

(2013) 10 J&K CK 0006

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 717 of 2012 and IA No. 1149 of 2012

Bashir Ahmad Wani

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2013) 10 J&K CK 0006

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Advocate : M.M. Amin, for the Appellant; Alla-ud-din Ganai, Dy. AG, for the Respondent

Judgement

Muzaffar Hussain Attar, J.—Compassionate appointment case of the petitioner was forwarded by Chief Engineer Irrigation and Flood

Control to the Administrative Department for relaxation of upper age limit of -09 months and 29 days as on 01st January, 2008. The case of the

petitioner for his appointment on compassionate grounds as Embankment Guard in the pay scale of Rs. 2550-3200(pre-revised) in Irrigation and

Flood Control Department, Kashmir was recommended as his father died in harness. General Administration Department vide its communication

dated 15th May, 2008 returned the case with the observation that same is not covered under SRO 43 of relaxation policy. This communication

was challenged in SWP NO: 585/2010. The Court disposed of the writ petition on 25th March, 2010, directing the respondents to consider the

recommendation regarding relaxation in age of the petitioner in accordance with the rules. The matter was taken up with the General Administration

Department and vide communication dated 29th March, 2011 it was observed that the petitioner at the time of death of his father (deceased

employee) was 37 years, 05 months and 04 days old and was already over aged. Accordingly the sanction for relaxation of upper age bar was not

accorded. The respondent no. 1 accordingly passed the Government Order No. 136-PW9 Hyd of 2011 dated 29.03.2011, rejecting the claim of

the petitioner for his appointment on compassionate grounds. It is this Order which is called in question in this petition.

2. The purpose of compassionate appointment has been defeated in this case because of total lack of application of mind by the concerned

authorities. Rule (7) of Rules of 1994 confer power on the Government to relax lower/upper age limit in deserving cases. The cases are to be

processed through General Administration Department in coordination. The authority has failed to exercise its statutory power.

3. The issue of granting relaxation in upper/lower age limit would arise only after the claim for seeking appointment on compassionate grounds

would arise. Such a claim would arise only on the death of the employee. After the death of the employee in case the legal heirs is over aged, then

the competent authority has to consider claim for grant of relaxation in upper age limit in accordance with rule 7 of rules of 1994 and the Policy of

Government.

4. In the impugned order, it has been observed that at the time of death of the father of the petitioner, he was over aged by 05 months and 04 days

and this has become basis for rejecting the claim of petitioner.

5. It was for this reason that necessity had arisen for considering the case for grant of relaxation in upper age limit. On legally unacceptable ground,

claim of the petitioner for grant of relaxation in upper age limit has been turned down and his claim for appointment is turned down because of the

arbitrary exercise of powers. Reference has also been made to some policy, but nothing is said about the same.

6. For the above stated reasons this writ petition alongwith connected IA(s) is disposed of in the following manner:

By issuance of writ of Certiorari Government Order No. 136-PW (Hyd) of 2011 dated 29.03.2011 is quashed. The respondents are directed to

consider the recommendation made in respect of grant of relaxation in upper age limit of the petitioner strictly in accordance with Rule 7 of J&K

(Compassionate Appointment) Rules of 1994 and in the light of observations

made in this order.

Because of wrong interpretation of the Rules, much time has been consumed by the respondents which shall not come in their way to grant

relaxation in upper age limit of the petitioner.

Respondents to take decision for grant of relaxation in upper age limit of the petitioner within four weeks from the date copy of this order is served

and petitioner be considered for appointment on compassionate grounds and necessary orders be passed within two weeks thereafter.

Disposed of alongwith connected IA(s)