

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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CWP-26684 -2023(O&M)
Decided on : 29.11.2023

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...Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

PRESENT: Mr. Kuldeep Sheoran, Advocate for the petitioner.

HARSIMRAN SINGH SETHI, J. (Oral)

1. In the present petition, the claim of the petitioner is that he has been given appointment on the post of Constable under Ex-gratia scheme after the death of his father, whereas, the petitioner was entitled to be appointed as Assistant Sub Inspector as the father of the petitioner was working on the post of Sub-Inspector.

2. Learned counsel for the petitioner argues that the reply to the legal notice dated 09.11.2023 declining the benefit as being claimed in the present petition is contrary to the instructions of the Government of Haryana and hence, appropriate directions needs to be issued to the respondents-department so as to grant the petitioner the benefit of ex-gratia appointment on the post of Assistant Sub-Inspector from the date when the petitioner was granted the appointment on the post of constable.

3. The facts stated in the present petition are that the late father of the petitioner was appointed as Constable in the Haryana police on 28.12.1998. He was promoted to the post of Head Constable on 21.09.2006 and was further promoted as Assistant Sub-Inspector on 26.10.2015.

Ultimately, on 30.12.2020, the late father of the petitioner was promoted as Sub-Inspector and while working on the said post unfortunately the father of the petitioner died due to heart attack on 26.09.2021. After the death of the father of the petitioner, the petitioner claimed the benefits under the Haryana Civil Services (Compassionate Financial Assistance or Appointment) Rules, 2019 (for short 'Rules, 2019').

4. As per the Rules, 2019, a dependent can opt either for a compassionate appointment or for ex-gratia financial assistance. In the present case, the petitioner opted for the grant of ex-gratia appointment. The petitioner claimed the compassionate appointment on account of the death of his father under Rules, 2019. The said request of the petitioner was considered by the respondents and accepted and the petitioner was appointed on the post of constable vide order dated 06.07.2022. The said order was accepted by the petitioner and joined on the post of a constable and for the last more than one year, the petitioner is working as a constable in the Haryana Police.

5. After getting the appointment as a constable and accepting the same, the petitioner turned around and filed a representation dated 22.08.2023 (Annexure P-9) claiming that the petitioner was entitled to be appointed on the post of Assistant Sub Inspector, which is one rank lower than the post held by late father of the petitioner, hence, he should be appointed on the post of Assistant Sub Inspector. As no reply was given by the respondents to the said representation, hence, the petitioner served upon the respondents a legal notice dated 12.09.2023 (Annexure P-10) claiming the same benefit of appointment on the basis of compassionate ground as Assistant Sub Inspector instead of constable.

6. The said legal notice has been replied by the respondents

wherein, in the reply it has been mentioned that the petitioner's mother, claimed the benefit of compassionate appointment of her son on the post of a constable, which request was accepted and the petitioner was appointed as constable vide order dated 06.07.2022. As per Rule 13 of the Rules 2019 once an appointment has already been offered and the same has been accepted, no further claim is to be entertained.

7. As, the claim of the petitioner for the grant of compassionate appointment on the post of Assistant Sub Inspector has been declined, which action of the respondents-department has been challenged by the petitioner in the present petition.

8. Learned counsel for the petitioner submits that under Rules of 2019, the dependent of deceased employee is entitled to get an appointment to a post which is one step lower than the post held by the deceased employee and as the late father of the petitioner was working as Sub inspector, the petitioner should have been granted the appointment on the compassionate ground on the post of Assistant Sub Inspector and not as a constable and hence, the petitioner has been given the compassionate appointment on the post of a constable which is contrary to the Rules, 2019.

9. I have heard learned counsel for the petitioner and have gone through the record with his able assistance.

10. It is a conceded fact that the compassionate appointment is given to mitigate the circumstances of the family after the death of the bread earner of the family. It is not a source of an appointment. Once the petitioner claimed benefit of compassionate appointment and he has already been appointed as a Constable by the respondents-department, which offer for the appointment on the post of a Constable was accepted by the petitioner without raising any grievance then and now the petitioner cannot turned

around and claim the post of Assistant Sub Inspector.

11. Further under 2019 Rules, Rule 13-A clearly states that once the appointment has been offered to the dependent of a deceased or a missing Government employee, no request for the change of the post shall be entertained with respect of any other post or department under any circumstances and in case the offer is not acceptable to him, no further claim shall be entertained.

12. Keeping in view the said clause of 2019 Rules, once the petitioner has been offered the post of a constable, which post the petitioner had accepted without any objection, later on, the petitioner cannot change the said offer of appointment on the post of a Constable.

13. In case the petitioner was aggrieved with respect of the action of the respondents in giving him compassionate appointment on the post of Constable on the basis of compassionate ground, the petitioner should have declined the said offer or should have raised the claim before competent Court of law claiming under the Rules in case, the petitioner thinks that he was entitled for the post of Assistant Sub Inspector in the facts and circumstances of the present case but once, the petitioner accepted the compassionate appointment as Constable, he had waived off other rights so as to seek other post as stated under Rule 13 of 2019 Rules.

14. The argument of the learned counsel petitioner that there was no bargain power with the petitioner and the petitioner had to accept the post of constable is of no avail. In case the petitioner his claiming his right, he should have asserted and not accepted any other post in case the same had been offered under his entitled. Once the petitioner accepted the post of a constable which was offered to him without there being any objection in July, 2022 and he raised his first objection only in the year 2023, which fact

shows that the said objection only came much after the acceptance of the appointment as constable hence, it is an after thought only.

15. Even otherwise, the claim of the higher post after accepting the compassionate appointment on a particular post, has already been decided by the Hon'ble Supreme Court of India while passing order in Civil Appeal No. 2208 of 2007 titled as 'I. G. (Karmik) and others vs. Prahalad Mani Tripathi' decided on 27.4.2007 wherein it is held that *once the compassionate appointment is offered to a candidate and the same is accepted by him, later on the said candidate cannot claim higher post.*

Relevant Paragraph of the said judgment is reproduced as under:-

"Furthermore, Appellant accepted the said post without any demur whatsoever. He, therefore, upon obtaining appointment in a lower post could not have been permitted to turn round and contend that he was entitled for a higher post although not eligible therefor. A person cannot be appointed unless he fulfils the eligibility criteria. Physical fitness being an essential eligibility criteria, the Superintendent of Police could not have made any recommendation in violation of the rules. Nothing has been shown before us that even the petitioner came within the purview of any provisions containing grant of relaxation of such qualification. Whenever, a person invokes such a provision, it would be for him to show that the authority is vested with such a power."

16. The same view was reiterated by the Hon'ble Supreme Court of India while deciding the Civil Appeal No. 2061 of 2015, titled as **The Rajashthan State Road Transport Coporation and others v. Revat Singh** decided on 20.02.2015,

Relevant Paragraph No. 8 of the said judgment is reproduced as under:-

"8. In I.G.(Karmik) and others vs. Prahalad Mani Tripathi (2007) 6 SCC 162, this Court has held that compassionate appointment can not be granted to a post for which the candidate is ineligible. It is further held in said case that even though higher post was applied for on compassionate ground, when a lower post offered considering qualification and eligibility as per rules was accepted by the candidate, he cannot claim higher post."

17. Keeping in view the settled principle of law stated herein above coupled with the fact that petitioner has already accepted the post of a Constable and now the petitioner cannot turn around and claim the post of Assistant Sub Inspector, hence, no ground is made out for any interference by this Court with the impugned order.

18. The present petition stands dismissed.

19. Civil miscellaneous application pending, if any, is also disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

29.11.2023
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Whether speaking/reasoned: Yes/~~No~~
Whether Reportable: Yes/~~No~~