



CWP- 24790-2021

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP- 24790-2021
Date of Decision:29.10.2024

JASWINDER SINGH ...Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Bhim Sen Sehgal, Advocate for the petitioner
Mr. Swapan Shorey, DAG, Punjab
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HARSIMRAN SINGH SETHI, J.(ORAL)

In the present petition, the grievance being raised by the petitioner is that the petitioner was entitled for appointment to the post of Naib-Tehsildar on compassionate basis whereas, the petitioner has been given appointment to the post of clerk, which is arbitrary and illegal and the petitioner should be given the benefit of appointment to the post of Naib-Tehsildar.

Learned counsel for the petitioner places reliance on judgment of the Division Bench of this Court in CWP No.19096-1996 titled Lakhwinder Singh vs. State of Punjab and others.

Learned counsel for the petitioner submits that the said judgment has also been upheld by the Hon'ble Supreme Court of India in Civil Appeal No.4485 of 2000 titled as State of Punjab and others vs. Lakhwinder Singh decided on 15th January, 2002,hence, the respondents are liable to consider the claim of the petitioner in the light of the said judgment.



Upon notice of motion, the respondents-State has filed the reply, wherein the respondents have stated that the petitioner had already been appointed as a Clerk in the year 2013 and after accepting appointment to the said post, the petitioner has filed the present petition after a period of 08 years of appointment claiming up-gradation of his appointment from the post to the post of Naib-Tehsildar, which is not permissible as the post of Naib-Tehsildar is a Group-B post whereas, the entitlement of the petitioner was only for Group C and D posts.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It may be noticed that the question of law raised in the present petition has already come up for consideration before this Court in CWP No.1850 of 2020 and CWP No.11660 of 2021 decided on 07.05.2024 wherein, in one petition the grant of up-gradation in post given to a compassionate appointee was challenged and in the other petition, the up-gradation of the post was claimed, which benefit has been declined by this Court. It has been held that keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India mentioned in the judgment dated 07.05.2024, the up-gradation of the post after accepting a particular post on compassionate appointment is not admissible. The relevant paragraphs of the said judgment are as under:-

*“14. The said law is clear since long. Hon'ble Supreme Court of India while deciding **Civil Appeal No.6492/94 titled as, State of Rajasthan vs. Shri Umrao Singh**, decided on 29.09.1994 held that once an appointment has been given on compassionate ground and the post is consumed by a candidate after accepting the said offer, his right extinguishes and no*



benefit of higher post can be given on later point of time.

Relevant paragraph of the judgment is as under:-

“8. Admittedly the respondent’s father died in harness while working as Sub-Inspector, C.I.D. (Special Branch) on 16.3.1988. The respondent filed an application on 8.4.1988 for his appointment on compassionate ground as Sub-Inspector or L.D.C. according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of L.D.C. by order dated 14.12.1989. He accepted the appointment as L.D.C. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of ‘endless compassion’. Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.”

*15. Similar view has further been reiterated by the Hon’ble Supreme Court of India in **Civil Appeal No.2208-2007, I.G. (Karmik) and others vs. Prahalad Mani Tripathi** decided on 27.04.2007 and further by Coordinate Bench of this Court while passing order in **CWP-311-2009 titled as Kiran Jyoti vs. State of Punjab and others** decided on 14.01.2009 has held on the basis of **Umrao Singh (supra)** as well as in **Prahalad Mani Tripathi (supra)** that once, a compassionate appointment has been accepted, the right of the candidate extinguishes and no right to seek consideration for higher post exists. Relevant paragraphs of the judgment in **Kiran Jyoti (supra)** are as under:-*

“4.The compassionate appointment is not a source of recruitment. The object and purport of compassionate appointment is to enable the family of the deceased to overcome immediate financial problems. It is for this purpose that an exception has been carved out under the mandate of [Articles 14](#) and [16](#) of the Constitution of India. The right of a person to ask for a higher post after the appointment has been considered by the Hon'ble Apex Court in the case of [State of Rajasthan v. Umrao](#)



Singh, (1994) 6 SCC 560 wherein the Apex Court held that once the right is consummated, any further or second consideration for higher post on the ground of compassion would not arise. This view has been followed in the case of *I.G. (Karmik) and others vs. Prahalad Mani Tripathi*, (2007) 6 Supreme Court Cases 162 wherein it has been observed as under:-

"7.Public appointment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion.

12.Furthermore, the respondent 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..."

5. In the instant case, the petitioner's claim for compassionate appointment was accepted by the respondents and she was offered the Class IV appointment which she accepted without any reservation. It was only after she got the benefit of appointment and confirmation that she tried to raise the issue of appointment on a higher post. In view of the aforesaid observations made by Hon'ble Supreme Court, the petitioner cannot be permitted to raise the issue after seeking appointment without reservation. I find no merit in this petition which is accordingly dismissed."

16. Similar view has been further reiterated by the Hon'ble Supreme Court of India in **Civil Appeal No.4422-1994 titled as, State of Haryana vs. Naresh Kumar Bali, decided on 17.05.1994**. In the said case, feeling aggrieved against the decision of this Court wherein direction was issued to grant the compassionate appointment on a higher post, State approached the Hon'ble Supreme Court of India with a plea that once, compassionate appointment has been offered and accepted, same cannot be upgraded to a higher post which plea was accepted by the Hon'ble Supreme Court of India.



17. A bare perusal of the settled principle of law observed hereinbefore will show that a consistent view starting from year 1994 is that a candidate, who has already accepted a particular post offered on compassionate ground cannot be allowed to turn around to claim benefit of higher post. The said view has been taken on the ground that compassionate appointment is not a source of appointment but to mitigate the circumstances, which the family of the deceased employee is facing and once, the said offer of appointment on compassionate ground has been accepted by a candidate, he/she cannot be allowed to turn around to claim a higher post. The said right consummate on the grant of appointment and no further consideration can be sought or offered at a belated stage when such hardship as it occurs upon the untimely demise of the employee, who happens to be a breadwinner of the family has been addressed by grant of the appointment. It has been categorically observed that the issue of compassionate appointment cannot remain open once appointment has been granted, the right of the same consummated and reconsideration of the same would constitute as a case of endless compassion which would be against equity in the light of the fact that compassionate appointment happens to be an exception to the general rule which govern the aspect of appointment with the State.

*18. A similar view was taken by another Coordinate Bench of this Court in **CWP-14282-2007 titled as, Jang Bahadur Singh vs. State of Punjab and others, decided on 07.01.2013**, wherein, a candidate, who was given an appointment on compassionate ground was claiming appointment on a higher post, which claim was rejected by the Coordinate Bench of this Court holding that once, an appointment has already been accepted, the claim for higher post cannot be accepted.*

Relevant paragraphs of the judgment are as under:-

8. The petitioner having been appointed to the post of Peon in the year 1991 and, that too, on a priority basis



and under a Rehabilitation Scheme, the objective of such scheme stood achieved. The claim as raised in the present writ petition would be in the nature of asking for endless compassion. The same is not permissible. The observations of the Hon'ble Supreme Court in the case of [State of Rajasthan v. Shri Umrao Singh](#), 1995(1) S.C.T.46 in somewhat similar circumstances would be relevant and read in the following terms:

*"Admittedly the respondent's father died in harness while working as Sub-Inspector, C.I.D. (Special Branch) on 16.3.1988. The respondent filed an application on 8.4.1988 for his appointment on compassionate ground as Sub-Inspector or L.D.C. according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of L.D.C. by order dated 14.12.1989. He accepted the appointment as L.D.C. Therefore, the Neutral right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of 'endless compassion'. Eligibility to be appointed as Sub-Inspector of Police is one thing; the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case. Since both the sides relied on Naresh Kumar Bali's case (*supra*), we will now refer to the same. We had indicated our mind in that very ruling in paragraph 15 of the said judgment. It reads as under:*

"Though the respondent claimed that he had applied for the post of a teacher the Subordinate Service Selection Board had not chosen him for the post of a Teacher because he did not have the requisite qualification. In



fact, the respondent did not object to his appointment as a Clerk and his claim for consideration for the post of Teacher was one year after his appointment. Thus, the appointment on compassionate ground as per the scheme had been completed." Therefore, once the right has consummated as we indicated earlier, any further or second consideration for a higher post on the ground of compassion would not arise. It is true that in the decision cited, the direction by the High Court was a positive direction to make the appointment but here the direction was to consider the case. Nevertheless, we find that the High Court was not legally justified in directing a further consideration of the candidature of the respondent for the post of Sub-Inspector. The Civil Appeal will stand allowed and in reversal of the orders of the courts below respondent's writ petition is dismissed. There shall be no order as to costs."

Not only this, the petitioner accepted appointment to the post of clerk in the year 2013 and the present petition has been filed after a period of 8 years of accepting the said appointment. Once, the petitioner has accepted the post and worked on the same for a period of 8 years, he cannot be allowed to approach this Court for upgradation from the post of clerk to that of Naib-Tehsildar to be given on compassionate appointment.

Further, the compassionate appointment is not a source of appointment but to mitigate the hardship being faced by a family of a deceased employee. The said appointment is the concession given, which cannot be claimed as a matter of right. Once, the petitioner accepted a particular post, he cannot approach the Court for upgradation of the same keeping in view settled principles of law cited hereinbefore.



As regard to the judgment in Lakhwinder Singh’s case (supra), it may be noticed that the said question law has been subsequently settled by the Hon’ble Supreme Court of India after the passing of the judgment by a Division Bench of this Court in Lakhwinder Singh’s case and the said judgments of the Hon’ble Supreme Court of India have been noticed hereinbefore, which will be applicable in the facts and circumstances of the present case.

No ground is made out for the grant of relief to the petitioner as being claimed in the present petition in view of the facts and circumstances mentioned hereinbefore.

Dismissed.

(HARSIMRAN SINGH SETHI)
JUDGE

29.10.2024
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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |