalent to the one which was held by the deceased employee but should be on a lower post by at least one step. Therefore, in the present case when the deceased employee was Deputy Superintendent of Police, the offering of the post of A.S.I. was not incorrect.....”

3. All that need to be done is that, post that is offered to the respondent claiming a post on compassionate ground, should be at least one step below that was held by the deceased employee and that does not mean it should be the immediate post below it, it could be even lower than that. If that is the correct interpretation to be placed of the relevant rules, the post offered to the respondent appears to us to be correct. Hence the view of the High Court is erroneous. The order made by the High Court is, therefore, set aside and the writ petition filed by the respondent is dismissed. However, it is made clear that as the respondent has joined the post s per the orders made by the Government, he may continue to serve on the said post. The appeal is allowed accordingly.”

8. It is trite that the qualifications of dependent of an employee having died in harness are not relevant. The channel of the *ex-gratia* scheme cannot be used for providing a job according to the qualifications, but is merely meant to ameliorate the immediate financial calamity a family is visited with, due to sudden death of an earning member.
9. In view of the aforesaid, no grounds are made out to interfere.
10. Dismissed.

26.05.2022
vandana/mahavir

(ARUN MONGA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No