
(2002) 12 J&K CK 0033
In the Jammu And Kashmir High Court
Case No : Writ Petition No. (S) 1425/01

Mohd. Yasin and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 02-12-2002

Acts Referred:

Constitution of Jammu and Kashmir, 1956 — Section 124

Citation : (2003) 1 JKJ 695

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : Shakoor Malik and D.S. Chouhan and A. Parihar, A.A.G, for the Appellant;

Judgement

T.S. Doabia, J.—Petitioners submit that their relatives were killed in militant related violence. The relationship, date of occurrence and the cause of death have been indicated in paragraph 2 of the petition. Petitioners submit that they are eligible for appointment on compassionate grounds. It is submitted that the relation of a person who has died in a militant related violence is also eligible for being considered for appointment on compassionate grounds.

2. The further fact is that Rule 2(iii) of the Jammu and Kashmir (Compassionate Appointment) Rules, 1994(SRO 43/ 94) deals with a situation

where a civilian dies as a result of militancy and in case of appointment is sought by a person who is the member of the family and in case of the

total income of the family is not more than Rs. 3500 per month, then compassionate appointment can be allowed. Rule 2(iii) of the above said

Rules is relevant and is being reproduced below;

2: Application of rules.- These rules shall apply to the compassionate

appointment of a person who is a family member of :-

(iii) a civilian who dies as a result of militancy related action for due to enemy action on the Line of Actual Control/International Border within the

State of Jammu & Kashmir not involved in militancy related activities and total income of the family from all sources does not exceed Rs. 3500 per

month as assessed by the Revenue Officer not below the rank of an Assistant Commissioner,

3. Rule 5(1) also deals with this aspect of the matter and is also being reproduced below :-

5 - Appointment in other cases. - (1) Appointment under these rules in respect of a member of the family of a Government employee or a civilian

who has died as a result of militancy related action or in respect of a family member of the officer of armed force or para military force, shall be

made by the (Deputy Commissioner Concerned) in accordance with the procedure hereinafter prescribed....

Thus, the short submission made in this petition is that in case of death of a civilian in a militant related violence or when death takes places in

exchange of fire, then compassionate appointment can be sought by the family member of the concerned person who dies in such a violence.

4. Petitioner No. 1 is a person whose mother died on 27th June 2000. Petitioner No. 6 's wife died on the intervening night of 10/11th Aug' 99. In

the case of other petitioners, the death of their brothers took place.

5. The further fact is that the term 'family member' stands defined in the Explanation to Rule 2. Clause (d) of this Explanation provides that ""Family

Members"" mean spouse, son, daughter, adopted son, adopted daughter, sister or brother dependent on the deceased.

6. A plain reading of the statutory provisions noticed above do bring the case of the petitioners within the four corners of the provisions noticed

above and they are prima facie entitled Compassionate appointment.

7. The Stand taken by respondent State is that the General Administration Department has issued a letter No. GAD(MIG 111/118/2000 dated

20th April, 2001. In this, it has been indicated that the benefit is not available to the brother and sister. It is submitted that there is no logic in the

prayer of the petitioners. This is on the plea that the father of the petitioners is alive.

8. It be seen that when a statutory rule is in existence, then this has to be implemented as it is. If any change is to be brought about, then the same is to be done by adopting the same procedure which led to the framing of the Rules. The Jammu and Kashmir (Compassionate Appointment) Rules of 1994 have been framed under and in the exercise of power conferred by Section 124 of the Constitution of Jammu and Kashmir. The letter dated 20th April 2001 referred to above cannot assume the shape of a rule. This letter being contrary to the Rules in question is held to be ultravires of the Rules and cannot be given effect to. Therefore, the plea raised by the respondents regarding non consideration of the case of the petitioners on the basis of aforesaid letter cannot be accepted. Independently of the above, State Government during last three weeks have issued letters of appointments on compassionate grounds in favour of those whose relations lost their lives in militancy related violence. These appointments have been made and letters of appointment have since been handed over to the appointees at Srinagar and Udhampur and other district head quarters of the State. This aspect has been rightly exercised and is within the scope of the Rules referred to above. Taking into consideration this aspect of the matter also it cannot be said that letter issued by the General Administrative Department on 20th April 2001 can have overriding effect. As indicated above letter in question cannot over rule the statutory rules. This cannot be given effect to. This petition as such is allowed. The order dated 20th April 2001 i.e. Annexure R-1 with the reply filed by respondent is quashed. The petitioners are held entitled to appointment in terms of SRO 43/94 and more particularly the Rules quoted above. The respondents to pass appropriate orders of appointment in favour of the petitioners within a period of Six weeks from the date a copy of this order is made available to them by the petitioners.