

(2005) 04 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1678 of 2003

Charanjit Singh

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 01-04-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Constitution of Jammu and Kashmir, 1956 — Section 103, 124
Jammu and Kashmir (Compassionate Appointment) Rules, 1994 — Rule 2, 3, 3(1), 4, 5(3)

Citation : (2005) 3 JKJ 155

Hon'ble Judges : Sudesh Kumar Gupta, J

Bench : Single Bench

Advocate : R.P. Sharma, for the Appellant; B.S. Slathia, AAG, for the Respondent

Final Decision : Allowed

Judgement

S.K. Gupta, J.—This petition has been preferred for seeking quashment of the orders of appointment of respondents-6 and 7 as Sales men

in Food and Supplies Department, issued by respondent-5, Deputy Commissioner, Poonch under No. AC/425-28 dated 29.7.2002 and

AC/433-36 dated 30.7.2002, being arbitrary, illegal and passed by incompetent authority in contravention of SRO 43 of 1994 and in violation of

Articles 14 and 16 of the Constitution of India, by a writ of certiorari, in invoking the writ jurisdiction under Article 226 of the Constitution of India

read with Section 103 of Constitution of Jammu & Kashmir.

2. Petitioner's father late S. Inder Singh, while serving as Sales man in the Food and Supplies Department died in harness. Thereafter the petitioner

was appointed as Weighman-Cum-Chowkidar in the pay scale of Rs. 2550-3200/- on compassionate ground under the provisions of SRO 43 of

1994 by an order of respondent-3, Director Food and Supplies, Jammu vide No. 17 FSJ of 2002 dated 6.3.2002. It is further stated that the

appointment of respondents- 6 and 7 has been made on compassionate grounds as Sales men in the grade of Rs. 3050-4500/- in the Food &

Supplies Department by the respondent-5, Deputy Commissioner, Poonch without any authority and in gross violation of SRO 43 of 1994. It is

stated that the orders of compassionate appointment could have been issued only by respondent-2, i.e. Commissioner Secretary to Government

(GAD), J & K Govt. and the Deputy Commissioner was not competent. Further contention of the petitioner is that though he was eligible to be

appointed on a class- III post of Sales man being qualified with matriculation, but was appointed as Weighman-Cum-Chowkidar. That the orders

of appointment in respect of respondents-6 and 7 having been issued by incompetent person being Deputy Commissioner, Poonch in violation of

provisions of SRO 43 of 1994 and the same are illegal and untenable in law.

3. Considered the objections and the writ petition is admitted to hearing. Objections filed by the respondents are treated as counter as prayed for.

On the consensus of the learned counsel for the parties, the writ petition is taken up for final disposal.

4. The private respondents in their reply submitted that the Dy. Commissioner has been empowered to make the appointment where death of a

family member has been caused due to militancy related incident in terms of SRO 211 of 1995. It is further submitted that subsequently vide SRO

88 of 1996, the Deputy Commissioners have also been empowered in terms of Rule 3 of SRO 43 of 1994 to make appointment of a family

member of a deceased member of Armed Forces or Para-Military Forces. The petitioner is not eligible for appointment of class-III post being only

a matriculate. It is further submitted that since the petitioner has accepted the appointment of Class-IV post without any grievance or protest, he

cannot subsequently press his claim for appointment against class-III post based on eligibility.

5. Respondents-1,3 and 4 in their reply stated that petitioner being a matriculate, he is only eligible for appointment as Weighman-Cum-Chowkidar

under the relevant Rule 3 Sub Rule (1) of SRO 43 of 1994. Nothing is, however, stated by the respondents about the competence of the Deputy

Commissioner, Poonch under the Compassionate Appointment Rules 1994 for the appointment of respondents-6 and 7 to the post of Salesmen in

Food and Supplies Department. So far as the appointment of respondents-6 and 7 is concerned, respondents submitted that it was made as their

relations had been killed by the militants.

6. The final question which falls for determination is whether the Deputy Commissioner is competent to issue an order of appointment on that

ground under the amended Compassionate Appointment Rules, 1994, vide SRO 211 of 1995 and SRO 88 of 1996. For facility of reference

SRO 88 of reads as under:-

SRO-88:- In exercise of the power conferred by the proviso to section 124 of the Constitution of Jammu and Kashmir, the Governor is pleased

to make the following amendment in the Jammu and Kashmir (Compassionate Appointment) Rules, 1994, namely:-

Sub-rule (3) of the rule 5 shall be re-cast as under:-

A family member of a deceased member of armed force or para military force who is eligible for appointment under these rules may apply for

appointment against a suitable vacancy to the Dy. Commissioner concerned through the Commanding officer of the unit in which the deceased

member of the armed force or para military force was last serving. The Dy. Commissioner after making such enquires as may be necessary and on

the recommendations of the District Level Co-ordination-cum Screening Committee, may issue appointment orders for his or her adjustment

against a vacancy in the District concerned in any Department under the Government in accordance with provisions of rule 3 here in above.

SRO 211 of 1995 reads as under:-

SRO-211:- In exercise of the powers conferred by proviso to section 124 of the Constitution of Jammu and Kashmir, the Governor is pleased to

make the following amendments in the Jammu and Kashmir (Compassionate Appointments) Rules, 1994, namely:-

(I) (i) In clause (ii) of rule 2 after the words "'as a result of militancy related action.'" The words "'or due to enemy action on the Line of Actual

Control' International Border within the State of Jammu and Kashmir'" shall be added.

(ii) In clause(iii) of rule 2, after the words "'as a result of militancy related

action", the words " or due to enemy action in the Line of Actual

Control/International Border, within the State of Jammu and Kashmir shall be added.

7. A plain reading of the aforesaid amended Rules fairly shows that SRO 88 of 1996 pertains to the appointment of a family member of a

deceased member of armed force or para-military forces and in that event, the Deputy Commissioner, after making such enquiries as may be

necessary issue an appointment order for adjustment against the vacancy in the District concerned in any Department on the recommendation of

the District Level Co-ordination-cum Screening Committee. Whereas amended clause-(ii) of sub rule 2 of Compassionate Appointment Rules,

1994 pertains to a government employee who dies as a result of militancy related action or due to any action on the line of actual

control/International Border within the State.

As regards clause (iii), it pertains to the civilian who has died as a result of militancy related action or due to enemy action within the State of

Jammu & Kashmir.

8. The orders of appointment issued by the Deputy Commissioner, Poonch, respondent-5 in respect of Ayaz Ahmed, respondent-6 and Mushtaq

Ahmed, respondent-7 are manifestly based on the report of the Sr. Superintendent of Police, Poonch that the private respondents (6 and 7) are

not involved in any militancy related activities. This clearly shows that their case is neither covered under Sub-rule (3) of rule 5 of the amended

Compassionate Appointment Rules i.e. SRO 88 of 1996 nor under the amended clause (ii) and (iii) of Rule-2 of the Compassionate Appointment

Rules as neither family members of the private respondents are the government employees or a civilian who is stated to have died in a militancy

related action nor due to enemy action on the line of actual control, so as to derive the benefit of compassionate appointment under the amended

Rules of Compassionate Appointment Rules, 1994 nor the private respondents are eligible to be appointed on compassionate ground under the

SRO 43 of 1994, nor the respondent-5, Deputy Commissioner is competent to issue an order of appointment as Sales man in the Food and

Supplies Department. Rule-4 of SRO-43 of 1994 empowers Head of the Department concerned to make the compassionate appointment. Rule-

4(i) further provides where no post is available in the office or subordinate offices of the Head of the Department, the proposal for appointment

shall be submitted to the Administrative Department concerned and in the event of that where there is no post available in the Administrative

Department concerned also, the case shall be referred to General Administration Department for appointment of the candidates in any other

Department. In case appointment is made in relaxation of the Rules, such cases shall be submitted to the General Administration Department in co-

ordination as is provided in class (ii) of SRO 43 of 1994.

9. The Deputy Commissioner figures no where in the Rules to make an appointment on compassionate ground under SRO 43 of 1994. Even Mr.

B.S. Slathia, AAG, when carried through the provisions of compassionate appointment Rules, he candidly conceded that the appointment has been

made without any authority by an incompetent person viz. respondent-5, Deputy Commissioner, Poonch. It is a clear cut case of back door entry,

and appointments made in violation of compassionate Rules and in contravention of Articles 14 and 16 of the Constitution of India and same are

liable to be quashed.

10. In the facts and circumstances discussed above, the appointment of respondents-6 and 7 having been made by an incompetent authority,

without any authority and in violation of Rules, deserves to be quashed. Consequently, I allow the writ petition and quash the orders dated

29.7.2002 and 30.7.2002 passed by respondent-5 in respect of the appointment of respondents-6 and 7.

11. So far as the claim of the petitioner for his eligibility to a class-III post is concerned, he may make a representation to the competent authority

for redressal of his grievance as he has already accepted the appointment of the post of Weighman-Cum-Chowkidar. In the event any

representation is filed, the official respondents shall consider the representation of the petitioner which I am hopeful shall be disposed of

expeditiously in accordance with Rules.