

(2005) 07 J&K CK 0023

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 837 Of 2004

Azeem Ahmad

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 29-07-2005

Acts Referred:

Jammu and Kashmir (Compassionate Appointment) Rules, 1994 — Rule 2, 3

Citation : (2005) JKJ 512 Supp : (2006) SriLJ 133 : (2006) 1 SriLJ 133

Hon'ble Judges : Bashir Ahmed Kirmani, J

Bench : Single Bench

Advocate : N.H.Shah , I.Sofi , F.A.Bhat , Advocates appearing for the Parties

Judgement

1. Objections stand filed on behalf of respondents 2 to 4 only. With agreement of learned counsel, the petition is admitted to hearing and taken up

for final disposal.

2. After death of his father namely Mushtaq Ahmad Wani, who was holding post of Tehsildar, on substantive basis in the Revenue Department, the

petitioner, a graduate, was appointed as 'Patwari' on compassionate grounds under SRO 43 of 1994.

3. Claiming that in view of his qualification and according to the J&K Revenue (Subordinate) Service Recruitment Rules 1973 he deserved to be

appointed as Naib Tehsildar, for which he was duly recommended by Dy. Commissioner, Srinagar, the petitioner complains that he was not so

appointed despite availability of post, and hence this writ petition for issuance of certiorari for quashment of the order of respondents denying

petitioner appointment as Naib Tehsildar and directing them to appoint him assuch.

4. Grounds pleaded in support of the prayer are that in addition to his qualification for the same, and entitlement in terms of the rules governing the matter, the petitioner also deserved to be appointed as Naib Tehsildar like private respondents 5 and 6, who, though similarly placed with him, were appointed as such in relaxation of rules. During course of hearing petitioner's counsel reiterated the contents of the writ petition while respondents counsel contended that the rules governing appointment on compassionate grounds envisaged appointment of the beneficiary into the lowest class/cadre of service only, and as such petitioner's claim of appointment to a higher post was not tenable, as pleaded in the objections.

5. I have heard learned counsel and considered the matter. In view of the contents of writ petition and submissions of counsel, the claim of petitioner in nutshell is that in view of his entitlement on basis of qualification etc., as aforesaid he deserved to be appointed as Naib Tehsildar directly under SRO 43 of 1994 at par with private respondents 5 and 6. Before proceeding further it would be apt to quote from the SRO relied upon by the petitioner:

2. Application of Rules: These rules shall apply to the compassionate appointment of a person who is a family member of:

- i) a Government employee who dies in harness other than due to militancy related action;
- ii) a Government employee who dies as a result of militancy related action and is not involved in a militancy related activities;
- iii) a civilian who dies as a result of militancy related action not involved in militancy related activities and total income of the family from any source does not exceed Rs.3,500/ per month as assessed by the Revenue Officer not below the rank of an Assistant Commissioner;
- iv) a permanent resident Junior Commissioned Officer or noncommissioned officer of the armed force or an officer of the armed force or an officer of equivalent rank of the para military force who is killed in action connected with law and order duties within the State of Jammu and Kashmir or as a result of enemy action on the line of actual control.....

Rule 3. Appointment under these Rules

(1) Notwithstanding any thing contained in any rule or order for the time being in force regulating the procedure for recruitment in any service or

posts under the Govt., an eligible family member of a person specified in rule (2) may be appointed against a vacancy in the lowest rank of a

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

Provided that the applicant is eligible and qualified or acquires eligibility and qualification within a period of six months from the date of death of

deceased person specified in rule 1.

(2) Nothing in subrule (1) shall derogate from the powers of the Govt., in General Administration Deptt to appoint at its discretion a candidate to a

higher post in the nongazatted service if he/ she is a family member of a deceased Govt.. employee or a civilian killed in the militancy related

actions"".

6. Thus, it appears that Rule 2 categorizes the beneficiary family members into two categories; first, family member of a Government servant who

has died in harness; and secondly the family member of a government servant or a civilian who has died in militancy related action; but has not been

involved in militancy. Rule 3 vests the power in Government for making compassionate appointments in terms of said rule, with an express

stipulation that ordinarily the family member of a deceased employee who has died in harness would be employed at the lowest rank of

nongazatted service. The discretion of Government to appoint a candidate to a higher post under sub rule (2) of the said rule is restricted only to

the second category created under Rule 2 i.e, family members of such a government employee or civilian who have died in militancy related

actions. As such the general rule appears to be appointment of a candidate to the lowest rank, to which the aforesaid exceptions has been carved

out to give higher benefit to the family members of those Government employees and civilians who have died in militancy related actions.

7. In the instant case, petitioner's father, who while posted as Tehsildar Ramban, reportedly met a sudden death. It is not pleaded that he died in

some militancy related action and that being so, the exception under sub rule (2) of rule 3 cannot be invoked to seek exercise of power by

Government thereunder for benefit of the petitioner; his claimed qualification notwithstanding. Moreover the appellant having once been

appointment as Patwari on compassionate ground, cannot repeat his claim on the

same ground, by seeking appointment to a higher post, merely by saying that he had protested against his appointment as such, because the right to appointment on compassionate grounds stands already exhausted with acceptance of the appointment. That is the law declared by Apex Court in *"State of Rajasthan v. Omro Singh"* reported as 1994 (6) SCC 560, wherein the Hon'ble Bench was pleased to hold that:

Admittedly the respondent's father died in harness while working as Subinspector CID (Special Branch) on 16.01.1988. The respondent filed an application on 08.04.1988 for his appointment on compassionate ground as Subinspector or LDC according to the availability of vacancy. On a consideration of his plea he was appointed as to the post of LDC by order dated 14.12.1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of *"endless compassion"*. Eligibility to be appointed as SubInspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso the Rule 5 of the Rules which has no application to the facts of this case.....Therefore, once the right has consummated as we indicated earlier, any further or second consideration for a higher post on the ground of compassion would not arise".

8. The said Supreme Court judgment in effect sweeps away the petitioner's claim of parity with private respondents also, because in terms thereof once benefited the petitioner cannot agitate his claim again in any manner or form whatsoever. Moreover nothing has been placed on record to suggest that private respondents 5 and 6, with whom he claims parity, were similarly placed with him in all aspects constituting eligibility; and that their appointments were well founded in law. Similarity of circumstances having not been made out, similarity of treatment can perhaps not be claimed.

9. Before parting, however, it would be proper to mention the judgments quoted by petitioner's counsel in support of his contentions:

10. In *"Surya Kant Kadam v. State of Karnataka and ors"* reported as 1990 Supl. SCC.

244, the appellant was given compassionate appointment as Second Division Assistant/Clerk even though, he had applied for the post of Sub

Inspector of Excise and did possess the necessary qualification for the said post. Respondents in that case also were similarly appointed as Second

Division Assistant/Clerk but were later on promoted/appointed as Sub Inspector in Excise department. Claiming parity, the appellant had moved

the State Administrative Tribunal for similar treatment who while turning down his prayer for appointment as Sub Inspector in Excise Department

also quashed the appointment of respondents as Sub Inspectors, which part was later withdrawn during review proceedings. On consideration, the

Apex court, held the appellant entitled to similar treatment as given to respondents in that matter, on the principle of equality. Thus the question in

essence related to the departmental promotion of respondents who were similarly placed with the petitioner and not compassionate appointment

per se. On that ground, together with what follows the reliance is misplaced. As further revealed from observations of the apex court the

compassionate appointment in State of Karnataka was not governed by any statutory rules but only by a set of instructions, while instantly the

matter is governed by a set of statutory rules commonly known as SRO 43 of 1994; wherein the entitlement and eligibility etc along with the

relaxations permissible, and discretion vested in the Government, are all set forth in form of actionable rules. That being so, the matter in hand has

to be governed strictly under those rules, wherefrom as a matter of fact, the petitioner derives the cause to institute the writ petition.

11. The petitioner's, counsel has also quoted the apex court judgment in ""Smt. Kamala Gaiind v. State of Punjab and ors"". reported 1990(Supp)

Supreme Court Cases 800, wherein the Hon'ble apex court on finding that son of a civil servant killed by terrorists was appointed as a class 1

Officer on compassionate grounds, while that of a judicial officer who too was gunned down by terrorists was appointed as a class 2nd Officer,

observed that in view of the similarity of circumstances in both the cases, the judicial officer's son could not be discriminated against. Thus, in that

case both the candidates were family members of such Government employees who had been killed by terrorists. No such similarity exists in

circumstances of the instant case and, accordingly, the parity allowed by the Hon'ble Apex Court in the above said case cannot be applied to"" the

case in hand.

12. Viewed thus, the writ petition appears to be devoid of force and is accordingly dismissed along with all connected CMP(s).