

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11766-2010 (O&M)

Decided on 09.12.2025

Rohit Sharma

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sunil K Nehra, Sr.Advocate with
Mr. Karan Ranjha, Advocate for the petitioner

Mr. Deepak Balyan, Addl. AG Haryana

Mr. RK Malik, Sr.Advocate with
Mr. Kartikey Chaudhary, Advocate
for respondents No.4, 6, 9 & 11

Mr. Pankaj Bains, Advocate for respondent No.14

Sandeep Moudgil, J.

CM-4104-CWP-2023

Allowed as prayed. Documents (Annexure P6 to P13) are taken on record subject to just exceptions.

CM-17981-CWP-2025

Allowed as prayed. Document (Annexure A1) is taken on record subject to just exceptions.

Main case

(1). This writ petition has been filed under Article 226 of the Constitution of India seeking a writ in the nature of certiorari for quashing the impugned order dated 02.08.2006 (Annexure P7) to the extent that the appointment order has not been issued to the petitioner w.e.f. 07.07.2006 and to quash the impugned seniority list of the post of Clerk as on 01.01.2007 (Annexure P8) to the extent the private respondents have been shown senior to the petitioner. He also seeks to set aside the order dated 24.05.2010 (Annexure

P11) whereby his claim for grant of seniority over and above the private respondents has been rejected with a direction to grant him appointment as Clerk w.e.f. 07.07.2006 in the order of precedence according to the date of death of his father with all consequential benefits.

(2). The facts of the present case are that the petitioner's father, late Sh. Purshotam Lal Sharma, Junior Engineer in the Irrigation Department at Kaithal, died in harness on 06.12.1999 and at that time, his age was 14 years only. The petitioner requested the Engineer-in-Chief (EIC) on 21.01.2000 to reserve a post for him till he became eligible for compassionate appointment as Clerk under the ex-gratia policy dated 31.08.1995 (Annexure P1), and, having passed matriculation in first division with 76.40% marks on 28.05.2001, he fulfilled the then requisite qualification for the post of Clerk.

(3). Notwithstanding this, the EIC's office offered him only a Group-D post of Beldar on 01.01.2002, which he initially declined claiming to be entitled to a Class-III post but later accepted his appointment as Beldar subsequently on 07.05.2003, even as other similarly placed candidates were placed on the waiting list for Clerk.

(4). Pursuant to the directions of this Court passed in a writ petition filed by the petitioner in CWP No.15191 of 2005, the Engineer-in-Chief passed a speaking order dated 24.01.2006 (Annexure P4) placing the petitioner at Sr. No.19 in the ex-gratia seniority/waiting list for appointment as Clerk "as and when" a vacancy arose, in terms of the policy letter dated 31.08.1995 (Annexure P1) which mandates date-of-death-wise seniority and prohibits consideration of subsequent ex-gratia cases in preference to earlier ones. As per seniority list of Clerks (Annexure P8), the petitioner was shown junior most at

Sr.No.77 (as per date of joining) as on 01.01.2007, due to his appointment after the private respondents.

(5). He sought information under the RTI Act and as per reply dated 17.01.2023 (Annexure P14) along with notings dated 22.06.2006 received from the official respondents, the department processed ex-gratia Clerk appointments in Head Office on a date-of-death-wise basis and that candidates temporarily left out for want of documents were to retain their seniority, yet two persons, namely Anil Yadav and Arun Gupta, were accorded seniority Nos.1 and 2 in preference to the petitioner, giving rise to the present challenge to the non-implementation and breach of the said policy and speaking order.

(6). Learned counsel for the petitioner contends that the impugned order is primarily arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India, inasmuch as, despite being an earlier ex-gratia claimant whose father (a Junior Engineer) died on 06.12.1999, and despite having acquired the requisite educational qualification for the post of Clerk on 28.05.2001 and the eligible age on 31.07.2002, the petitioner has been denied seniority and parity vis-à-vis the private respondents, whose fathers died later in time but have been appointed earlier and placed above him in the seniority list. The differential treatment between the petitioner and the private respondents, all of whom are ex-gratia appointees, is without any rational basis and amounts to hostile discrimination. The details of the petitioner vis-à-vis private respondents showing their seniority along with date of death of his father and date of issuance of appointment letter have also been deduced which is reproduced hereunder:-

Sr. No.	Petitioner/ respondent Number	Date of death of father	Date of issuing appointment letter	Seniority list
1	Petitioner	06.12.1999	02.08.2006	77
2	Respondent No.3 (Anil Yadav)	07.12.2002	07.07.2006	57
3	Respondent No.4 (Arun Gupta)	25.01.2006	07.07.2006	58
4	Respondent No.5 (Vikram Singh)	03.03.2002	07.07.2006	59
5	Respondent No.6 (Anil Kumar Kamra)	01.04.2005	07.07.2006	61
6	Respondent No.7 (Joginder Singh)	08.08.2001	07.07.2006	66
7	Respondent No.8 (Ajay Khokhar)	31.12.2000	07.07.2006	69
8	Respondent No.9 (Arun Khera)	14.02.2005	07.07.2006	70
9	Respondent No.10 (Barjinder Singh)	20.11.2001	07.07.2006	71
10	Respondent No.11 (Janesh Kumar)	01.01.2003	27.07.2006	73
11	Respondent No.12 (Prem Kumar)	01.01.2004	25.07.2006	74
12	Respondent No.13 (Guru Bhakti)	22.02.2003	25.07.2006	75
13	Respondent No.14 (Rajesh Kumar)	05.10.2004	27.07.2006	76

(7). It is further submitted that the action of the respondents in initially offering the petitioner only a Group-D post of Beldar, despite his fulfilling the then prescribed qualification for appointment as Clerk, and thereafter compelling him, under extreme financial hardship as an orphan with dependent siblings, to accept the said Group-D post, runs counter to the very object and spirit of the ex-gratia/compassionate appointment scheme, which is intended to provide fair and reasonable relief to the family of a deceased employee. The subsequent refusal to accord him notional or ante-dated appointment as Clerk on the ground that he had joined as Beldar, while simultaneously extending the benefit of earlier Clerk appointments to later-claim dependents, is wholly unjust and unsustainable

(8). That apart, it is argued that as per the binding Government policy dated 31.08.1995 (Annexure P1) as well as the Engineer-in-Chief's speaking order dated 24.01.2006 (Annexure P4), a seniority list of pending ex-gratia cases shall be maintained by every Head of Department and such cases shall be kept alive till the appointment, and that "no subsequent case of ex-gratia appointment is considered/decided in preference to an earlier case", with precedence to be determined on a date-of-death basis. He urged that the speaking order of 24.01.2006 (Annexure P4) issued pursuant to the directions of this Court, specifically placed the petitioner at Sr. No.19 in the ex-gratia seniority/waiting list for appointment as Clerk as and when a vacancy arose, however, when the department processed cases for appointment of 23 Clerks on 19.06.2006, the petitioner's name was not included in that proposal and private respondents were issued appointment orders on 07.07.2006, 25.07.2006 and 27.07.2006, ahead of him, in direct contravention of the above policy and speaking order.

(9). Learned counsel further contended that as per Rule 11 of the Punjab Public Works Department (Irrigation Branch) Head Office, Clerical (State Service Class-III) Rules, 1965 (in short the 1965 Rules) which lays down that seniority in each cadre is to be determined by the length of continuous service on a post in that cadre, subject to the applicable scheme of appointment, however, as per the information sought under the RTI Act, it is evident that the petitioner's file, received in NGE-II Branch on 27.01.2006, was kept pending there till 25.07.2006 and forwarded to EG-I Branch only after the cases of the private respondents had been processed and their appointments issued. He exhorted that the delay in processing the petitioner's case is thus entirely

departmental and deliberate, and the respondents cannot be permitted to take advantage of their own wrong by relying on the later date of his appointment to deny him his rightful seniority inasmuch as, his appointment as Clerk is liable to be notionally ante-dated to 07.07.2006 so that his seniority reflects his true precedence over the private respondents.

(10). Lastly, it is submitted that no ex-gratia seniority list of Clerks as on 01.07.2006 is traceable in the record of EG-I Branch which is indicative of the fact that appointments were actually made without maintaining or producing the mandated seniority list which is all the more glaring in view of the fact that all private respondents whose fathers died later have been granted appointment and seniority over and above the petitioner by adopting pick-and-choose method and in contravention of the *ex gratia* policy dated 31.08.1995.

(11). Reply dated 08.07.2024 has been filed by Rakesh Chauhan, Engineer-in-Chief, Irrigation & Water Resources Department, on behalf of respondents No.1&2 wherein it has been averred that compassionate appointment is only a concession and an exception to the normal rule of open recruitment, intended merely to tide over immediate financial hardship, and not a vested or recurring right. On this premise, learned counsel for respondents No.1&2 contend that the petitioner cannot demand ante-dated appointment as Clerk from 02.08.2006 to 07.07.2006 or claim any seniority advantage from such a small difference in dates, inasmuch as the petitioner has already availed the benefit of ex-gratia appointment earlier, as Beldar, on the basis of his father's death in 1999, and therefore cannot "use" the same date of death a second time to claim precedence over the private respondents, who are

first-time ex-gratia beneficiaries and as such, the speaking order dated 24.01.2006 placing him at Sr. No.19 in the ex-gratia waiting list only enabled his subsequent appointment as Clerk on 07.08.2006, and that waiting-list preference stood exhausted once he joined as Clerk.

(12). It is further submitted that seniority in the Clerk cadre is governed exclusively by the date of appointment/date of joining, not by ex-gratia waiting-list position or date of death, relying on Rule 11 of the 1965 Rules and Rule 15(a)&(b) of the 2003 Ex-gratia Policy, both of which tie *inter se* seniority to the date of appointment and provide that the date of joining shall be treated as the date of regular appointment. On this basis, they maintain that the seniority list dated 01.01.2007 correctly places the private respondents who joined as Clerks in July 2006 over and above the petitioner, who joined on 07.08.2006. He further emphasized that serial number 19 in the ex-gratia waiting list and serial number 77 in the Clerk seniority list operate in two distinct spheres which cannot be equated.

(13). Learned counsel for the respondents No.1&2 pointed out that the 01.01.2007 seniority list was allowed to stand and was acted upon for 2–3 years, resulting in several promotions including the petitioner's own promotion as Assistant w.e.f. 12.10.2011, and was challenged only in 2010. Reliance has been placed on ***Maloon Lawrence D'Souza vs. UOI 1975 AIR 1269***, to contend that seniority positions, once worked out and acted upon, cannot be reopened after such a lapse of time, and as such the writ petition is liable to be dismissed on this ground alone.

(14). Short written statements have been filed by respondents No.4,6,9 & 11 as well as respondents No.8, inter alia, contending that once the petitioner

has been offered appointment as Beldar on compassionate grounds vide letter dated 01.01.2002 and he having accepted to join as such on 07.05.2003, in such situation, the petitioner has no right to appointment on compassionate ground on a higher post and there is no specific provision in Haryana Compassionate Assistnace to the Dependents of Deceased Govt. Employees Rules, 2003 to that effect. Reliance has been placed on *State of Rajasthan vs. Sh. Umrao Singh 1995 (1) SCT 46.*

(15). Heard learned counsel for the parties.

(16). The issue that arises for consideration in the present case is whether the petitioner, whose father's death is earlier and whose name stood at Sr. No.19 in the ex-gratia waiting list, is entitled to have his appointment as Clerk ante-dated and his cadre seniority fixed on a date-of-death / waiting-list basis in preference to private respondents as per the existing rules and polices, or whether cadre seniority of ex-gratia appointee Clerks must be determined strictly by date of appointment/date of joining and continuous service, leaving the existing seniority list dated 01.01.2007 undisturbed?

(17). Under the general law, seniority in a service is normally counted from the date of appointment/entry into the cadre, unless a statute clearly provides otherwise. The Supreme Court has repeatedly held that, in the absence of a specific contrary rule, length of continuous service from the date of appointment is the governing criterion for seniority. Rule 11 of the 1965 Clerical Rules and Rule 15(a) & (b) of the 2003 Ex-gratia Policy themselves adopt that very standard i.e. date of appointment/date of joining and continuous service, leaving no scope to substitute date of death or ex-gratia waiting-list number as the determinative factor.

(18). On the compassionate/ex-gratia side, the Supreme Court in **Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138** made it clear that compassionate appointment is only a narrowly tailored exception to the normal recruitment process, meant to relieve sudden financial crisis, and that such appointment “cannot be claimed as a matter of right” or treated as a basis for further or higher claims in service.

(19). In **State of Rajasthan v. Umrao Singh, (1994) 4 SCC 448**, the Supreme Court went further and held that once a dependent has accepted appointment on compassionate grounds, his right “to be considered on compassionate ground was consummated” and he cannot thereafter claim a higher post on the same compassionate footing as it would be a case of endless compassion.

(20). Even if one assumes some irregularity in how the ex-gratia queue was worked, the service jurisprudence on delay and laches also comes in. It is settled principle of law that seniority can be challenged only within a reasonable time and that long-standing seniority, once acted upon for promotions, cannot be reopened as seniority of an employee generally tracks “continuous period/length of service” from initial appointment and that seniority arrangements cannot be disturbed after long lapse as this would disrupt administration.

(21). In the present case, the petitioner accepted appointment as Clerk on 07/08.08.2006 and allowed the 01.01.2007 seniority list to stand as it was without challenging the same. He took promotion as Assistant in 2011, and challenged the seniority only thereafter. This Court would not unsettle the list or redo seniority based on date of death.

(22). Besides, the seniority of ex-gratia appointee Clerks in this case must be determined strictly by date of appointment/date of joining and continuous service, as laid down in the statutory/service rules. The petitioner cannot, by invoking ex-gratia policy, date of death, or waiting-list serial number, claim ante-dated appointment or higher seniority over Clerks who actually joined earlier. The issue, therefore, must be answered against the petitioner.

(23). In view of the above, there is no merit in the present writ petition and the same is accordingly dismissed.

09.12.2025

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No
Yes/No