
(2013) 01 P&H CK 0158

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14282 of 2007

Jang Bahadur Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 07-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 169 PLR 555 : (2013) 3 SCT 103

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : Vikas Behl, for the Appellant; Inder Pal Goyat, Additional Advocate General, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Tejinder Singh Dhindsa, J.—The petitioner who had been appointed as a Peon (Class-IV post) on 9.8.1991 on the basis that his mother had been killed in terrorist action, has preferred the present writ petition raising a claim that he be given appointment on the post of Clerk with effect from the date of his initial appointment on the post of Peon along with all consequential benefits. Briefly noticed, the petitioner, who belongs to the Scheduled Caste category, qualified his +2 Examination in the year 1988 from the Punjab School Education Board. Mother of the petitioner, namely, Shri Parkash Kaur was killed in terrorists violence on 6.10.1990. The Department of Personnel and Administrative Reforms issued instructions dated 24.4.1986, Annexure P-1/3, on the subject of priority list for various categories of persons for employment in State services. In terms of such instructions, a member of the family of a person killed as a result of terrorist action in the State as also a member of the family who lost their breadwinner in Delhi Riots and other places in India, between 31st October to 7th November, 1984 were placed in category priority No. 1 for purposes of consideration for employment in the State services.

2. It is asserted that the petitioner, who was wholly dependent upon his mother

and she having been killed by the terrorists on 6.10.1990, fell in category priority No. 1. The petitioner submitted a representation dated 22.1.1991 for being appointed to the post of Clerk as he possessed the requisite qualifications for such post. In terms of order dated 9.8.1991, Annexure P3, passed by the Assistant Excise and Taxation Commissioner, Amritsar, the petitioner was appointed as a Taxation Peon under priority No. 1 in the grade of Rs. 750-1350. A perusal of the order at Annexure P3 would reveal that such appointment in favour of the petitioner was in pursuance to an order passed by the Deputy Commissioner, Amritsar conveyed vide memo dated 18.7.3991. The petitioner accepted such appointment and joined on the post of Taxation Peon and thereafter has even been promoted to the post of Clerk on 24.2.2009.

3. Learned counsel appearing for me petitioner has vehemently argued that after having joined on the post of Peon in the year 1991, the petitioner had been submitting repeated representations for being appointed to the post of Clerk for which he had applied. Learned counsel would submit that the case of the petitioner for appointment to the post of Clerk had even been recommended by the Assistant Excise Taxation Commissioner, Amritsar (respondent No. 3)., yet in terms of impugned communication dated 6.9.2006, Annexure P-4/B, the legal notice that had been served on behalf of the petitioner has been responded to and the petitioner has been informed that his claim stands rejected. Learned counsel would argue that the petitioner was vested with a right for being considered for appointment to a post that was commensurate to the qualifications that he possessed and still further, in the light of the fact that vacancies relating to the post of Clerks had been available, the action of the State Government in rejecting his claim for appointment as Clerk with effect from the initial date i.e. 9.8.1991, is arbitrary and unwarranted. Learned counsel has even raised the plea of discrimination in terms of citing instances of other employees, namely, Pawan Kumar, Tarsem Kumar Sehgal and Amrik Singh who had also been appointed on a lower post initially but had thereafter been appointed/adjusted against a higher post. In support of his submissions, learned counsel for the petitioner has placed reliance on the following judgments:

1 Surya Kant Kadam Vs. State of Karnataka and Others,

2 Smt. Kamala Gaiind v. State of Punjab ; and

3. Gulbahar Singh v. State of Punjab, 2002 (2) S.C.T. 124.

4. Per contra, learned counsel appearing for the State has contended that the petitioner had joined the post of Taxation Peon in the year 1991 without protest and as such, it will not be open for the petitioner to raise a claim for being appointed on the post of Clerk with effect from the initial date of his appointment to the post of Peon. That apart, It has been argued that the claim of the petitioner as raised in the present writ petition had been rejected vide order dated 15.5.1992, appended as Annexure R-3/2 along with the written statement filed on behalf of the State, and it has been urged that there has been a

deliberate concealment of such fact at the hands of the petitioner and as such, the petitioner has disentitled himself from claiming any relief from the writ court.

5. Having heard the learned counsel for the parties and having perused the pleadings on record, I find that at the very outset, the present writ petition deserves dismissal on the ground of delay itself. The claim of the petitioner seeking appointment to the post of Clerk on priority basis, as his mother had been killed in terrorists violence, was rejected vide memo dated 15.5.1992. The instant writ petition had been preferred in the year 2007. Towards the objection of delay, learned counsel for the petitioner would submit that repeated representations had been preferred and it is only in terms of his legal notice having been responded to vide communication dated 6.9.2006, Annexure P-4/B, that the cause of action had accrued to the petitioner. I find such submission to be wholly misplaced. The claim of the petitioner stood rejected in the year 1992. For reasons best known to the petitioner, such fact has been concealed. Repeated representations having been filed by the petitioner and thereafter issuance of a legal notice which was responded to in terms of communication dated 6.9.2006 cannot be construed to have given a fresh cause of action to the petitioner. The impugned communication dated 6.9.2006, Annexure P-4/B, has merely been invited by the petitioner himself and he cannot gain any impetus from the same.

6. Even otherwise in matters relating to public employment, the State is obligated to give effect to the constitution scheme of equality as enshrined under Articles 14 and 16 of the Constitution of India. All appointments, therefore, have to be effected in terms of an open invitation of applications and consideration of the same strictly in order of merit. Certain exceptions in the nature of compassionate appointments as also for rehabilitation of the members of the family affected by terrorists violence/riots victims etc. would be in the nature of a concession and cannot be asserted as a right. Undoubtedly in terms of the instructions dated 24.4.1996 issued by the State Government, the petitioner fell in category priority No. 1 and accordingly, he was granted appointment to the post of Peon in the year 1991. The stipulation in the instructions dated 24.4.1996 to the effect that the basic qualification and conditions of experience prescribed for the respective post shall have to be fulfilled cannot be read in a manner to vest in the petitioner a right to claim appointment to a post for which he possessed the requisite qualification. It would certainly be open for the State/ Authority to appoint an applicant falling in priority category No. 1 even to a post lower than the one for which such candidate may have possessed the requisite qualifications. The entire objective of grant of compassionate appointments as also consideration of the claim of members of a family affected by terrorists violence is rehabilitation as also to provide immediate relief on account of the sudden financial crisis that has befallen the family on account of the death of a bread-winner.

7. 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 Vs. Umrao Singh, 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 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.

8. Even otherwise, the Hon'ble Supreme Court in a catena of judgments has categorically held that Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment to the post which had fallen vacant. Appointment on compassionate ground offered to a

dependent of a deceased employee is an exception to the said Rule. It is a concession and not a right. Such view was taken by the Hon"ble Apex Court in General Manager, State Bank of India and Others Vs. Anju Jain, Such view was reiterated in Steel Authority of India Ltd. Vs. Madhusudan Das and Others, As such having held that the claim as regards appointment on priority basis towards rehabilitation of a family member affected by terrorists violence would not be a right but a matter of concession, the plea of discrimination would not; be open to the petitioner.

9. For the reasons recorded above, the present writ petition is dismissed on merits as well as on, the ground of delay. Dismissed.