

(2012) 11 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : CWP No. 1343 of 2012-E

Shri Ishwar Singh

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Citation : (2012) 11 SHI CK 0006

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : V.D. Khidtta, for the Appellant; Rajinder Dogra, Additional Advocate General, for the Respondent

Judgement

Justice Dharam Chand Chaudhary, J.—The complaint is that the petitioner being duly qualified and eligible for appointment on compassionate ground as Clerk on daily wage basis, has not been appointed as such irrespective of the fact that the posts of Clerk were lying vacant and to the contrary appointed as Beldar on daily wage basis. The facts not in controversy are that late Shri Shiv Ram, father of petitioner was a work-charged Beldar on the establishment of respondent-Department. He incurred disability and was allowed to retire on medical ground in May, 2000. The petitioner being matriculate made an application Annexure P-3 for appointment on compassionate ground as Clerk/Supervisor. The Screening Committee constituted for consideration of the cases for appointment on compassionate ground in its meeting held on 25.10.2005 had decided to make an offer of appointment as a Beldar on daily wage basis to the petitioner. The decision, Annexure R-1 so taken was conveyed to the Executive Engineer, B&R Division, H.P., PWD, Nalagarh by the 3rd respondent. Consequently, the offer of appointment vide letter, Annexure P-4/R-2 was made to the petitioner and he seems to have accepted the same without any protest. Subsequently, the petitioner, however seems to have made an application for appointment as Clerk on daily wage basis which was forwarded by the 3rd respondent to 2nd respondent vide Annexure P-5. The request so made however was rejected vide

Annexure R-4 being contrary to the Policy of the Government coupled with the factum of the petitioner had accepted his appointment as Beldar on daily wage basis without any protest. The copy of decision (Annexure R-4) so taken was endorsed to the Executive Engineer, Nalagarh Division, HP, PWD, Nalagarh for information. As per further case of the petitioner, the persons similarly situated to him who had filed CWP No. 1254 of 2011, titled Bal Krishan Vs. State of H.P. have since been appointed as Clerk pursuant to the direction of this Court. He being similarly situated to Bal Krishan, the petitioner in the case supra though made an application for appointment as Clerk however denied the benefit of the judgment rendered by this Court in the case of Bal Krishan aforesaid and other writ petitions preferred before this Court by the similarly situated persons.

2. In reply, the stand taken by the respondent-State is that the petitioner who had accepted the offer of appointment as Beldar on daily wage basis without any protest and being matriculate with 3rd Division even was not eligible also as per rules for appointment as Clerk, therefore, is not entitled to claim appointment as Clerk on daily wage basis.

3. In rejoinder while placing reliance on Annexures P-7 and P-8, it has been claimed that the judgment of this Court in Bal Krishan's case supra has since been implemented and also that in the year 2006 posts of Clerks were lying vacant in the respondent-Department.

4. As regards the essential qualification for the post of Clerk prevalent in the years 2001-2002 and 2006, Annexures P-9 and P-10, the information sought under the Right to Information Act, 2005 have been brought on record.

5. On analyzing the rival submissions and the pleadings on record, it is crystal clear that in the year 2006 when the offer of appointment as Beldar on daily wage basis was made to the petitioner by respondent-State, posts of Clerks were lying vacant as is evident from the information Annexures P-9 and P-10 supplied to the petitioner by the Executive Engineer (D)-cum-Public Information Officer, 3rd Circle, HPPWD, Solan. In the years 2001-02 and 2006, the essential qualification for the post of Clerk was Matric. No doubt information Annexures P-9 and P-10 to this effect sought under the Right to Information Act has been sought to be produced by way of filing an application registered as CMP No. 13282 of 2012, however, in view of the same having been supplied by the Executive Engineer(D)-cum-Information Officer of the respondent-Department and no reply to the application is opted to be filed, this Court is of the considered opinion that in order to meet the ends of justice, it would not be improper to take on record these documents.

6. In Annexures P-9 and P-10, there is nothing suggestive of that the essential qualification for the post of Clerk in the years 2001-02 and 2006 was Matric 2nd Division. The respondent-State in support of its stand that the essential qualification for the post of Clerk in the year 2006 was Matric with 2nd Division, did not produce either Recruitment and Promotion Rules or any other

documentary proof. The bald assertions in reply to the writ petition qua this aspect of the matter cannot be believed as gospel truth, particularly when as per the plea raised by the petitioner in the writ petition that Shri Bal Krishan and other similarly situated persons have later on been given appointment as Clerk on daily wage basis pursuant to the directions of this Court, which remained uncontroverted, the petitioner should have not been discriminated against the similarly situated persons and rather appointed as Clerk on daily wage basis.

7. True it is that the petitioner had accepted the offer of appointment as Beldar on daily wage basis given to him by the respondents without any protest, however, may be due to the fact that the family was living under indigent conditions on account of initially the retirement of the breadwinner on medical ground and later on his death. Hence, the rejection of application made by the petitioner for appointment as Clerk on daily wage basis vide impugned order dated 19.3.2012, Annexure P-4 is not at all legally justified nor the respondents are justified in claiming the benefit of acceptance of the offer of appointment as Beldar on daily wage basis made to the petitioner without any protest. The petitioner in the year 2006 when he made application Annexure P-3 for appointment as Clerk/Supervisor on compassionate ground was Matriculate as is evident from the certificate Annexure P-1. He acquired 10+2 qualification in May, 2011 as is apparent from the certificate Annexure P-2. The Policy, Annexure P-6 in unequivocal terms provide that the employment on compassionate ground has to be given as per the qualification and eligibility to the dependents irrespective of the fact whether the deceased employee had been working in a Class-III or Class-IV post, however, with the stipulation that the appointment on compassionate ground can only be made to the lowest rung of Class-III and Class-IV posts, as the case may be. Irrespective of the fact that deceased father of the petitioner was working as Beldar on work-charge establishment of the respondent-Department, in terms of the Policy Annexure P-6, the petitioner being Matriculate was duly qualified and eligible and was required to be appointed as Clerk. This Court also finds considerable force in the submission of the petitioner that Shri Bal Krishan, petitioner in CWP No. 1254 of 2011 and other persons similarly situated, approached this Court by way of filing the writ petitions, have been given appointment as Clerks on daily wage basis as there is no denial thereto in reply to the writ petition.

8. In view of what has been stated hereinabove, this writ petition succeeds and the same is allowed. Consequently, there will be a direction to the respondents to appoint the petitioner as Clerk on daily wage basis from the date of his initial appointment, i.e. 31.1.2006, within one month from the date of production of a copy of this judgment by the petitioner before the 2nd respondent, with all consequential benefits except for wages qua which he will be entitled from the date of joining duties as Clerk. The writ petition stands accordingly disposed of so also CMP No. 13282 of 2012 and any other pending application(s). No order as to costs.