
(1994) 03 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10321 of 1988

Lalit Kumar

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 31-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1994) 107 PLR 389

Hon'ble Judges : V.K. Jhanji, J;G.R. Majithia, J

Bench : Division Bench

Advocate : Ramesh Hooda, for the Appellant; J.C. Sethi, Addl A.G. and P.S. Kadian, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

G.R. Majithia, J.—The petitioner has sought a mandate to the respondents to appoint him against the post of Naib Tehsildar with effect from December 2, 1987, in this petition under Articles 226/227 of the Constitution of India.

2. The petitioner's father late Sh. Hem Chander Gupta, who was working as Tehsildar, Ferozepur Jhirka, in the State of Haryana, expired on June 22, 1981. The Govt. of Haryana issued Circular Letter No. 3442-3GS-II-71/19169, dated July 13, 1971, providing for absorption in Government service one or more members of the family of the deceased Govt. employee on Class-III or Class IV posts, as the case may be, even in relaxation of the Rules. The relevant portion of these instructions read thus :-

"I am directed to invite attention to the Haryana Government circular letter No. 9054-4GS-70/32230, dated the 22nd December, 1970, on the subject noted above in which it was indicated inter-alia that one or more members of the family of the deceased employee would be considered for absorption in Govt. service, the relevant rules being relaxed, if necessary and feasible. In this connection the question as to the general policy to be followed in this behalf and the extent to

which the rules should be relaxed has been considered by the State Government and it has been decided to make it clear that it is not the intention to provide employment to the dependents of deceased Government employee as a matter of course. Instead each individual case should be examined carefully and employment, which should be confined to class-III and Class IV posts, should be provided only if it is justified in order to avoid exceptional hardship and not otherwise.

2. In the matter of relaxation of rules etc. relaxation will be necessary in respect of the condition that appointment should be made after reference to the Employment Exchange on the recommendation of the Service Selection Board. As to the relaxation in the matter of age, qualifications, etc. the criterion should be that relaxation should be considered only to the extent that the work of the post in question will not be adversely affected and the person concerned will be able to undertake the work satisfactorily. Recommendations in this regard should be formulated after due consideration and reference thereafter be made to the Chief Secretary (in General Service II Branch) which office will then process the case further."

The petitioner's mother submitted an application that her son be appointed to the post of Kanungo ("A" Class). Respondent No. 1 wrote a letter to respondent No. 3 to appoint the petitioner on the post of patwari, but the latter vide letter dated June 28, 1982, recommended that the petitioner be appointed on the post of Kanungo Class-A keeping in view the status of his father. Later on, the petitioner submitted an application on June 15, 1983 that if the post of Naib Tehsildar was not available, he might be considered for the post of Kanungo. Under the Punjab Tehsildari Rules, 1932 as applicable to the State of Haryana upto 1989 when these were substituted by the Haryana Revenue Department Naib Tehsildars (Group-C) Service Rules, 1988 with effect from January 6, 1989, the minimum qualification prescribed for appointment as Naib Tehsildar by direct recruitment is graduation from a recognised University. The petitioner passed his graduation in the year 1986. He did not possess the requisite qualification prescribed for the post of Naib Tehsildar on June 15, 1983 when he submitted an application for appointment as Naib Tehsildar or in the alternative, as Kanungo on compassionate grounds. He submitted an application to the Commissioner, Revenue Department, Haryana that he should be appointed to the post of Naib Tehsildar. The Financial Commissioner and Secretary to Govt. Haryana, Revenue Department vide letter dated June 9, 1987, requested the Chief Secretary to Government, Haryana, for granting approval to the appointment of the petitioner against the vacant post of Kanungo in the Head Office (Financial Commissioner's Office, ARIC Branch). The State Government granted the approval and the petitioner was offered the post of Kanungo. The petitioner accepted the offer of appointment and joined against the said post.

3. The petitioner moved this Court on November 17, 1988 through this writ petition claiming the relief afore mentioned. When the writ petition came up for

motion hearing, the learned counsel for the petitioner relying upon a decision of this Court reported as *Tarsem Kumar Sehgal v. State of Punjab and Anr.* 1986 (3) SLR 774, urged before the Bench that the petitioner was entitled to be appointed as Naib Tehsildar from the date on which he became eligible for appointment as such. On November 18, 1988. The Bench passed the following order:-

"Cities 1986 (3) SLR 774.

Admitted D.B. To be listed for final hearing on 1st December, 1988."

It is how this petition has been listed before us.

4. Indisputably, on the date when the petitioner's father died, he was not possessed of the minimum qualification prescribed for the post of Naib Tehsildar by direct recruitment. He graduated in 1986. Since on the date when his father expired he was not eligible for appointment to the post of Naib Tehsildar or as Kanungo, he was offered the post of a Clerk, which he declined to accept. On his representation, the State Government decided to appoint him as Kanungo.

5. The learned counsel for the petitioner submits that although the petitioner was ineligible for appointment as a Naib Tehsildar on the date when his father expired, but his claim for appointment to the post of Naib Tehsildar on compassionate grounds under the State Government's policy decision should be considered from the date he had acquired the requisite qualification. It is not disputed that on the date when the father of the petitioner expired, the petitioner was only a Matriculate and the State Government offered him the post of a clerk for which he was eligible. He declined to accept the offer. The Government's policy decision dated July 13, 1971, on which the reliance is placed, has not got a statutory force. It contains instructions and the Government has to adhere to it as far as possible. Policy decision does not confer any legal right on the heirs of a deceased Government employee. It contains benevolent provisions in order to ameliorate the suffering of the family of a deceased Government employee, which is rendered hapless, when the bread earner has died. A Mandamus cannot be sought without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. (See in this "connection, *Mani Subrat Jain and Others Vs. State of Haryana and Others*,).

6. We do not think that in the instant case the petitioner is entitled to the equitable relief. He is claiming appointment to the post of Naib Tehsildar on compassionate grounds under the Government's policy decision dated July 13, 1971. He was not satisfied with the post of Clerk offered to him to which he was found entitled to on the death of his father. On attaining higher qualifications after lapse of about five years of his father's death, he made claim for the higher post of Naib Tehsildar. As no post of Naib Tehsildar was available, the State Government offered him the post of Kanungo, which he accepted. If now a

direction is issued to the respondents to offer him appointment as a Naib Tehsildar, he will claim seniority over large number of Naib Tehsildars who were either recruited by direct appointment or promoted from lower posts. It will cause great hardship to them. Granting of the equitable relief to the petitioner at this stage will result in manifest injustice to them.

7. In fairness to the learned counsel for the petitioner it is necessary to deal with the judgments referred to by him at the bar and these are:-

(1) Praveen Kumar v. State of Haryana and Ors., C.W.P. No. 179 of 1990) decided by J.L. Gupta, J. on July 14, 1992.

(2) Harpal Singh v. State of Haryana, (C.W.P. No. 5274 of 1993), decided by a Division Bench of this Court on October 22, 1993.

(3) Tarsem Kumar Sehgal v. The State of Punjab and Anr. 1986 (3) SLR 774.

8. In Praveen Kumar's case (supra), the petitioner's father, who was Deputy Superintendent of Police, died while in service. The petitioner was offered appointment to the post of Sub Inspector of Police, r's father, who was which was accepted by him. While he was working as such, one Sh. Gurdev Singh,. Deputy Superintendent of Police, died and his son was appointed as Inspector of Police. The petitioner moved an application that he should be; accorded the same treatment as was accorded to Sh. Gurdev Singh's son. The prayer was declined. He moved this Court through CWP No. 179 of 1990 and the learned Single Judge held that the action of the State Government was discriminatory. Similarly situated persons could not be treated differently. It was on these undisputed facts that the learned Single Judge issued the directions. The learned Judge did not examine whether a writ of mandamus could be issued. This decision was rendered in view of the peculiar facts of the case and cannot be cited as an authority for deciding the proposition arising in this case.

9. In Harpal Singh's case (supra), the petitioner's father died while in Government Service. The petitioner applied for the post of Naib Tehsildar under the Policy decision. He was a graduate and on these undisputed facts the Bench ordered that he should be allowed appointment against the post for which he possessed the minimum educational qualifications. The ratio of this judgment has no bearing to the facts of the instant case.

10. In Tarsem Kumar Sehgal's case (supra), the Bench posed the following question:-

"The short question that falls for consideration is as to whether the petitioner's qualifications for being appointed under the given priority scheme to a post is to be judged on the date when he first applied for the post immediately after the death of his father or the date on which he was actually offered the employment."

and the same was answered in paragraph 5 of the report, which reads thus:-

"It is not disputed that the petitioner satisfied the educational and other

requirements for the post of Inspector. He was, therefore, entitled to be appointed as an Inspector and not as a Clerk because on that date he stood in a position identical to the position of the persons named above in regard to his right to be appointed to the post of Inspector."

The Bench observed that the petitioner's claim should be considered for the post on the date when the appointment was offered to him. The ratio of this judgment supports the contention of the State rather than that of the petitioner. On the date when the petitioner was offered the post of Kunungo, he was found ineligible for appointment as Kanungo was accepted by him.

11. For the reasons stated above, we find no merit in the writ petition and the same is dismissed.