

(2015) 05 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : SWP No. 1367 of 2012

Arun Kumar

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 29-05-2015

Acts Referred:

Citation : (2015) 4 JKJ 185 : (2015) LabIC 3946

Hon'ble Judges : Tashi Rabstan, J

Bench : Single Bench

Advocate : Aseem Sawhney, for the Appellant; Seema Shekhar, Senior AAG, for the Respondent

Final Decision : Disposed Off

Judgement

Tashi Rabstan, J.—The challenge in this petition is to Order No. CEJ/Adm/12 of 2011 dated 14.01.2011 issued by the Chief Engineer,

Electric, Maintenance & R.E. Wing, respondent No. 4 herein, and Govt. Order No. 214-PDD of 2011 dated 18.07.2011 issued by Deputy

Secretary to Government, Power Development Department, respondent No. 2 herein, whereby the case of petitioner under SRO 43 of 1994 for

appointment on compassionate grounds has been rejected. The facts-in-brief are that the brother of petitioner, namely, Rama Kant was working as

a Technician-III in STD Udhampur, who died in harness on 18.10.2009 due to electrocution. Petitioner herein applied for his appointment on

compassionate grounds under SRO 43 of 1994. Meanwhile petitioner also filed SWP No. 2439/2009 in this Court seeking a direction to the

respondents for his appointment on compassionate grounds. This Court vide order dated 03.12.2010, while disposing of the writ petition, directed

the respondents to consider the case of petitioner for his appointment under SRO 43 on its own merits, besides his request for relaxation of age be

also considered. Consequently, respondent No. 4 issued Order No. CEJ/Adm/12 of 2011 dated 14.01.2011, and, thereafter, respondent No. 2

issued Govt. Order No. 214-PDD of 2011 dated 18.07.2011 rejecting the case of petitioner on the ground that at the time of death of his brother

he was over aged by more than five years, therefore, was not covered under the relaxation policy/SRO 43 of 1994.

2. The case of the petitioner is that the present draft Relaxation Policy is neither a legislation nor a Government order under Business Rules,

therefore, the opinion of General Administration Department in rejecting his case is wrong. The contention of learned counsel for petitioner is that

the language of SRO 43 has never put any embargo over the power of Government to relax the age or qualification, therefore, the Government is

within its power to relax the age of petitioner. It is contended that though the case of petitioner was recommended by the Power Development

Commissioner to the Government for relaxation of his upper age, but the respondents rejected his case merely on technicalities. It is averred that

several persons who were over aged by more than 5 to 8 years have been granted the age relaxation, but in case of petitioner he has been denied

the same treatment. It is further averred that the petitioner sought information from the Public Information Officer of the General Administration

Department, but he has not been provided with the same. Thus, it is contended that both the orders impugned are arbitrary and not in conformity

with law laid down on the subject. It is submitted that SRO 43 was amended and Rule 7 incorporated to enable the respondents to relax the

statutory requirements of lower or upper age limits or educational/technical qualification in deserving cases.

3. Objections have been filed on behalf of respondents. It is contended that the petitioner at the time of death of his brother was over aged by

more than five years, therefore, was not found fit by the Government for according him the benefit of SRO 43 of 1994. Further, it is contended

that upper age relaxation is given to such candidates who at the time of death of the deceased's are within their prescribed age limit of 37 years but

become over aged while their cases are under process for according them the benefit of SRO 43 of 1994.

4. Heard learned counsel appearing for the parties and perused the writ record.

5. It is not in dispute that the deceased was working as a Technician-III in STD Udhampur and he died on 18.10.2009 due to electrocution while on active duty. It is the specific stand of petitioner that several similarly situated candidates, who were already over aged by more than 5 to 8 years at the time of death of their deceased relatives, have been granted the age relaxation so as to accord them the benefit of SRO 43 of 1994, but, to hide this fact, he was not provided with this information by the Public Information Officer of the General Administration Department.

6. Article 16 of the Constitution of India confers on every citizen a right to equality of opportunity in the matters relating to employment or appointment to any office under the State. It follows that public employment cannot be given selectively at the whim and caprice of the appointing authority. However, the Jammu & Kashmir (Compassionate Appointment) Rules, 1994 notified vide SRO 43 dated 22.02.1994 carve out an exception to the aforementioned principle, in favour of spouse, children and siblings of Government servant who dies in harness and on whom said family members are dependant. In terms of Rule 7, the Government has the power to relax the upper age limit in deserving cases; meaning thereby if a person is over aged at the time of death of his deceased relative, the Government has the power to exercise this discretion in deserving cases.

Even at paragraph-5 of the draft Relaxation Policy, the respondents have themselves admitted that there is a clause in the existing SRO that the Government can grant any relaxation in age as well as qualification. In the present case the respondents without enquiring as regards to the fact whether the petitioner has any source of income and whether he was the deserving candidate in terms of Rule 7 (supra), have rejected his case on the ground of his having crossed the upper age limit at the time of death of deceased, and this was the sole ground for rejecting the claim of petitioner. It was for this reason that necessity had arisen for considering the case(s) for grant of relaxation in upper age limit. Because of wrong interpretation of rules and on legally unacceptable ground as also due to arbitrary exercise of powers, claim of petitioner for grant of relaxation in upper age limit has been turned down. A Division Bench of this Court in LPASW No. 105/2009 decided on 5.4.2010 has also issued a direction

for consideration of relaxation of age in terms of Rule 7 of SRO 43/relaxation policy.

7. In the given circumstances, the orders impugned are quashed. Respondents to consider the case of petitioner for relaxation of his upper age limit

in terms of Rule 7 of SRO 43/relaxation policy for his appointment on compassionate grounds keeping in view the facts of this case as well as the

inter departmental recommendations made from time to time. Let this exercise be completed within a period of eight weeks from the date a copy

of this order is served upon them by the petitioner and necessary orders be passed within two weeks thereafter. Disposed of along with all CMPs.