

(2013) 08 P&H CK 0954
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 2063 of 2012 (O and M)

Pardeep Kumar

APPELLANT

Vs

Punjab and Haryana High Court and Others

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2014) 1 SCT 175

Hon'ble Judges : Tejinder Singh Dhindsa, J

Bench : Single Bench

Advocate : R.S. Rangpuri, for the Appellant; Vikas Bahl, for the Respondent

Judgement

Tejinder Singh Dhindsa, J.—The petitioner, who is presently serving on the post of Peon in the Court of District & Sessions Judge, Shri Muktsar Sahib, having been appointed as such on a compassionate basis, has filed the instant writ petition seeking adjustment against a vacant post of Process Server. Briefly noticed, father of the petitioner namely Sh. Ashok Kumar died in harness on 11.9.2008 while serving as Bailiff in the Court of Additional Civil Judge (Sr. Divn.), Malout. Mother of the petitioner submitted an application dated 2.12.2008 seeking appointment of the petitioner on compassionate ground on the post of Process Server. Such application was duly processed and the Registrar (General) of this Court vide letter dated 10.9.2009 addressed to the District & Sessions Judge, Faridkot directed the appointment of the petitioner to a Class-IV post on compassionate basis. Accordingly, the petitioner was issued an appointment letter dated 7.10.2009 on the post of Peon. He submitted his joining report on 23.10.2009.

2. Learned counsel for the petitioner has submitted that it was in the month of June, 2011 that the petitioner became aware that one post of Process Server is lying vacant in the Court of District & Sessions Judge, Shri Muktsar Sahib and consequently submitted a representation on 7.6.2011 to be adjusted against such post. Counsel has strenuously argued that the action of the respondent-authorities in not having acceded to his request, is arbitrary. It has been argued

that the post of Peon as also Process Server are Class-IV posts under the Punjab Subordinate Courts Establishment (Recruitment & General Conditions of Service) Rules, 1997 and as such the petitioner could have been adjusted even against the post of Process Server, which otherwise carries higher emoluments than the post of Peon. Counsel has also submitted that the petitioner possesses the qualifications of Matriculation with Punjabi and Hindi as subjects and has passed the Senior Secondary Examination in March, 1998 and thereafter has qualified the Industrial Training qualification in the trade of Information Technology in the year 2001. As per counsel, since the petitioner possessed the requisite qualifications for being appointed on the post of Process Server at the time of initial submission of application in the year 2008, he had a vested right to be appointed on the post of Process Server instead that of Peon. Towards such submission, reliance has been placed upon a judgement of this Court rendered in case of Tarsem Kumar Sehgal v. State of Punjab and another, 1986 (3) S.L.R 774.

3. Mr. Vikas Bahl, learned counsel appearing for the respondents would advert to the joint written statement filed on behalf of respondents No. 1 to 3 and would contend that the petitioner had been offered appointment of a Class-IV post i.e. the post of a Peon in compliance of the order dated 10.9.2009 issued by this Court at Annexure P-5 and the petitioner having duly accepted such post without any protest or demur, no further right vests in him for claiming appointment/adjustment on the post of Process Server on a compassionate basis having worked for more than two years on the post of Peon.

4. Learned counsel for the parties have been heard at length.

5. In matters relating to public appointment the State is obligated to give effect to the constitutional 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 appointment with the sole objective to mitigate the sudden financial hardship, that has fallen upon the family of a bread winner, who dies in harness, would be in the nature of a concession and cannot be asserted as a (sic)ight. The petitioner having been offered appointment to the post of Peon in the year 2009 on a compassionate basis, and he having accepted the same and having joined without protest, the objective of compassionate appointment stood achieved. The claim raised in the present writ petition for being adjusted/appointed as Process Server would be in the nature of asking for endless compassion. The same is not permissible. The observations of the Hon''ble Supreme Court in case of State of Rajasthan v. Shri Umrao Singh, 1995 (1) S.C.T 46, wherein a similar claim was rejected 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.

Such view was, thereafter, followed by this Court in Jang Bahadur Singh v. State of Punjab and others, 2013(3) S.C.T. 103 : CWP No. 14282 of 2007. D/d. 7.1.2013 and which decision even stands affirmed by the L.P.A. Bench in L.P.A. No. 617 of 2013 decided on 9.5.2013.

The reliance placed upon Tarsem Kumar Sehgal's case (supra) is wholly misplaced. Therein the petitioner had joined on the lower post of Clerk under protest and his claim for being appointed on the post of Inspector in the Excise & Taxation Department had been accepted by this Court, having noticed that Tarsem Kumar Sehgal had been discriminated against inasmuch as other similarly situated employees had been appointed as inspectors in the department on compassionate basis and under the relevant Priority Scheme. The facts of the case are clearly distinguishable.

For the reasons recorded above, I find no merit in the present writ petition and the same is, accordingly, dismissed.