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(2005) 07 J&K CK 0022

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 147 Of 2004

Goutam Singh Jasrotia APPELLANT

Vs

State of J&K and others RESPONDENT

Date of Decision : 12-07-2005

Acts Referred:
Jammu and Kashmir (Compassionate Appointment) Rules, 1994 — Rule 4(1)

Citation : (2005) JKJ 465 Supp : (2006) SriLJ 119 : (2006) 1 SriLJ 119

Hon'ble Judges : Nisar Ahmad Kakru, J

Bench : Single Bench

Advocate : V.R.Wazir, Shaishta Hakim, B.S.Salathia, Advocates appearing for the Parties

Judgement

Heard Admit.

1. Mr. Salathia on the instructions of Mrs. Shaista Hakim appearing counsel for the respondents adopts objections as counter and reiterates the

arguments advanced on 4.7.2005 by Mrs. Hakim against the admissibility of the writ petition which will be deliberated upon a bit later. At the

moment a narrative of relevant facts may be noticed. One Kuldeep Singh a regular government servant having served for more than a couple of

decades in the capacity of a driver on the establishment of Power Development Department died in harness on 1.2.2002 leaving behind a widow

and three sons, consequently an application by the widow seeking appointment under ""The Jammu and Kashmir (Compassionate Appointment)

Rules 1994"" (for short Compassionate Appointment rules) in favour of her son, petitioner herein which came to be rejected by following order

bearing No. DC/pd/AdmII/4363 dated. 8.1.2004;

To the Chief Engineer, Procurement & MM Wing Jammu.

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Subject: Appointment of Sh. Goutam Singh S/o Late Sh. Kuldeep Singh Driver of Elect. Central Stores Div. Jammu under SRO43.

Sir, I am directed to refer your letter No. 7243 Dt. 3122003 regarding the subject cited above and to say the compassionate appointment case of

Sh. Goutam Singh S/o Late Sh. Kuldeep Singh does not fall under the purview of SRO 43 may inform the beneficiary accordingly. Yours faithfully,

Administrative Officer with Development Commissioner Power.

2. The communication does not indicate as to what is wanting in petitioner which excluded him from the purview of SRO 43. Such omission

necessitated perusal of contemporaneous record. Its perusal suggests that application was rejected on the ground that same had been filed beyond

prescribed period. To substantiate the contention reference is made to the decisions of the Apex Court in Sanjay Kumar Vs. State of Bihar and

others (2002 SLJ 659) and National Hydro Electric Power Corporation Vs. Nanak Chand (AIR Supreme Court weekly 6340). Law being on

more res integra that ratio descend! is binding provided facts are similar, therefore for application thereof similarity has to be established by the

party who relies on the judgment. To appreciate similarity or otherwise a mention about the facts of the above said cases is called for. In Sanjay

Kumar's case application was filed after several years and the court ruled that there cannot be reservation of a vacancy till bread earner's

dependant becomes major unless there is a provision to that effect in the rules. In National Hydro Electric Power Corporation's case while

reiterating the aforementioned principle the indulgence was declined on the ground that the claim having been laid after more than a decade same is

highly belated, obviously if the petitioner's claim too suffers from equal amount of delay or is near similarity delay wise this writ petition has to meet

the same fate. How far facts are similar needs to be appreciated in the lightof the pleadings of the parties and relevant to the issue being para 2

same is reproduced hereunder;

.....An application for compassionate appointment was submitted by the mother of the petitioner under SKO 43 of 1994 in the month of July

2002 in the office of the respondent No.4...

Dealing with the above statement of fact respondents have averred as under;

Contents of paragraph No.2 are a matter of record and anything contrary to

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record is denied. It is further submitted that the father of the

petitioner was a driver in the Power Development Department, had rendered about 22 years and 11 month's service prior to his death which took

place on 1.2.2002 during his service. All the prerequisite certificates under rules for appointment in government service were obtained from the

widow of the deceased Driver and were submitted by her in piecemeal on different dates in the Office respondent No. 4.

3. It transpires from the reply that the averment stating that application was filed in the month of July2002 is not refuted specifically and reliance is

placed on the record for purposes of exact date of application. It is also contended on the basis of record that documents were submitted in

piecemeal but the record docs not contain the original application. It also does not indicate as to with whom it lies. Communication of the Chief

Engineer bearing No.CE/PMM/1043 dated 22.5.2003 which recommends the petitioner to the Development Commissioner for appointment on

compassionate grounds, too is silent about the date of presentation of the application. Record also does not indicate the details of the dates on

which documents were produced so that contention that documents were presented in piece meal could be appreciated. In view of the stand so

taken by the respondents coupled with the recitation aforementioned by contemporaneous record it has to be presumed that application was

presented in the month of July 2002. Even if it is assumed that application was filed in December as argued by learned counsel for the respondents

still delay runs in months which by no stretch of imagination can be said to be highly belated, therefore, the decisions are not attracted.

4. Reliance is also placed on proviso to rule 3 of Compassionate Appointment Rules which may be noticed;

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

deceased person specified in rule 2.

On a plain reading of the proviso it is clear that a person who is eligible at the time of death of the bread earner as also the one who attains

eligibility within a period of six moths from the death of the deceased is entitled to consideration. True it is that the petitioner was not eligible age

wise at the time of death of his father. That being so he is ineligible for the

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appointment but Rules do take care of such situations. In this behalf

reference to rule 7 is material which reads:

Power to relax: The Government may relax the lower or upper age limit or educational/technical qualifications as the case may be in deserving

cases. All such cases shall be processed through General Administration Department in coordination.

5. It is crystal clear from the rule aforementioned that even an ineligible person can make an application for appointment. How such application is

to be routed and processed rule 7 is complete answer. Undoubtedly the Government has the power to reject the application but such rejection has

to come through General Administration Department. Conversely, the Development Commissioner has neither referred the case to the Government

nor to the General Administration. That apart rule position being very clear that power to accept or reject the application vests in the Government,

order impugned rejecting the application amounts to transgression of power and is without jurisdiction, hence liable to be quashed.

6. Next it was contended that the post available was filled up in December 2003. In this behalf reference is made to the decision of the Supreme

Court in Dhanna Ram Vs. Union of India (AIR 1997SC 126). The judgment deals with the fall out of non availability of vacancy in reservation

quota governed by recruitment rules, least realizing that compassionate appointment is not a source of recruitment but is an exception aimed at

helping the defendants of a deceased bread earner. Suffice it to say that judgment has no application to the case on hand, for, the recruitment rules

applicable to Dhanna Ram's case have absolutely no bearing on the case on hand. Moreover, there is world of difference in the two sets of facts.

There are many other reasons which weigh against the stand to defeat the writ petition opted for by the respondents, one that petitioner has no way

contributed to the filling up of the post. Moreso parties arc not at variance that in December 2003 when the available vacancy wasfilled up by the

respondents they were already seized of the petitioner's application for appointment, obviously, prudence and propriety required them to respect

the spirit which has brought the compassionate appointment rules into being and decide the petitioner's application before filling up the vacant post.

That apart Compassionate appointment rules do not subject the appointment to

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the condition of availability of the post in the office the bread

earner was working in. In this behalf reference to clause (i) of rule 4 becomes relevant which reads:

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 where there is no post available in the Administrative Department concerned also, the case shall be

referred to General Administrative Department for appointment of the candidate in any other Department.

7. What is deducible from the provision aforementioned is that the appointment can be made in any of the subordinate offices of the Head of the

Department and when no post is available in the Department, proposal for appointment has to be submitted to the Administrative Department

concerned and in case of nonavailability of the post in the Administrative Department the case has to be referred to the General Administration for

appointment in any other Department. That being the rule position the contention that post was not available in the Power Development

Department is devoid of any logic and legal sanction. It may not be impertinent to mention that it was vehemently canvassed that the affidavit is

false because so many persons have been appointed in the Department and plea of non availability of post emanates from extraneous

considerations. It may be advantageous to reproduce note 11 recorded by office of the Development Commissioner Power Development

Department.

The mother of Sh. Goutum Singh has applied for compassionate appointment after the expiry of the prescribed time limit of 6 months, so the case

does not fall under the rule of SRO 43. Therefore if approved may inform the CE P&MM wing accordingly.

Contention of learned counsel for the petitioner that opposition registered by the respondents in the reply on the ground of non availability of the

post when considered in the light of note 11 does receive support because the averment is contrary to the record which smack of arbitrary and

mala fide exercise of power.

8. In the aforementioned background the writ petition succeeds. Impugned order is quashed. RespondentPower Development Commissioner shall

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forward the recommendation made by the Chief Engineer vide his No. CE/PMM/ 1043 dated 22.5.2003 for appointment of the petitioner to the

Administrative Department and the latter shall accord consideration to the recommendation on the touchstone of Compassionate Appointment

Rules afresh expeditiously at any rate within three months. No order as to costs.

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