

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

(224)

CWP-32052-2018

Reserved on 05.01.2023

DATE OF DECISION:- 03.02.2023

BHARAT RATTAN

...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Vijay K. Jindal, Advocate
for the petitioner.

Mr. R.K.S.Brar, Additional Advocate General, Haryana
for the respondents.

SUVIR SEHGAL, J. (ORAL)

Petitioner has approached this Court under Article 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to treat the petitioner as Warder w.e.f. 30.09.2006 and for grant of all consequential benefits of service. Another prayer has been made for issuance of a writ of certiorari for quashing paras 7 and 8 of communication dated 16.10.2018, Annexure P-12, whereby the petitioner has been made ineligible for appointment/promotion against the post of Warder/Clerks.

Factual matrix leading to the filing of the petition are that Sh. Vijay Gulati, father of the petitioner, was killed by criminals at the main gate of Central Jail, Hisar on 07.04.2003, while he was performing his duty as a Head Warder. A recommendation dated 20.04.2005, Annexure P-4, was sent to the Government and petitioner's father was

awarded President Correctional Service Medal (Gallantry Award) on the occasion of Independence Day, 2006. Vide order dated 21.10.2004/26.10.2004, Annexure P-6, petitioner, who had cleared his matriculation in May, 2004, was given compassionate appointment in a Class-IV post as he was 16 years of age on the assurance that on completion of the age of 18 years, he will be appointed a Warder. Appointment order dated 30.11.2004, Annexure P-7, was issued by the Superintendent, Central Jail, Hisar and the petitioner joined the post of Peon, where he is working since then. On attaining the age of 18 years, the petitioner represented to the respondents, but instead, by letter dated 22.02.2007, Annexure P-9, he was informed that he cannot be considered for the higher post under the same scheme and his case will be considered along with other Class-IV employees at the time of promotion to the post of clerk when it becomes due. Petitioner was supplied information vide letter dated 23.05.2018, Annexure P-10, that dependent children of Warder/Head Warder, who expired during the years 1988 to 2004, have been appointed to the post of Clerk under the ex-gratia Scheme. He served a legal notice dated 20.08.2018, Annexure P-11, and by reply dated 16.10.2018, Annexure P-12, he was informed that as per the amended rules, the petitioner is not entitled to Class-IV post. Upon notice, petition has been contested by the respondents taking a stand that after the amendment of the rules, the petitioner is not entitled to Class-III post or promotion thereto. It has been submitted that as there is no promotional avenue, Government has introduced the Assured Career Progression Scheme and first ACP scale has been granted to the petitioner. Written statement has been controverted by the petitioner by filing a replication re-iterating the averments of writ petition.

Counsel for the petitioner has contended that as the petitioner was entitled and offered the post of Warder under The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (for short “the 2003 Rules”), but by adopting dilatory tactics, the respondents have gone back on their commitment. On the other hand, State counsel has argued that after having accepted the post under the 2003 Rules, petitioner cannot be considered for a higher post.

I have considered the submissions made by counsel for the parties and examined the material placed on the record with their able assistance.

Before adjudicating on the claim raised by the petitioner in the instant petition, both orders, Annexures P-6 and P-7, deserve to be noticed and are reproduced hereunder:-

“Annexure P-6

From

*Inspector General of Prisons, Haryana,
Manimajra Chandigarh*

To

*Superintendent,
Central Jail, Hisar.*

*No.38566 G.I/A.3 dated 21.10.2004/
26.10.2004.*

Subject:- For providing Govt. service to Shri Bharat Rattan son of Shri Vijay Gulati under the ex-gratia scheme.

In reference to your letter No.14653 dated 14.07.2004.

Shri Bharat Rattan s/o Late Shri Vijay Kumar Gulati has submitted an application for job under ex-gratia scheme against the Class IV posts which are lying vacant in Jail. Because presently, Shri Bharat Rattan is matric pass but his age is 16 years. As per new ex-gratia scheme 2003, this candidate does not fulfill the requisite condition to give service to the deceased employee because this

person does not fulfill the requirements concerning age for the post of warder. Therefore, he may be given the service of Class-IV employee on the condition when he will complete the age of 18 years, then he will be appointed on the post of Warder. Before appointing Shri Bharat Rattan on the post of peon (sewadar) all the required documents with regard to his conduct and character which are annexed herewith, be got filled from Shri Bharat Rattan and all other formalities be completed and thereafter the papers be sent after verification to concerned Deputy Commission & Superintendent of Police and Deputy Inspector General Police, C.I.D. Department, Haryana.

Sd/-

*Asstt. Inspector General (Admn)
For Inspector General, Prisons, Haryana*

Endt. No.38566 G.I/A.3 dated 21.10.2004/ 26.10.2004.

A copy of the above is being sent to Smt. Varsha Rani wife of Late Shri Vijay Gulati, Warder Colony, Central Jail, Hisar for information.

Sd/-

*Asstt. Inspector General (Admn)
For Inspector General, Prisons, Haryana”*

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Annexure P-7

**OFFICE OF THE SUPERINTENDENT CENTRAL
JAIL, HISAR**

ORDER

In terms of decision contained in Haryana Govt. letter No.16/138/2001-5GS-II dated 31.03.2003 and in compliance of Director General of Prisons, Haryana, Chandigarh letter No.38566 GI/A-3 dated 21.10.04, regarding providing employment to the member of a Govt. employee under ex-gratia scheme who die while in service. Shri Bharat Rattan S/o Late Sh. Vijay Gulati, Warder, is hereby appointed as peon temporarily on the regular basis in the pay scale of Rs.2550-55-2660-EB-60-3200 plus usual allowances as admissible under the rules from time to time and posted in the office of the Superintendent Central Jail, Hisar against the existing vacancy. In accordance with the direction given by the Director General of Prisons, Haryana, Chandigarh vide letter No.38566 GI/A-3 dated 21.10.04 this appointment (as peon) is given due to below aged of 18 years. As per policy of new Ex-gratia Scheme 2003, he shall be appointed on the post of Warder on attaining the age of 18 years.

The condition of the appointment is as under:-

1. *He shall have to produce a medical certificate of fitness from the Chief Medical Officer, Hisar for entry in the Govt. service in this Department.*
2. *He will have to join his duty in the office of the Superintendent, Central Jail, Hisar within 15 days from the date of receipt of this appointment letter.*

PLACE: HISAR

Sd/-30.11.2004

DATED: 30-11-2004

(JAGJIT SINGH) H.P.S.-1

SUPERINTENDENT,

CENTRAL JAIL, HISAR.

ENDST No. 23186 DATED 30.11.04.

Copy is forwarded to Sh. BHARAT RATTAN S/o Late Sh. VIJAY GULATI (Warder) House No.191, VIJAY COLONY, Jawahar Nagar, Hisar, District Hisar, Haryana, for information and necessary action.

Sd/- 30.11.2004

SUPERINTENDENT,

CENTRAL JAIL, HISAR.”

Upon reading both the above reproduced orders, this Court finds that it was a case of Hobson's choice for the petitioner. Due to economic compulsions, the petitioner did not have any alternative except to accept what the Government put before him.

A perusal of both the above reproduced annexures shows that the petitioner was appointed as a Peon, a Class-IV post on the commitment that on completion of the age of 18 years, he will be appointed to the post of Warder, a Class-III post. It was an unequivocal assurance extended by the Government and there is nothing on the record to show that it was ever withdrawn or the government made any modification in the orders, Annexures P-6 and P-7. It is not the case of respondents that the petitioner did not possess the requisite educational qualification or that he was not entitled for the post under the 2003 Rules, which were applicable to the case of the petitioner. Having made the offer, the respondents cannot be permitted a volte-face. Furthermore, information supplied to the petitioner vide letter, Annexure P-10, under

the Right to Information Act, 2005 shows that on the death of a Warder/Head Warder, during the years 1988 to 2004, their dependent children were given the post of Clerk (Class-III post). Petitioner is entitled to same treatment on the principle of parity. This fortifies his case for appointment to the post of Warder, which post is one step lower than the post held by his father as was the mandate of the 2003 Rules.

Accordingly, a direction is issued to the respondents to make an offer of the post of Warder to the petitioner on the basis of their assurance given in Annexures P-6 and P-7, within a period of three months from today.

It is clarified that the petitioner will be entitled to salary, seniority, increment etc. for the post of Warder from the day he joins the post.

Writ petition is disposed of with the above direction.

(SUVIR SEHGAL)
JUDGE

03.02.2023
Kamal

Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No