

**CWP-8806-2014**

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**2023:PHHC:126625**

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

**CWP-8806-2014 (O&M)**

**Date of decision : 09.08.2023**

**Sanjeev Bhasin**

**...Petitioner**

**Vs.**

**State of Punjab and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Arjun Pratap Atma Ram, Advocate  
for the petitioner.

Mr. Arun Gupta, AAG, Punjab.

Mr. Karamjit Singh, Advocate  
for respondent No.3.

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**DEEPAK MANCHANDA, J.**

1. Petitioner-Sanjeev Bhasin has filed this writ petition under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus for summoning the records of the case and for issuance of directions to respondent-State to appoint the petitioner as Senior Assistant w.e.f.01.03.2005 along with all consequential benefits. Further, the prayer has been made for quashing of order dated 20.09.2013 (Annexure P-13), whereby representation moved by the petitioner was rejected.

2. The facts in brief leading to the present petition are that petitioner's father, namely, Jagdish Chander Bhasin was serving as Senior Assistant in the Improvement Trust, Amritsar-respondent No.3 and was granted the pay scale of Rs.6400-10640/-, which was equivalent to scale of

Superintendent as he had served with the department for more than 33 years. As there was no vacancy in the respondent/department, therefore, petitioner's father was placed in the pay-scale of Superintendent in order to avoid career stagnation. However, he expired on 23.02.2004. The State of Punjab vide letter dated 21.11.2002 (Annexure P-1) issued instructions with regard to compassionate appointment. The petitioner being holder of degree of B.A and P.G. diploma in computer application, applied in the office of respondent No.3/department through his mother and he was appointed as Clerk on 01.03.2005 in the pay scale of Rs.3120-5160/- according to the terms of the instructions. Later, during the course of his service, the petitioner came to know about one appointee, namely, Harjit Kaur, who was appointed as Assistant/Inspector on compassionate grounds as her father was working as Accountant in Nagar Council, Kapurthala in pay scale of Rs.5800-9200/-, therefore, petitioner brought this fact to the attention of the authority through his representations dated 17.04.2007 and 26.04.2007 (Annexures P-4 and P-5, respectively). He further submitted the reminders on various dates i.e. Annexures P-6 to P-9 and also submitted his representation (Annexure P-10) through proper channel to claim parity with the case of Ms. Harjit Kaur. During the course of his service, petitioner came to know about other cases as well, who were appointed on the same or higher post on compassionate grounds. Dissatisfied with this, petitioner served a legal notice dated 29.08.2013 (Annexure P-12), whereby he claimed compassionate appointment for the post of Senior Assistant instead of Clerk, however, the same was declined vide order dated 20.09.2013 (Annexure P-13). Hence this petition.

3. Learned counsel for the petitioner contends that the petitioner was

compelled to accept the post of Clerk on account of the extreme financial condition of the family whereas the similarly situated persons/dependents were appointed to the same or higher post on which the deceased was working, but petitioner has been deprived from similar benefit. Therefore the action of the respondents is arbitrary and discriminatory on the face of it and without any justifiable reasons, the claim of the petitioner has been rejected. He further contends that as per policy, a compassionate appointment can be made even against a higher post than the post the deceased was working on, provided the dependent is educationally qualified and vacancy in Group 'C' post exists for the same. Further, the order dated 20.09.2013 (Annexure P-13) passed by the respondents against legal notice is silent as to how the case of other similarly situated employees, namely, Ms Harjit Kaur, Ms. Madhu Sharma and Mr. Bram Nath, whose names have been mentioned in the petition as well as in the representations sent by the petitioner time to time for consideration of his right to be appointed on the higher post were appointed. Learned counsel for the petitioner submits that respondents have not applied their minds and treated equals as unequal which violates Clause 17(a) and 17(b) of the instructions of the State of Punjab. To support his contentions learned counsel relies upon the judgements passed by Hon'ble Supreme Court in "Kamla Gaiind Vs. State of Punjab", 1990 (Suppl.) S.C.C.800, "Surya Kant Kadam Vs. State of Karnataka", 2002 (1) S.C.T.244, "Sri Chand Gupta Vs. State of Punjab", 1995 (2) S.C.T.679, "Rajinder Kumar Khara Vs. State of Haryana", 1996 (3) S.C.T.99, "Gulbahar Singh Gill Vs. State of Punjab", 2002(2) S.C.T.124 and judgments passed by this Court, titled as "Harwinder Singh Vs. State of Punjab and others" in CWP-21444-2010, "Harsimran Singh Vs. State of

Punjab and others” in CWP-19031-2011 and “Sitara Singh Vs. State of Punjab and another” in CWP-16142-2014.

4. Per contra learned counsel for respondent Nos. 1, 2 and 3 while referring to the replies dated 22.08.2014 and 30.11.2016 have submitted that the petitioner was appointed on compassionate grounds vide letter dated 01/03/2005 in Group ‘C’ being qualified for the appointment in accordance with the Instructions dated 21.11.2002. As per Clause 17 of the policy, it provides that the employment to a family member of the deceased Group ‘D’ government servant to a Group ‘C’ post be not restricted, if he/she is educationally qualified to Group ‘C’ post provided a vacancy in Group ‘C’ posts exists. Accordingly the petitioner was appointed to Group ‘C’ post as a Clerk and he did not have any right to claim a particular post in Group ‘C’ and has been appointed in strict compliance to the scheme/policy dated 21.11.2002 and there is no violation of any nature. To support their contentions, learned State counsel has relied upon the judgements passed by Hon’ble the Supreme Court in “I.G.(Karmik) and others Vs. Prahlad Mani Tripathi, 2007 (6) SCC 162 and “State of Rajasthan Vs. Umrao Singh, 1994 (6) SCC 560.”

5. I have heard the learned counsels for the parties.

6. Through this petition petitioner has alleged discrimination and the same has been highlighted in the pleadings by giving reference and names of the other similarly placed employees, who had already been given the benefit of appointment on compassionate grounds to same or higher post on which the deceased/employee worked, but the petitioner has not been considered for appointment to the post of Senior Assistant. The petitioner has mentioned the examples of pick and choose policy adopted by the respondents and granting

the benefit of compassionate appointment in para-7 and 8 of the petition. It is not in dispute that the petitioner fulfills the educational qualifications for a candidate to be appointed to the post of Senior Assistant and for not accepting his candidature, neither any justification or reason has been given in the impugned order (Annexure P-13), nor in the replies filed by the respondent Nos. 1, 2 and 3 annexed with the present petition. As per policy dated 21.11.2002, a dependent member of the family of the deceased government employee, who died in harness being a son can be appointed on the compassionate appointment. A perusal of Clauses 17(a) and 17(b) of the Instructions also reveals that compassionate appointment can be made to group 'C' of Group 'D' posts against the direct route on quota available at the time of appointment by the Department of the deceased employee and further the perusal of the said instructions also shows that nothing as such has been mentioned therein that qualified persons cannot be appointed against the same or higher post on which the deceased was working. The relevant clauses of the instructions/policy are reproduced below:-

*(1) A dependent member of the family of a person (bread winner) killed or 100% physically disabled in terrorist action or by security forces acting in aid of civil power in the State.*

*(2) A dependent member of the family of the deceased Government employee, who dies in harness.*

*(3) Disabled Ex-Servicemen (fit for Civil Service).*

*(4) A dependent member of the family of the Defence Services Personnel:*

*(i) Killed in service, while performing duties; or*

*(ii) Who are severely disabled and totally unfit for re-employment.*

***Note: Independent Family Members means:-***

*(a) Spouse; or*

*(b) son (including adopted son); or*

*(c) Unmarried daughter (including adopted daughter); or*

*(d) Unmarried brother or unmarried sister in the case of*

*unmarried Government Servant who was wholly dependent on the Government Servant/member of the Armed Forces at the time of his death in harness.*

**Note II**      *Government Servant for the purpose of these instructions means a Government Servant appointed on regular basis and not one working on daily wage or casual apprentice or adhoc or contract or re-employment or on 89 days basis.*

**Note IV**      *‘Service’ means a period prior to the date of superannuation. It does not include extension in service or re-employment after attaining the normal age of retirement in a civil post.*

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**17. GENERAL**

*(a) Appointments made on grounds of compassion should be done in such a way that persons appointed to the post do have, the essential educational and technical qualifications and experience required for the post consistent with the requirement of maintenance of efficiency of administration.*

*(b) It is not the intention to restrict employment of a family member of the deceased Group ‘D’ Government servant to a Group ‘D’ post only. As such, a family member of such Group ‘D’ Government servant can be appointed to a Group ‘C’ post for which he/she is educationally qualified, provided a vacancy in Group ‘C’ post exists for this purpose.”*

7.            Moreover, no justifying reasons have come forth for the appointments of all other similarly situated employees/persons except for one reason that the same was done in strict compliance of instructions issued by the Government. In all mentioned cases, who were offered an appointment to the higher posts, which was accepted by them and where all those persons joined also, that being an admitted position, discrimination to the service of the petitioner is made out. Therefore, petitioner’s right as per Articles 14 and 16 of the Constitution has been violated by the respondents. Further, this Court cannot lose it’s sight on the fact that after getting an appointment on the post of Clerk, petitioner after coming to know about the appointment of other persons as mentioned in the petition, immediately submitted his representation and

rigorously persuaded for claiming the benefit, but still his prayer for the said post was not considered. The stand of the respondents is that the petitioner was appointed in strict compliance with the scheme/policy dated 21.11.2002, but they failed to interpret policy in the right spirit. Clause 17 of the policy says that a family member of the deceased Group 'D', government servant to a Group 'D' post be not restricted if he/she is educationally qualified to a Group 'C' post provided a vacancy of Group 'C' post exists. Merely referring the said Clause in reply, and no other reason has been disclosed including whether the educational qualification of the petitioner was ever considered at the time of his appointment as Clerk rather Clause 17 has been misconstrued. The judgements cited by the learned counsel for the petitioner are much more convincing whereas on the other hand, the law cited by the respondents do not apply to the facts of the present case. Even in the judgements cited by the learned counsel for the petitioner similar issue of discrimination was agitated and the Hon'ble Apex Court and Coordinate Bench of this Court while relying upon the said judgements allowed those petitions wherein also similarly placed as the petitioner were ordered to be considered.

8. The violation of Articles 14 and 16 Constitution of India as far as the claim of the petitioner is concerned is apparent and in the absence of any cogent reasoning given by the respondents where the petitioner should have been treated similarly as the others. On this ground only this petition deserves to be allowed and benefits as have been extended to similarly placed persons also be granted to the petitioner. The Hon'ble Apex court in "*Union of India and Others Versus Munshi Ram*" 2022 (4) SCT 699, has dealt with the issue of discrimination and the relevant paragraphs are reproduced below-

*“6. From the aforesaid, it can be seen that with respect to Commission Vendors/bearers working in the Western Railway, Eastern Railway, Southern Railway and South-Eastern Railway, they are held to be entitled to 50% of the services rendered prior to their regularization to be counted for pensionary benefits and all those Commission Vendors/bearers are granted such benefits. Now the dispute is with respect to Commission Vendors/bearers working in the Northern Railway.*

*7. It cannot be disputed that employees working in different divisions/zones in the Railways are under the very same employer – Railway Board which is under the Ministry of Railways. There are 16 Zones and 68 Divisions in the Railways. Therefore, the employees working under the same employer – Railway Board working in different Zones/Divisions are required to be treated similarly and equally and are entitled to similar benefits and are entitled to the same treatment. As rightly submitted on behalf of the respondents, there cannot be any discrimination inter se. Under the circumstances, on the ground of parity, the Commission Vendors/bearers working in the Northern Railway are entitled to the same benefits which are held to be entitled to all the similarly situated Commission Vendors/Bearers working under different Zones/Divisions. There cannot be different criteria/parameters with respect to similarly situated employees – Commission Vendors/bearers working in different Zones/Divisions, but working under the same employer.*

*8. The Railways/UOI/Railway Board cannot be permitted to repeat the same arguments which were raised before different Tribunals, High Courts and also before this Court. Under the circumstances, the respondents – Commission Vendors/bearers working in the Northern Railway shall also be entitled to the same benefits which the other Commission Vendors/bearers working in different Zones/Divisions are held to be entitled to. There cannot be discrimination among the similarly situated Commission Vendors/bearers. To deny similar benefits would tantamount to discrimination and in violation of [Articles 14](#) and [16](#) of the Constitution of India.*

*9. Now so far as the submission on behalf of the appellants - UOI/Railways that there shall be huge financial burden on the Railways is concerned, it is required to be noted that the issue is with respect to pensionary benefits. Once it is found that the respondents – Commission Vendors/bearers working in the Northern Railway are also entitled to similar benefits which are given to the similarly situated Commission Vendors/bearers working in different zones/divisions and since they are already being paid the pensionary benefits by counting the benefit of 50% of their services rendered prior to their regularization, there is no reason to deny the similar benefits to the respondents – Commission Vendors/bearers working in the Northern Railway being similarly situated.*

*10. Even the concept of negative equality submitted on behalf of the appellants also shall not be applicable in the facts and circumstances of the case, more particularly when the decisions of different High Courts which are held against the appellants have been confirmed by this Court and the special leave petitions have been dismissed on the ground of delay as well as on merits.*

*11. In view of the above and for the reasons stated above and even applying the doctrine of stare decisis, on the aforesaid ground alone, the present appeals deserve to be dismissed and are accordingly dismissed, by holding that the respondents – Commission Vendors/bearers working in the Northern Railway are entitled to have 50% of their services rendered prior to their regularization to be counted for pensionary benefits like other office*

*bearers/Vendors working under the Railway Board, working in different zones/divisions, namely, Western Railway, Eastern Railway, Southern Railway and South-Eastern Railway.”*

9.           Given the above discussion, Annexure P-13 is hereby quashed. Further, directions are issued to the respondents to consider the claim of the petitioner for appointment to the post of Senior Assistant and thereafter pass appropriate orders in accordance with the law. This exercise shall be completed within two months from the date of receipt of a certified copy of this order. The petitioner shall be entitled to the consequential benefits, which shall further be released within two months.

**(DEEPAK MANCHANDA)**  
**JUDGE**

**09.08.2023**  
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| Whether speaking/reasoned : | Yes | No |
| Whether Reportable :        | Yes | No |