

(1990) 06 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. -859 of 1992

Anmolak Singh

APPELLANT

Vs

State of Jammu and Kashmir and Others

RESPONDENT

Date of Decision : 30-06-1990

Acts Referred:

Jammu and Kashmir (Compassionate Appointment) Rules, 1994 — Rule 3

Citation : (1999) KashLJ 47 : (1999) 1 SCT 801 : (1998) SriLJ 426

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Judgement

1. This order shall dispose of four writ petitions.
2. Facts of writ petition No:895 of 1992 are as under.
3. The petitioner submits that his father died in harness. On account of this happening he applied for getting appointment on compassionate grounds. According to the petitioner he was entitled to appointment in terms of SRO 194 of 1989 and SRO 283 of 1991. The grievance of the petitioner is:
 - (i) That he applied for the post of SubInspector.
 - (ii) That he was fully eligible for the post.
 - (iii) That instead of appointing him as SubInspector he was given the job of Excise Guard.
 - (iv) Similarly situated persons has been appointed as SubInspector. Name of these persons have been indicated as respondents No.5 and 6 in this petition.
4. On the basis of above it is submitted that the petitioner should have been appointed as Excise Sub Inspector. It is further submitted that even

though a vacancy was available and even though some recommendations were made, appointment was not made for a period of two years. Later

on he was appointed as Excise Grard. Thus the only grievance of the petitioner, appears to be that he should have been appointed as Excise Sub

Inspector. The appointment given as a Excise Guard is not the proper appointment, As indicated above, he is seeking parity with two persons

whose names have been given as respondents No.5 and 6.

5. It be seen that so far as allegations are concerned, these find mentioned in para 3(k). There is no specific reply to the aforementioned

paragraphs

6. Facts of writ petition No.555 of 1998 are as under :

Petitioner who was seeking compassionate appointment has been appointed as a class iv employee. He is seeking appointment to the post of

Junior Assistant.

7. Circumstances under which this petition has come to be filed in this court be noticed. Father of the petitioner was working as Naib Tehsildar. He

died in the year 1993. At that point of time, the petitioner was studying in part1 (Higher Secondary). He submitted an application. He was

appointed as classIV employee on 29th of January 1998. The petitioner submits that he should have been appointed as Junior Assistant. Reliance

is being placed on SRO 43 of 1994. Particular reliance is being placed on Rules. This provision reads as under: ""3. Appointment under these

Rules:(I) Notwithstanding anything contained in any rule or order for the time being in force regulating the procedure for recruitment in any service

or posts under the Government an eligible family member of a person specified in Rule 2 may be appointed against a vacancy in the lowest rank of

a nongazetted service having qualification above matriculation or to a class IV post if the candidate has read up to Matric.

8. Facts of writ petition No: 911 of 1998 are as under:

Petitioner sought appointment on compassionate grounds. He is having qualification 10+2(Higher Secondary). Under Rule 3 of 1994, if a person

possess qualification above matriculation, then he is not to be appointed against post of class IV. This has not happened in this case. Petitioner who

has been appointment against class IV post wants appointment against the post of Work Supervisor. He made representation in this behalf. These

are pending with the State authorities.

9. Facts of writ petition No: 269 of 1997 are as under .

Petitioner submits that her son namely Chand Jee Bhat died on account of militant related violence. FIR in this regard was lodged with the

concerned authorities. FIR number is 169/90. The aforementioned Chand Jee Bhat was working in defence service. Petitioner and her husband

wanted their other son Bhushan Lal Bhat to be given appointment on compassionate ground. Application annexures P/3 and P/4 were submitted.

Application was also submitted for ex gratia relief. In the meanwhile, husband of the petitioner has also died. In these circumstances, she submits that

State should have considered the case of her son for giving compassionate appointment. It is stated that other persons similarly situated were

granted ex gratia relief and compassionate appointments were offered to them. Petitioner is seeking appointment of her son in terms of SRO 43 of

1994. This petition is pending in this Court for more than a year

10. Even though opportunities of adjournments have been given. State has not taken any step to file objections. Petition admitted. With the consent

of parties, it is taken up for final disposal.

11. A plain reading of the aforementioned Rule 3 makes it apparent that a person who possesses qualification above matriculation, is to be

appointed against the vacancy in the lowest rank of non-gazetted service. If a candidate has acquired qualification up to metric, then he is to be

appointed, against class IV post only. Above is the plain interpretation of the Rule 3 referred to above. If this be the position then the petitioners are

well within their rights to contend that they should be appointed against the post other than class IV post. Some judicial precedents in this regard be

noticed. In Smt Shanti Devi. V. State of Haryana 1992 (6) SLR 320, a Division Bench of Punjab and Haryana High Court has observed that

object of granting compassionate appointment is to see that kith and kin of the deceased are provided with livelihood so that they can live a

respectable life. According to the Division Bench, this object can be achieved only if post offered is commensurate with the academic

qualification of a person seeking appointment. Appointment to the lowest post would amount to humiliating the person concerned. Relevant

observations are being quoted as under:

Logic behind such instructions being that such kith and kin should be provided with a source of livelihood that they should have respectable living, which can only be if posts in consonance with the academic qualification are offered. The object of such instructions is not to humiliate a person by offering a very lower post.

The Supreme Court of India in case reported as Smt. Kamala Gaiind Vs. State of Punjab and others, 1992 (5) SLR 864, observed that even in the case of compassionate appointment, there has to be some rationale. Son of the Additional District Judge, who was claiming compassionate appointment, was not given Class I post whereas others were given. Direction was issued to provide him with a job in Punjab Civil Service (Executive) Branch.

The object of giving appointment on compassionate grounds is to see that dependents of the deceased's family do not suffer on account of financial constraint. Even if the post has to be created, that should be done. Such was the view expressed in case reported as Govind Kushwaha Vs. State of Punjab 1993(4) SCT 342.

12. In Smt. Darshana Devi V. State of Haryana 1998 (1) Set 481, the husband of the petitioner, died while holding the post of Multipurpose

Health worker in the pay scale of 12002040. Her application for exgratia employment was accepted but she was offered appointment as Class IV

employee in the pay scale of Rs 750940. The Government instructions were that the cases of such persons should be considered for appointment

on a post carrying one scale lower than the post held by the deceased. Taking note of these instructions, directions were given to the State

Government to offer the job carrying one pay scale lower than the scale which the deceased was enjoying. The view of this court is also the same.

13. In Sajawarjit Sharma versus State of J and K and others SWP No: 142 of 1997, decided on 10th of May 1997, it was observed that job

which is offered should be commensurate with the educational qualifications. What was observed in the aforementioned judgment, is being noticed.

The petitioner being a matriculate and because of the untimely demise of his father could not continue his studies and also because of the

circumstances, he had to accept whatever meagre is offered to him to save himself and his family from starvation but that is not the intent of the

scheme and the rules promulgated to provide appointment on compassionate grounds that may result in harassment. The job offered should be

commensurate to the qualification to lead a respectful life in the society. There was no difficulty or dearth of posts with the respondents to consider

the petitioner for appointment against the post of Jr. Assistant.

14. In view of the above opinion expressed by the Supreme Court of India, Punjab, and Haryana High Court and this Court, it can safely be

concluded that the job which is to be offered should be commensurate with qualifications of the person seeking appointment. In the present case,

Rule 3 is categorical. Person having qualifications above matriculation is to be given post of Junior Assistant and above.

15. These petitions are accordingly allowed. Respondents are directed to take notice of the observations made above. Respondents would

process the case for further orders. Let it be done within a period of four months. The period of four months would begin from the date a copy of

order passed by the court alongwith writ petition and annexure thereof is made available by the petitioners to the respondents. If for any practical

reasons it is not possible to take a decision within above mentioned period, respondents would be at liberty to seek extension of time. But in that

eventuality they would have to explain each and every day's delay.

16. Before parting with this order, reference may also be made to the order passed in SWP No: 488 of 1998 decided on 29.06.98. In the above

case it was concluded as under:

(i) in the matter of making compassionate appointment, the paramount consideration is to see that the members of the deceased family are

provided with relief which would mitigate the financial crisis.

(ii) the word 'acquire' denotes a conscious act. An effort is made to obtain something. Eligibility on account of death is an event which can never be

acquired.

(iii) the period of six months limitation prescribed in the Rule 3 would apply only to acquisition of eligibility qua educational technical and other

qualifications.

(iv) that the rules of 1994 are not retrospective. This would govern only those cases where death has taken place after 22.02.1994. The old cases

would be continued to be governed by the old Rules.

(v) that the Government is within its rights to relax any of the Rules and if the Government comes to the conclusion that financial crisis is still being

faced by the family and as that is the basic factor which guides the authorities in making compassionate appointment, the Government can still make

appointment notwithstanding the prescription of the period of limitation.

(vi) that in all cases what is required to be seen is that the hardship which the family is required to be mitigated. If the family is not suffering any

hardship then notwithstanding the presence of all other criteria's, the appointment can be denied. If the family is suffering from hardship, then

compassion has to be shown. Rules can be relaxed. State has to show benevolence

The respondents would take notice of the above position and more so while dealing with the writ petition No: 269 of 1997 of the writ petitioner.

17. All petitions which are admitted and taken up for final disposal with the consent of the parties are disposed of accordingly.