THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**C.W.P. No. OF 2015**

**Vishal …….. …. …Petitioner**

**Versus**

**Haryana Power Generation Corporation Ltd., and others. ………..…Respondents**

INDEX

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Sr no. | Particulars | Date | Page | Court Fee |
| 1. | List of Events | 12.12..2015 |  |  |
| 2. | Civil Writ Petition | 12.12..2015 |  | 50.00 |
| 3 | Affidavit | .12.2015 |  |  |
| 4 | Annexure P-1 ( Assurance letter | 26.7.2011 |  | 5.85 |
| 5 | Annexure P-2 ( Certificate of 10+2 ) | 9.6.2011 |  | 65 |
| 6 | Annexure P-3 (Certificate of proficiency in Computer ) | 2010-11 |  | 65 |
| 7. | Annexure P-4 ( Copy of Diploma in the Trade of COPA) | 17.9.2012 |  | 1.30 |
| 8. | Annexure P-5  (Representation.) | 19.9.2012 |  | 65 |
| 9. | Annexure P-6 ( letter regarding residency confirmation) | 31.10.2012 |  | 65 |
| 10 | Annexure-P-7 ( letter regarding residency confirmation) | 9.11.2012 |  | 1.30 |
| 11 | Annexure P-8 (Appointment Letter) | 1.1.2015 |  |  |
| 12 | Annexure -9 ( Representation | 18.3.2015 |  | 1.95 |
| 13 | Annexure -10 ( Representation | 25.8.2015 |  | 2.75 |
| 14 | Power of Attorney |  |  |  |
|  | VERNACULR |  |  |  |
| 15 | Annexure P- 9 Representation | 18.3.2015 |  |  |
| 16 | Annexure P-10 Representation | 25.8.2015 |  |  |

Total Court Fee Rs.

*NOTES:-*

1. The main law points canvassed in this writ petition are contained in para No. 13 at page and thereof.

2. *Relevant Acts and Statutes* - Constitution of India.

3. Whether any Caveat/Petition has been filed in this case of not. -Nil-

4. *Similar Case, if any*. -Nil-

CHANDIGARH ( SURESH AHLAWAT )

DATED : 1 2.12.2015 ADVOCATE

COUNSEL FOR THE PETITIONER

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL WRIT PETITION NO. OF 2015

Vishal s/o Sh.Manohar Lal c/o Ram Niwas s/o Sh. Chandu resident of Village & P.O. Khedar, District- Hisar presently working as Peon (HQ) in the Office of Under Secretary/Estt.. (NG) HPGCL , C-7 Urja Bhawan, Sector-6, Panchkula (Haryana) …. …Petitioner

Versus

1. Haryana Power Generation Corporation Ltd., through its Managing Director Urja Bawan Sector-6 Panchkula

2. Chief Engineer ( Admn.) C-7, Haryana Power Generation Corporation Ltd. Urja Bhawan Sector-6 Panchkula.

…………….. Respondents

Civil Writ Petition under Articles 226/227 of the Constitution of India, for issuance of a writ in the nature of Mandamus be issued to the respondents to re- consider the claim of the petitioner for the post of class- III i.e. Lower Division Clerk ( L.D.C. ) instead of class- IV i.e. Peon , according to his educational qualifications, from the date of his appointment as Peon, with all consequential service benefits.

*RESPECTFULLY SHOWETH*

1. **That** the petitioner is a resident of District Hissar (Haryana) and as such he being a citizen of India, is fully competent to invoke the extraordinary writ jurisdiction of this Hon’ble Court under Article 226 of the Constitution of India by way of the present writ petition.
2. **That** State Government acquired the agriculture land near about 2000 Acres of the village Khedar in District Hisar for setting up 2X600 MW Rajiv Gandhi Super Thermal Power Plant ( RGSTPP- KHEDAR ) District HISAR. The then , Hon,ble Chief Minister, Haryana had made an announcement on 19.5.2007 while addressing at village Khedar Hisar in the presence of Prime Minister of India that one member each of the family whose land has been acquired ( minimum 2 acres) shall be given employment against Class-III and IV posts as per the qualification possessed by the member of the land oustees family .
3. **That** in this regard , on dated 28.6.2011 a meeting was held under the Chairmanship of Hon,ble Chief Minister ,Haryana at Chandigarh to implement the announcement of employment to the oustees and directed to the respondents and Deputy Commissioner Hisar to supply the list of oustees of the village along with their education qualification. They were also directed to forward the application forms of such oustees candidates, complete in all respect, along with all documents, after duly verifying the same to grant the employment, such applications duly verified were to be forwarded to the duly constituted High Power committee at Panchkula. It is also mentioned in the CM Announcement that Rehabilitation & Re-settlement (R&R) Policy-2010 be also considered for providing the job to the dependent family of oustees. Further ,it was decided that the job will be offered against Class-III and IV posts as per the qualification possessed by the member of the oustees family .It was further decided that the oustees for whom the Power Company of this project has no suitable jobs , may be provided employment by Haryana Power Utilities i.e. UHBVN, DHBVN,HVPN and HPGCL. Accordingly , Deputy Commissioner , Hisar vide memo no.144/LAC dated 24.5.2011 supplied the requisite information wherein the detail of 133 candidates were supplied . It is also mentioned that in the month of July -2011 applications member of the oustees were invited through conducting the munadi by the concerned Patwari in the village.
4. **That** in pursuance to the CM Announcement, from July -2011 , process of collecting the application form was started for the employment of the eligible candidates of the family of the oustees. Petitioner had applied for giving employment under land oustees quota against the land of his maternal grand father (Nana ) as per decision of State Government , employment under land oustees quota to maternal grant children (dyota/dyoti) were to be provided .At that time, petitioner was 10+2 ( Non-Medical) with 80% marks (GPA 08.00) from Board of School Education Haryana, in March.-2011 and having the full knowledge of computer operating and he was fully eligible for the post of clerk but at that time , he was minor i.e. his age was less than 18 years and could not get the job.
5. **That** vide official letter dated 26.7.2011 petitioner was also given assurance/offered letter by the respondent no.2 regarding providing employment in which it was written that for entry into service of Haryana Govt., limit of age 18 years and at present your age is below 18 years. When your age will become of 18 years at that time, whatever will be your qualification , in accordance with that you will be provided employment , of that post in HPGCL. In this regard, true copy of the said letter dated 26.7.2011 is being attached here with as **Annexure P-1** ,

It is pertinent to mention here that it is correct that at that time his age was less than 18 years ( date of birth 5.12.1993) but his educational qualification was 10+2 (Non Medical, passed with 80% marks ) passed in March -2011 and certificate of proficiency in computer passed with class 10+2 and petitioner was fulfilling the educational qualification for the post of Lower Divisional Clerk (L.D.C.). True photo copy of certificate of 10+2 ( March -2011) and true photocopy of Certificate of proficiency in Computer issued by the Principal Govt. Sr. Sec. School ( 2010-2011) are being attached herewith as **ANNEXURE - P-2 & 3 respectively.**

1. **That**  it is pertinent to mention here that petitioner after getting the assurance letter (Annexure P-1 ) enrolled in I.T.I in the month of August- 2011 and passed one year diploma course in the trade of COPA ( Computer Operator Programming Assistant) held in the month of July 2012. True photocopy of diploma course of trade test in the trade of COPA issued by the Principal, I.T.I. ( Aug. – 2011 to July -2012) is being attached herewith as **ANNEXURE - P-4.**
2. **That**  on dated 19.9.2012 petitioner submitted his representation along with all documents of his educational qualifications to the respondent no. 2 intimating for attaining the age of 18 years . True copy of said representation 19.9.2012 is being attached herewith as **ANNEXURE - P-5.**
3. **That** in spite of submission of representation dated 19.9.2012 no decision was taken on the said representation up to 2014.When ever, petitioner used to go , in Head office at Panchkula for inquiry , he was told by the official of the respondents that verification regarding your residencial is going on, . It was further told that the Head office has been written the letters to the Deputy Commissioner, Hisar and Chief Engineer, Thermal Power Plant Khedar when the same is completed , you will be appointed . True copies of said letters regarding residential verification , office letter dated 31.10.2012 from Chief Engineer/Admn i.e. respondent no.2 sent to the Chief Engineer /RGTPP HPDCL, Khedar (Hisar) and other office letter dated 9.11.2012 from respondent no.2 to the Deputy Commissioner , Hisar are being attached herewith as **Annexure P-6 & 7 respectively**
4. **That** ultimately petitioner was given appointment letter dated 1.1.2015 for the post of Peon -Class-IV. On seeing the same petitioner was astonished that he was given appointment letter for the post of peon where as , he was having full qualification for the post of clerk and he was given assurance vide letter (Annexure P-1) that HPGCL will provide a suitable employment on the basis of educational qualifications at that time when petitioner will attain the age of 18 years. Petitioner also made a request letter to the respondents in this regard . Petitioner was left no option except to join .Then petitioner joined against the post of peon under protest. A true copy of the appointment letter dated 1.1.2015 is being is attached herewith as **Annexure –P-8.**
5. **That** petitioner after joining the post of peon submitted a representation on 18.3.2015 to the respondents that in accordance with his educational qualification he should be provide the post of Lower Divisional Clerk (L.D.C) but he was told by the official of the respondents that verification of your confirmation of residence was pending during the period from September-2012 to December-2014 and further told to the petitioner that now qualification for the post of Lower Divisional Clerk ( L.D.C) has been changed which was earlier 10+2 with 2nd Division with working knowledge of computer and now since Sep.2013 qualification is Graduation with a minimum 60% marks . A true translated copy of the representation dated 18.3.2015 is being attached herewith as **Annexure –P-9.**
6. **That w**hen the respondents did not take any action on the representation dated 28.3.2015 (P-9) , petitioner again moved an representation on dated 20.8.2015 to the respondents to provide the post of clerk according to his educational qualification. But the respondents till today has not taking any action on the representations. A true translated copy of the representation dated 18.3.2015 is being attached herewith as **Annexure –P-10.**

It is pertinent to mention here that when the petitioner submitted his application for employment he was having the qualification 10+2 with 80% marks with one year certificate of proficiency in computer and one year diploma of trade test in the trade of COPA ( Computer Operator Programming Assistant) . In this way , at that time he was fully eligible for the post of Lower Divisional Clerk (L.D.C) according to his educational qualifications but could not get the job due to less than 18 years of age. Further assurance letter annexure P-1 was also given to the petitioner mentioning in it that he will be provided a suitable employment on the basis of educational qualification at the time of attaining the age of 18 years. When petitioner attained the age of 18 years in the month of December- 2011, could not get the job, only on the plea of the respondents that verification of confirmation of residency is going on, when it completed than employment will be provided. It is submitted that when the residential confirmation of the petitioner has been verified in the month of Dec.-2014, then educational qualifications for the post of Lower Divisional Clerk (L.D.C.) has been changed i.e from 13.9.2013. That due to delay in residential verification about 2 years attributed by the respondents. Petitioner could not be blamed and petitioner is not at fault at any stage.

**For kind consideration education qualification for the post of Lower Divisional Clerk (L.DC.) in the 2011 ( i.e wef 15.9.2005 to 18.4.2013) was as under :-**

**“ 10+2 with 2nd Division or equivalent with working knowledge of computer”**

**Thereafter , new revised Recruitment and Promotion policy notified vide office order** dated 18.4.2013 **following qualifications were prescribed the post of LDC:-**

1. **Graduate with a minimum 60% marks in respect of General Category candidates**
2. **B) Must have passed Hindi/Sanskrit up to Matric slandered**
3. **Computer Eligibility Test would be conducted.**
4. **That** from the above it is clearly substantiated that on July-2011 the qualification for the post of Clerk was 10+2 but the petitioner could not be appointed because at that time , his age was less than 18 years and further respondents took two years in confirming the residency of the petitioner. It was laps on the parts of the respondents and not the petitioner. So, he entitled for the post of Lower Divisional Clerk (L.D.C) as per the qualifications as it was on July 2011 not April-2013.
5. **That** the petitioner was eligible for the post of Clerk (LDC)having been educational qualifications of 10+2 with 80% marks and with two years experience of computer conducting/operating and attainted the age of 18 years in the year 2012. Further change in the educational qualification for the post of L.D.C. from 10+2 to Graduation cannot snatched away his accrued right for the post of L.D.C. (Lower Divisional Clerk )

**14.**  **That**  the following main law points arise in this writ petition for the kind consideration of this Hon’ble Court:-

a) Whether the case of the petitioner is squarely covered with the educational qualifications of the post of Lower Divisional Clerk ( L.D.C) ?

b) Whether the action of the respondents is arbitrary and discriminatory which violative of Articles 14 and 16 of the Constitution of India?

c) Whether a grave manifest injustice has been caused to the petitioner?

**15. That** there is no other alternative remedy of appeal or revision available to the petitioner except to approach this Hon’ble Court by way of the present writ petition under Article 226 of the Constitution of India.

**16. That** the petitioner has not so far filed any such or similar writ petition either in this Hon’ble Court or in the Hon’ble Supreme Court of India for seeking the same relief against the impugned action of the respondents.

**PRAYER:-**

It is, therefore, respectfully prayed that this Hon’ble Court may be pleased to call for the records of the present case and after perusal thereof may be pleased to issue: -

a writ in nature of Mandamus directing to the respondents to re- consider the claim of the petitioner for the post of class- III i.e. Lower Division Clerk ( L.D.C. ) instead of class- IV i.e. Peon , according to his educational qualifications from the date of his appointment as Peon, with all consequential service benefits .

ii) Any other appropriate writ, order or direction be also issued which this Hon’ble Court may deem fit, just and proper in the peculiar facts and circumstances of this case and to which the petitioner is found entitled in law justice and equity.

iii) Service of advance notices upon the respondent be dispensed with.

iv) Filing of true typed of annexure and certified copy of Annexures be also dispensed with;

CHANDIGARH Through: Petitioner Petitioner

DATED: 12.12.2015 ( SURESH AHLAWAT )

ADVOCATE

Counsel for the petitioner.

*VERIFICATION*

Verified that the contents of Para No. 1 to 13 and 15 to 16 of the writ petition are true and correct to my knowledge. Legal submissions made in para Nos. 14 are believed to be true on the advice received from the learned Counsel. No part of it is false and nothing has been kept concealed therefrom.

CHANDIGARH Petitioner

DATED: 12.12.2015

THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CIVIL WRIT PETITION NO. OF 2015

Vishal ---------- ……Petitioner

Versus

. Haryana Power Generation Corporation Ltd and other --------------…Respondents

*TOTAL AMOUNT OF COURT FEE AFFIXED*

CHANDIGARH (SURESH AHLAWAT)

P/370/1994

DATED : 12.12 .2015 ADVOCATE

COUNSEL FOR THE PETITIONER

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. NO. OF 2015

Vishal -----------------------Petitioner

Versus

H.P.G.C.L and other -------- ---------…Respondents

Affidavit of Vishal s/o Sh.Manohar Lal presently working as Peon (HQ) in the Office of Under Secretary /Estt. (NG), HPGCL , Urja Bhawan , Panchkula. (Haryana)

I , the above named deponent do hereby solemnly affirm and declare on oath as under: -

1. That the deponent has gone through the contents of the accompanying petition which have been drafted by the counsel on my instructions. The contents of the same are admitted to be true and correct and be read as part and parcel of this affidavit.

2. That no such or similar petition has earlier been filed either before this Hon,ble Court or Hon,ble Supreme Court.

CHANDIGARH

DATED . .2015

*VERIFICATION*

Verified that the contents of my above affidavit are true and correct to my knowledge. No part of it is false and nothing has been kept concealed therein.

CHANDIGARH

DATED .2015

HARYANA POWER GENERATION CORPORATION LIMTED

Regd. Officer :C-7, Urja Bhawan, Sector-6, Panchkula

From

The Chief Engineer/Admn.

Urja Bhawan, HPGCL Panchkula

To

Chief Engineer/RGTPP

HPGCL.Khedar (HIsar)

Memo No. Ch. 8 /HPGCL/Reett.-107/200 **dated 31.10.2012**

Subject:- Verification for residential proof of Sh. Vishal s/o Sh. Manohar Lal , Dohta of Sh. Ram Niwas s/o Sh. Chandu.

Sh. Vishal s/o Sh. Manohar Lal has applied for giving employment in liew of acquisition of land of his maternal grandfather Sh. Ram Niwas s/o Sh. Chandu (Copy enclosed)

As per the decision , maternal grandfather children ( Dohta/Dohti) are to be provided employment subject to the verification from office of D.C. Hisar that they are residing in village Khedar( Hisar).

Accordingly , you are requested to get the position verified from the office of D.C. Hisar that he has been residing in village Khedar prior to July-2011 along with authentic proof.

DA/As above.

Dy. Secy./Genl.

For Chief Engineer/Admn.

HPGCL, Panchkula.

RAJIV GANDHI THERMAL POWER PLANT,KHEDAR,HISAR

A UNIT OF HARYANA POWER GENERATION CORPORATION LIMTED

Regd. Officer :C-7, Urja Bhawan, Sector-6, Panchkula

From

The Chief Engineer/RGTPP

HPGC.Khedar (Barwala)

District-Hisar ( Haryana)

To

The Deputy Commissioner,

Hisar.

Memo No. Ch. -153/CE/RGTPP/G-118  **DATED- 9.11.2012**

Subject:-Verification for residential proof of Sh. Vishal s/o Sh. Manohar Lal , Dohta of Sh. Ram Niwas s/o Sh. Chandu.

Sh. Vishal s/o Sh. Manohar Lal has applied for giving employment in liew of acquisition of land of his maternal grandfather Sh. Ram Niwas s/o Sh. Chandu (Copy enclosed)

As per the decision , maternal grandfather children ( Dohta/Dohti) are to be provided employment subject to the verification from office of D.C. Hisar that they are residing in village Khedar( Hisar).

In view of the above , it is requested to get the position verified that Sh. Vishal s/o Sh. Manohar Lal has been residing in village Khedar prior to July-211 alongwith authentic proof so that furthrt action with regard to his employment can be taken by the Corporate Office of HPGCL accordingly,please.

The Chief Engineer/RGTPP

HPGC.Khedar.

C.C. 1. CE/Admn., HPGCL, Panchkula with reference to his office Memo no. Ch.8/HPGCL/Rectt.-107/200 dated 31.10.2012 .

**That** State Government acquired the agriculture land near about 2000 Acres of the village Khedar in District Hisar for setting up 2X600 MW Rajiv Gandhi Super Thermal Power Plant ( RGSTPP- KHEDAR ) District HISAR. Then , Hon,ble Chief Minister, Haryana had made an announcement on 19.5.2007 while addressing at village Khedar Hisar that one member each of the family whose land has been acquired ( minimum 2 acres) shall be given employment against Class-III and IV posts as per the qualification possessed by the member of the land oustees family.

**That** in the month of May/June -2011 applications of the land oustees were also invited by the respondents by calling munadi in the village .

**That** Petitioner who also belong to the oustees family also submitted his application along with all documents of his educational qualification for appointment for the post of LDC in the Camp at RGTPP of the respondents .

accordingly , the petitioner is fully eligible for the said post as on June-2011 i.e. the date of filing the application . Petitioner passed 10+2 with 59% marks ( Vocational course ) with type writing one of the subject , he was regular student in Three Years Diploma in Electronics & Communication Trade (Polytechnic Institution recognize by the Haryana Govt. ) during the session 2007-2010. Thus the petitioner had full knowledge of computer operating at the time of submission of his application and he was fully eligible for the said post i.e LDC.

**That**  as evident from above , the petitioner was fully eligible for appointment to the post of LDC but the petitioner was offered the post of Peon vide Letter memo no. 184 dated 26.7.2011.Then petitioner raised the objection and aggrieved by the above said order, petitioner submitted the representation to the respondents to provide his, the post of Lower Division Clerk (LDC) instead of peon according to his educational qualification .

**That** It is pertinent to mention here that the petitioner after joining the post of peon also represented to the respondent no.2 through proper channel to provide the Job as LDC instead of peon .As such, in response of the such representations , Chief Engineer HPGCL Yamuna Nagar (where he was posted ) forwarded the letters to the respondent no.2 to take necessary action .

**That** on dated 13.9.2015 petitioner utter surprised after seeing the letter dated.13.9.2015 in his office sent by the respondent no.2 mentioned “ that your representation is not feasible for acceptance and you were

To

The Chief Engineer /Admn.,

HPGHCL, Panchkula.

Sir

I beg to say that land was acquired for the setting up of Rajiv Gandhi Thermal Power Project , Khedar ( Hisar).

I filled up your application form for the job in 2011. At that time, I was under age. Thus, I could not get the job. Then , I received your letter according to which you will provide me suitable job on the basis of my educational qualification . Now I completed my ITI diploma from COPA Trade after + 2 and attained the age of 18 years.

Kindly provide me suitable job after checking my educational documents which are attached to this letter. I shell feel very obliged to you.

Thanking You

Dairy no.188 Yours Faithfully

received 19.9.2012 Vishal

VPO- Pattan ( Hisar)

Memo no. 263/HPGCL/GB-333/L

Through Proper Chanel

To

Managing Director, HOGCL

Urja Bhawan, Panchkula.

Subject:- To Provide the post as per Qualification.

Sir,

It is submitted that I am posted as Peon in the HPGCL. I was provided this employment in lieu of acquisition of land in RGSTPP.

Sir, I want to considered your attention towards this , that in 2011 when the employment was provided to the family of farmers of village –Khedar at that time , who have qualification of 10+2 was appointed on the post of Clerk and I also have the knowledge of computer with 10+2.

So, I have qualification for the post of Clerk where as, I was appointed as peon, which is unjustified as per my qualification , in the present time, after my appointment as peon Anil s/o Hawa Singh, Sandeep s/o Ishwar Singh and Satish s/o Lehri Ram was also provided the post as per the policy of 2011.

From the above said, it is clarified that discrimination was done with me while providing the job to me. So, you are humbly prayed that by interfering in the matter of applicant and justice be done with me by appointing me as a Clerk.

I will be highly thankful to you.

Applicant

Vishal s/o Sh. Manohar Lal Establishment Branch, HPGCL

Received

Sd

18.3.2015