
(2024) 10 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 3541 Of 2019

Prem Sagar

APPELLANT

Vs

H.P. State Forest Development Corporation Ltd

RESPONDENT

Date of Decision : 04-10-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2024) 10 SHI CK 0009

Hon'ble Judges : Virender Singh, J

Bench : Single Bench

Advocate : J.L. Bhardwaj, Dhanwanti, Vijay K. Arora

Final Decision : Allowed

Judgement

Virender Singh, J

1. Petitioner-Prem Sagar has invoked the extraordinary jurisdiction of this Court, by way of filing Civil Writ Petition, which was initially registered as CWP No.9908 of 2014. Thereafter, the State Government has established the Himachal Pradesh State Administrative Tribunal (hereinafter referred to as the 'Tribunal'), under the provisions of the Administrative Tribunals Act, 1985 (hereinafter referred to as the 'Act') and the said case was transferred to the Tribunal and registered as T.A. No.4048 of 2015.

2. By way of the Civil Writ Petition, the petitioner has sought the following reliefs:-

"i) That the writ in the nature of certiorari may kindly be issued for quashing the impugned order dated 30.10.2014 passed by the respondent-corporation.

ii) That the writ in the nature of mandamus may kindly be issued directing the respondent-corporation to offer the appointment to the petitioner as Forest Guard instead of Clerk as per office order dated 25.08.2014 after summoning the entire record;

ii(a) That a writ in the nature of mandamus may kindly be issued directing the respondent-corporation to modify the office order dated 20.09.2016 issued by it while offering the appointment to the petitioner on the post of Peon and offer the appointment to the petitioner on the post of Peon and offer the appointment to the petitioner on the post of Clerk w.e.f. 20.09.2016 with all consequential benefits such as seniority, increments, promotions and further the difference of the salary of the post of Peon and Clerk may kindly be ordered to be paid to the petitioner alongwith interest @9% per annum w.e.f. 20.09.2016 till actual payment and thereafter on the promotional posts too."

3. After the abolition of the Tribunal, the matter was again transferred to this Court and thereafter, registered as CWPOA No.3541 of 2019.

4. The abovementioned reliefs have been sought, by the petitioner, on the ground that his father was serving as Chowkidar, with the respondent-Corporation and unfortunately, died in harness on 22.01.2006, leaving behind the petitioner, his two siblings and his widowed mother. Thereafter, the petitioner had filed CWP No.2770 of 2009, titled as 'Prem Sagar Versus State of H.P.', with a prayer to appoint him on compassionate ground, before this Court, which was disposed of on 11.09.2012, directing the petitioner to supply the copy of writ petition or fresh representation, along with certified copy of the judgment, enclosing the fresh policy of Government to the respondent-Corporation, within a period of one month, from the date of that order and respondent-Corporation was also directed to decide the same, within a period of three months, thereafter.

4.1. It is the further case of the petitioner that in pursuance of the said order, the petitioner had filed the representation, which was rejected by the respondent-Corporation vide order dated 12.11.2012.

4.2. Subsequently, the petitioner again approached this Court, by way of filing CWP No.10223 of 2012, titled as 'Prem Sagar Versus State of H.P.', which was disposed of, vide order dated 07.07.2014, with a direction to the respondent-Corporation to consider the case of the petitioner in the light of the Resolution, dated 30.08.2013, passed by the Board of Directors, after quashing the order dated 12.11.2012, on the basis of which, the representation of the petitioner was rejected.

4.3. It is the case of the petitioner that on the basis of judgment, dated 07.07.2014, the case of the petitioner for appointment on compassionate ground was considered by the respondent-Corporation, but, it has been held that appointment can be given to the petitioner on the availability of the post of Clerk. In this regard, order dated 25.08.2014, which has been annexed with the petition as Annexure P-2, was passed.

4.4. It is the further case of the petitioner that after receipt of the office order dated 25.08.2014, the petitioner had made the representation, requesting respondent-Corporation to consider his case for appointment as Forest Guard, instead of Clerk, as per letter dated 25.09.2014. The petitioner has also annexed

his consent letter, along with the representation. His request to appoint as Forest Guard has been rejected, by the respondent-Corporation, on 30.10.2014.

4.5. According to the petitioner, his request has been rejected simply on the ground that though, there were 68 posts of Forest Guard, lying vacant with the respondent-Corporation, however, as per Recruitment and Promotion Rules (hereinafter referred to as the 'R&P Rules'), the posts of Forest Guard are only filled up 90% by way of placement from amongst Resin/Timber Watcher and 10% by way of promotion from Class-IV employees. The decision dated 30.10.2014 has also been annexed with the petition as Annexure P-4.

4.6. It is the further case of the petitioner that though, in terms of Office Order, dated 25.08.2014, it has been decided by the respondent-Corporation that the petitioner shall be offered the appointment on compassionate ground on the availability of post of Clerk, however, in case, in future, the respondent-Corporation does not feel to appoint him as Clerk on the ground that the family of the deceased has survived for a quite long period without his appointment on compassionate ground, the said order dated 25.08.2014 will become nullity. According to the petitioner, once the respondent-Corporation has admitted that 68 posts of Forest Guard were lying vacant, the petitioner, who is possessing the requisite qualification, could be appointed as Forest Guard.

4.7. It is the further case of the petitioner that he has passed his graduation in the year 2009, securing 55% marks and also obtained diploma in computer course. All these facts have been pleaded by the petitioner to demonstrate that he was having the requisite qualification for being appointed as Forest Guard.

4.8. The above action/inaction of the respondent has been assailed on the ground that the Corporation has acted in an illegal and arbitrary manner, by appointing the petitioner on the post of Peon, whereas, he is eligible to be appointed as Forest Guard, as well as, Clerk.

4.9. To buttress his contention, he has pleaded that he was having the requisite qualification and also cleared the test for the post of Clerk, as well as, Forest Guard. According to him, the respondent-Corporation had conducted the typing test for the post of Clerk to be appointed on compassionate ground on 30.09.2015, in which, the petitioner had appeared and qualified the test. However, his case had not been forwarded to the Government for being appointed on compassionate ground. Even, on 05.07.2016, the respondent-Corporation had again conducted the typing test. Thereafter, the respondent-Corporation initiated the process for appointment of Clerks on compassionate ground.

4.10. It is the further case of the petitioner that despite being qualified the typing tests, conducted on 30.09.2015 and 05.07.2016, the petitioner has not been appointed to the post of Clerk, but, has been offered the appointment for the post of Peon, as per Memorandum dated 20.09.2016. Interestingly, according to him, on the same day, another office order was issued to offer the

appointment to other persons to the post of Clerk. These facts have been highlighted to show that the respondent-Corporation has treated him with discrimination and acted in arbitrary manner, which, according to him, is violative of Articles 14 and 16 of the Constitution of India.

4.11. Highlighting the arbitrariness of the respondent-Corporation, it has been pleaded that on 30.09.2016, the respondent-Corporation issued the office order, by virtue of which, only 21 incumbents have joined the posts of Clerk in pursuance of the office order dated 20.09.2016, issued by the respondent-Corporation.

4.12. In nutshell, it is the case of the petitioner that he has wrongly been appointed as Peon, whereas, he should have been appointed as Clerk on the compassionate ground, as, similar situated persons were appointed on the post of Clerk.

4.13. He has also assailed the stand of the respondent that as per R&P Rules, for the post of Forest Guard, 90% posts are filled up by placement from amongst Resin/Timber Watchers and 10% by way of promotion from Class-IV employees, whereas, relying upon the office order dated 13.01.2022, Annexure P-10, it has been pleaded that the respondent-Corporation has filled up the posts of Forest Guard by direct recruitment.

5. On the basis of the above facts, the petitioner has sought the reliefs, as claimed, in the petition, by asserting that when the post of Clerk was available, then, appointing him as Peon is contrary to the Scheme, as well as, violative of Articles 14 and 16 of the Constitution of India.

6. When put to notice, the petition has been contested by respondent-Corporation, by filing the reply, in which, the factual position, with regard to the fact that father of the petitioner was serving as Chowkidar, with the respondent-Corporation, has not been disputed. The factual position, with regard to the filing of Civil Writ Petition No.2770 of 2009 and rejection of representation, has also not been disputed.

6.1. It has also been admitted that the said rejection order was assailed by way of CWP No.10223 of 2012 and this Court, vide order dated 07.07.2014, had set aside the said rejection order, directing the respondent to consider the case of the petitioner in view of the Resolution of the Board of Directors, dated 30.08.2013. However, according to the respondent, the case of the petitioner was considered in the light of the decision dated 07.07.2014, but, no post of Clerk was available, as such, the appointment could not be offered to him.

6.2. It has also been admitted that the petitioner had made the representation to consider his case for the appointment of Forest Guard instead of Clerk, however, the said prayer was rejected on 30.10.2014, on the ground that as per R&P Rules, 90% vacant posts of Forest Guard are to be filled up by placement from amongst Resin/Timber Watcher and 10% by way of promotion from Class-IV

employees.

6.3. It is their further case that on 20.09.2016, the post of Peon was offered to the petitioner and the petitioner had joined the said post, on contractual basis, in the year 2016. As such, the present petition is stated to be not maintainable, as, according to them, the appointment on compassionate ground is meant to financially assist the family of employee, who dies in harness. The qualification of the petitioner has also not been disputed, but, according to them, the Rules cannot be bypassed to accommodate the well-qualified persons, against the post, which is out of the stream, in which, they are working.

6.4. According to the respondent-Corporation, the appointment on compassionate ground is the discretionary appointment and the same is to be provided to consider the indigenous circumstances of the family of the employee, who dies in harness. It has also been admitted by the respondent-Corporation that the typing test was conducted on 30.09.2015, however, according to them, the petitioner had accepted the post of Peon on compassionate ground and now, he will be promoted, as per his turn and seniority.

7. On the basis of above facts, a prayer has been made to dismiss the petition.

8. The petitioner has filed the rejoinder to the reply, in which, he has denied the preliminary objections and re-asserted the claim, as made in the petition.

9. As per the document, Annexure P-2, the representation, made by the petitioner, in pursuance of the direction of this Court, passed in CWP No.10223 of 2012, decided on 07.07.2014, the case of the petitioner was rejected. In the said office order, no question has been raised regarding the eligibility of the petitioner to be appointed on compassionate ground and his claim has solely been rejected on the ground that there is no vacant post of Clerk, on which, he can be appointed. Relevant paragraph 4 of the said office order is reproduced, as under:-

"4. Whereas the case of Shri Prem Sagar has now been reconsidered in view of decision dated 07.07.2014 in CWP No.10223/2012 and his application for grant of employment as Clerk has been considered but at present there is no vacant post of Clerk on which he can be appointed. Moreover, there are about 180 cases for employment on compassionate grounds and about 90 cases are complete till date and in other cases necessary papers have not been completed and received from the applicants."

10. Thereafter, the petitioner has approached the respondent-Corporation, by way of letter dated 25.09.2014 (Annexure P-3) to appoint him as Forest Guard instead of Clerk, by highlighting that 68 posts of Forest Guard were lying vacant in the Corporation. The same was rejected by the respondent-Corporation vide Annexure P-4, which is impugned herein. By way of this communication, the prayer, so made, by the petitioner, was rejected by highlighting the R&P Rules.

11. As per the stand, taken by the respondent-Corporation, in Office Order dated 25.08.2014 (Annexure P-2), there was no vacant post of Clerk and thereafter,

the petitioner was appointed as Peon on compassionate ground, on contractual basis, on 20.09.2016. In the said office order, the prayer of the petitioner was not rejected on the ground that he does not possess the qualification for being appointed as Clerk on compassionate ground, but, the sole ground, upon which, the claim of the petitioner was rejected, is non-availability of the post of Clerk, whereas, Annexure P-6, which is the information, obtained by the petitioner, under the Right to Information Act, is the result of Screening Committee meeting held on 30.09.2016 and 05.07.2016, for filling up the vacant posts in different categories, amongst compassionate appointment cases, in respect of Directorate North Zone, which depicts that 81 persons were recommended to be appointed. The person, whose name figured at Sr. No.1 in Annexure P-6, had applied on 20.09.2000 and the person, whose name figured at Sr. No.81, had applied on 06.05.2015. The petitioner is senior to the said persons, who have been recommended to be appointed as Clerk.

12. Vide Annexure P-7, the petitioner was appointed as Peon. On the same day, 21 persons were appointed as Clerk on compassionate ground as depicted in Annexure P-8, which is the information, supplied by the respondent-Corporation, under the provisions of Right to Information Act. Not only this, vide Annexure P-9, Sh. Deepak, Smt. Nirjala Devi and Sh. Jagdish Kumar were appointed as Clerk on compassionate ground on 20.10.2016.

13. In this background, learned counsel appearing for the respondent-Corporation could not justify the action of the respondent-Corporation to appoint the petitioner on compassionate ground against the post of Peon, instead of appointing him against the post of Clerk, whereas, his eligibility for the post of Clerk has not been disputed, rather, the same has been admitted. Another fact, which has rightly been highlighted, is that the petitioner has participated in the typing test twice and qualified the same.

14. The arguments of learned Senior Counsel, appearing for the petitioner, holds water, as, the act of the respondent-Corporation is against the constitutional principle, according to which, equals cannot be treated unequally, as, the law does not permit the treatment of equals unequally, since Article 14 of the Constitution of India guarantees equality before the law.

15. As per Annexure P-6, the person, at Sr. No.1, who was the employee of respondent-Corporation, had expired on 02.07.2000 and the person, at Sr. No.81, had expired on 19.01.2004. Wards of those persons, who died in harness, were appointed.

16. The petitioner, according to the document (Annexure R-1), had applied for the grant of employment on compassionate ground vide application dated 08.01.2007 and the respondent-Corporation had recommended the wards of the employee, who died in harness, who had applied for appointment on compassionate ground, even later in time.

17. The person at Sr. No.81 had applied for appointment on compassionate

ground on 05.06.2015, whereas, the case of the petitioner had repeatedly been rejected on the grounds, which are not sustainable in the eyes of law.

18. The learned counsel, appearing for the respondent-Corporation, could not satisfy the judicial conscience of this Court as to how the present petition is not maintainable, merely on the ground that the petitioner, who was starving for employment due to death of his father, has accepted the post of Peon, whereas, the similar situated persons were given the appointment on compassionate ground against the post of Clerk. As held earlier, the qualification of the petitioner for being appointed on compassionate ground against the post of Clerk has not been disputed, by the respondent-Corporation.

19. In such situation, the action of the respondent-Corporation to appoint the petitioner against the post of Peon is clearly violative of Articles 14 and 16 of the Constitution of India, as, the similar situated persons cannot be treated differently and it seems that the sole reason for appointing the petitioner on the post of Peon is that he had filed the number of writ petitions regarding redressal of his grievances. No doubt, the appointment on compassionate ground is discretion of the State, but, the State cannot discriminate between the similar situated persons.

20. The action of the respondent-Corporation depriving the petitioner from the benefit of appointment on compassionate ground, on the ground of non-availability of the post of Clerk, is also not sustainable in the eyes of law, as, the Hon'ble Supreme Court in 'Malaya Nanda Sethy vs. State of Orissa', reported in AIR 2022 SC 2836, has directed the authorities to consider the application for appointment on compassionate ground, at the earliest, but, not beyond the period of six months, from the date of submission of such application. Relevant para 9 of the said judgment is reproduced, as under:-

"9. Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, the family a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications. We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in

harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.

If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only the object and purpose of appointment on compassionate grounds can be achieved."

(self-emphasis supplied)

21. As per office order dated 22.11.2022 (Annexure R-1), the petitioner had made the application on 08.01.2007, which was rejected, but, the said order had been set aside, by this Court. If, other similar situated candidates were offered the post of Clerk, then, no discrimination can be made with the petitioner. As such, the present writ petition is liable to be allowed.

22. Consequently, the present petition is allowed with costs, assessed at Rs.10,000/-, by granting the following relief to the petitioner:-

"The respondent-Corporation is directed to modify the office order dated 20.09.2016, by virtue of which, offer of appointment on the post of Peon to the petitioner was given w.e.f. 20.09.2016 and to issue the appointment letter for the post of Clerk with all consequential benefits such as seniority, increments, promotion and difference of salary of the post of Peon and Clerk. The monetary benefits are confined to three years preceding the date of filing of the petition and the said benefits, upto date, are ordered to be released in favour of the petitioner, within a period of 60 days, from the date of passing of this order, failing which, the petitioner is held entitled for the same along with interest @9% per annum from the date, when it becomes due."

23. Pending miscellaneous application(s), if any, shall also stand disposed of.