

**(2010) 05 J&K CK 0008**

**In the Jammu And Kashmir High Court**

**Case No : Service Writ Petition (SWP) No. 275 of 2009**

Manju Sharma

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

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**Date of Decision :** 13-05-2010

**Acts Referred:**

**Citation :** (2010) 3 JKJ 643

**Hon'ble Judges :** Mansoor Ahmad Mir, J

**Bench :** Single Bench

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## **Judgement**

Mansoor Ahmad Mir, Judge

1. Sanjeev Sharma, husband of petitioner, who was working as a Senior Assistant in the Motor Vehicles Department, died in harness on

31.5.2007, leaving behind petitioner-widow and five years old son. On 30.6.2007 the petitioner applied before Regional Transport Officer,

Jammu for appointment on compassionate grounds, came to be submitted to the Director General of Transport. The case of petitioner came to be

processed and Secretary to Government, Transport Department-respondent No. 1 herein referred her case to Commissioner/Secretary, General

Administration Department-respondent No.2, who rejected the proposal vide Order No.GDC-155/CM/2008-SRO dated 11.7.2008 observing

that the case is not covered under Compassionate Appointment Rules (SRO 43/relaxation policy). Feeling aggrieved, the petitioner has filed the

writ petition in hand seeking writ of certiorari quashing the order passed by the General Administration Department, with a writ of mandamus

commanding the respondents to appoint her on compassionate grounds after relaxing her upper age limit.

2. Petitioner has annexed with the writ petition copy of Secondary School Examination issued by the Chairman, State Board of School Education

indicating her date of birth as 19.10.1965 and copy of mark sheet issued by the University of Jammu indicating that she is graduate in Bachelor of

Arts.

3. Respondents have filed objections. According to respondents 1 & 3 the petitioner was over age by 4 years 2 months and 12 days as on

1.1.2007 and so made recommendation for relaxing her upper age limit, but respondent No. 3 did not accede to the same. Virtually the

respondents have admitted the case of petitioner.

4. Now the question is whether respondent No. 2 has passed the impugned order rightly or otherwise.

5. The order passed by respondent No.2 is not a speaking order and the case of petitioner came to be rejected without application of mind. Even

otherwise respondents were under a legal obligation to consider her case in terms of Rule 7 of Compassionate Appointment Rules (SRO 43). It is

apt to reproduce Rule 7 of SRO 43 herein:

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

cases. All such cases shall be processed through General Administration Department in co-ordination.

6. This rule mandates that respondents have to consider the case(es) for relaxation of upper or lower age limit by passing a speaking order, which

has not been done in the present case.

7. A communication made by Deputy Secretary to Government, General Administration Department to Deputy Advocate General vide No.GDC-

143/CM/2010-SRO dated 30.3.2010, a copy whereof is placed on the file, indicates that the Government has adopted the relaxation policy for

settlement of cases in terms of SRO 43 of 1994 since 26.1.2004, which is in place. It provides for relaxation of five years upper age limit beyond

37 years in cases of widows of Government employees and relaxation in respect of qualification for Class IV posts. It also provides 5-1/2 years

relaxation in case of lower age limit.

8. Admittedly, in case of petitioner the relaxation required is for four years, two months and twelve days. Thus the case of petitioner squarely falls

within the relaxation policy (supra).

9. A Division Bench of this Court in LPASW No. 105/2009 decided on 5.4.2010 also issued a direction for consideration of relaxation of age in

terms of Rule 7 of SRO 43 read with the relaxation policy (supra).

10. In the given circumstances, the writ petition merits to be allowed. Accordingly, the same is allowed. The orders impugned are quashed and the

respondents are directed to consider the case of petitioner for relaxation of her upper age limit in terms of SRO 43 of 1994 read with the

relaxation policy (supra) for her appointment on compassionate grounds within three months from the date a copy of this order is served upon

them by the petitioner. Disposed of along with all CMPs.