

(2013) 11 J&K CK 0007
In the Jammu And Kashmir High Court
Case No : S.W.P. No. 2564 Of 2012

Mukhtar Ahmad Lone

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-11-2013

Acts Referred:

Citation : (2014) 1 JKJ 345

Hon'ble Judges : Ali Mohammad. Magrey, J

Bench : Single Bench

Judgement

Ali Mohammad. Magrey, J.—Communication-cum-Order No. 1801/R/756/Est. dated 04.05.2012 addressed by respondent No. 7 to the

petitioner, rejecting employment assistance on compassionate grounds to him is challenged in this petition with prayer to direct the respondents to

appoint the petitioner on Group C or Group D post on compassionate grounds. Petitioner's brother, Manzoor Ahmad Lone, who was working as

a Fireman under P. No. 2471 at Field Ordinance Depot, Khundroo, got killed in the fire incident in the Army Depot on 11.09.2007. Several other

persons also died in the incident. Petitioner applied for his appointment on compassionate grounds and so did two other persons, namely, Abdul

Rashid Bhat and Parveena Akhtar, apply. They jointly also filed a writ petition, SWP No. 1738/2010 before this Court. In response thereto, the

respondents in their objections/reply stated that the petitioner's application was examined by the Board of Officers at HQ Northern Command on

the basis of 100 points scale system evolved by the Ministry of Defence on all India basis as per the available vacancies in AOC under 5%

reserved quota earmarked for such cases and that pending receipt of clarification

from DOP & T/MOD regarding allotment of points in view of

new pension scheme enforced w.e.f. 10.10.2004 applicable to the deceased employee, the final decision of the petitioner's case has been kept in

abeyance. Thereafter, the respondents produced copies of two orders before the Court dated 04.05.2012 and 11.06.2012. In terms of order

dated 04.05.2012 the petitioner's application was rejected; whereas vide the other order the other petitioner, Parveena Akhter, was shown to

have been appointed as Trainee Mazdoor. The writ petition was, accordingly, disposed of and the petitioner has filed the present writ petition

challenging the order dated 04.05.2012.

2. Before stating the grounds of challenge taken by the petitioner in the writ petition, I deem it appropriate to briefly mention the facts-cum-reasons

recorded by the respondents in the impugned order for rejecting the case of the petitioner. It is, inter alia, stated therein:

i) that there is only 5% of the total DR vacancies occurring in a year in Group 'C' and 'D' posts for purposes of offering appointments on

compassionate grounds on all India basis;

ii) that to find out the most deserving cases, the Board of Officers take various aspects as stipulated in MoD ID No. 19(4)/824-99/1998-D(Lab)

dated 09.03.2001 into consideration, which include family size, age of children, amount of terminal benefits, amount of family pension, liability in

terms of unmarried daughter(s), minor children etc., movable/immovable properties left by the deceased at the time of death;

iii) that recommendations are made as per guidelines of marking system approved by the Ministry;

iv) that petitioner's case was considered twice against ADRP vacancies for the years 2006-07 and 2007-08 by the Annual Board of Officers held

at IHQ of MoD (Army);

v) that the petitioner could score only 53 points whereas persons scoring 59 and 54 points or more in the Annual Board of Officers for the said

years only were recommended;

vi) that the petitioner's case was again considered for the ADRP vacancies for the year 2008-09 and he was provisionally recommended for

Group 'C' post;

vii) that on further review and scrutiny of petitioner's original documents, it was found that the deceased was covered under New Pension Scheme

having been appointed after 01.01.2004, since he had joined service on 09.10.2006;

viii) that as per the DFOP & T Guidelines, brother and sister can apply for appointment on compassionate grounds; however, on the allocation of

points issued vide MoD ID No. 19(4)/824-99/1998-D(Lab) dated 09.04.2002, the parents, brother and unmarried sister cannot be considered

as dependent;

ix) that due to oversight, the pre-annual Board of Officers did not examine this aspect and wrongly included the names of Mother, father, sisters

and brother (applicant) as dependents of the deceased. Accordingly, the petitioner's case was reviewed/considered by the Board of Officers for

third and final chance in compliance of the orders of the Hon'ble High Court, Srinagar, but the petitioner could not be recommended;

x) that the petitioner had shown five dependents and two unmarried sisters of the deceased Government servant for which Board had given 25

points considering them dependents. However, in terms of the criteria (100 points scale system) laid down vide MoD ID No. 18(9)824-99/1998-

D (Lab) dated 09.03.2001, 25 points allotted to the petitioner did not stand justified; hence the same were reduced from the total of 53 points

earlier granted to the petitioner and stand modified to 28 points. Since candidates with 45 points or more were recommended by the Board for the

year 2008-09 against 40 vacancies earmarked for appointment in Group 'C' post, the petitioner did not fall within the recommending zone.

While referring to the status/position of the family of the deceased, the following facts and figures have been mentioned in the impugned order:

(a) The Government servant died on 11.08.2007. The family (patents) of the deceased Government servant was paid an amount of Rs.

17,28,798/- (10 Lakhs Ex Gratia + 6,71,744/- under Workman's Compensation Act + Rs. 57,054/- Terminal Benefits such as DCRG, Group

Insurance Scheme/encashment of leave). In addition family is also in receipt of family pension of Rs. 3,500 + DA and a spherical pay of Rs. 750/-

per month;

(b) The family owns movable/immovable property of Rs. 24,000/- with income of

Rs. 1,200/- per month.

The marks obtained by the petitioner in terms of the Guidelines on 100 point scale in the three Annual Board of Officers meetings are 59 on 1st

occasion; 54 on 2nd occasion and 28 on 3rd occasion.

3. The grounds taken by the petitioner are that as per settled proposition of law parents, brother and unmarried sisters who are totally dependent

on the deceased are entitled to appointment; that once at the 1st and the 2nd occasion of consideration of the petitioner's case he was awarded 25

points on account of dependency on the deceased employee, respondents had no jurisdiction to deduct these 25 points on the third occasion; that

the respondents could not deprive the petitioner of appointment on compassionate grounds merely because the deceased's family has been paid

ex-gratia relief and some amount under Workman's Compensation and further family pension has been granted to the family; that the brother of the

deceased had died in extra ordinary circumstances, therefore, petitioner's case deserved a special treatment beyond 5% quota of the total direct

recruitment vacancies reserved in normal routine in a year in Group 'C' and 'D' posts; that the petitioner has been singled out for hostile

discrimination in an arbitrary and capricious manner; and that the respondents have not considered the case of the petitioner in terms of the Scheme

in its correct perspective.

4. Respondents have also filed their reply which is more or less on the same lines as the impugned order.

5. I have heard learned counsel for the parties and considered the matter.

6. The law on compassionate appointments is by now clearly established. In a recent judgment in MGB Gramin Bank v. Chakrawarti Singh, (Civil

Appeal No. 6348 of 2013 arising out of SLP(C) No. 13957/2010), decided on 07.08.2013, the Supreme Court has held that mere death of a

Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the

financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be

able to meet the crisis that a job is to be offered to the eligible member of the family. It has been reiterated in the judgment that the only ground

which can justify compassionate employment is the condition of the deceased's

family. It would be useful to quote hereunder the relevant paragraphs of the aforesaid judgment, which read thus:

5. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution.

An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the

bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim

compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only

if it is satisfied that without providing employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of

the family.

More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court

is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by

liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem

the family in distress. It is improper to keep such a case pending for years.

6. In *Umesh Kumar Nagpal Vs. State of Haryana and Others*, , this Court has considered the nature of the right which a dependant can claim

while seeking employment on compassionate ground. The Court observed as under:-

The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give a

member of such family a post much less a post for post held by the deceased. The exception to the rule made in favour of the family of the

deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of

the family engendered by the erstwhile employment which are suddenly upturned. The only ground which can justify compassionate employment is

the penurious condition of the deceased's family. The consideration for such employment is not a vested right. The object being to enable the family

to get over the financial crisis.

(Emphasis added)

7. An 'ameliorating relief' should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application

made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

8. The Courts and the Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate

grounds when the regulation framed in respect thereof did not cover and contemplate such appointments.

9. In *A. Umarani Vs. Registrar, Cooperative Societies and Others*, , while dealing with the issue, this Court held that even the Supreme Court

should not exercise the extraordinary jurisdiction under Article 142 issuing a direction to give compassionate appointment in contravention of the

provisions of the Scheme/Rules etc., as the provisions have to be complied with mandatorily and any appointment given or ordered to be given in

violation of the scheme would be illegal.

10. The word 'vested' is defined in Black's Law Dictionary (6th Edition) at page 1563, as 'vested', Fixed; accrued; settled; absolute; complete.

Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are

'Vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere

expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested

rights.

11. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as Law held by a tenure subject to no

contingency; complete; established by law as a permanent right; vested interest. (Vide: *Masammatt Bibi Sayeeda and Others etc. Vs. State of Bihar*

and Others, ; and *J.S. Yadav Vs. State of U.P. and Another*,) Thus, vested right is a right independent of any contingency and it cannot be taken

away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested

right has been derived by a party, the policy decision/scheme could be changed. (Vide: *Kuldeep Singh Vs. Govt. of NCT of Delhi*,)

12. A scheme containing an in pari materia clause, as is involved in this case was considered by this Court in State Bank of India and Another Vs.

Raj Kumar, . Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under: ""14. Date of effect of the

scheme and disposal of pending applications: The Scheme will come into force with effect from the date it is approved by the Board of Directors.

Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be

dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme.

13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground

may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other

circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case

the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the

cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the

case under the new Scheme has to be considered.

7. In the instant case, apart from the fact that the family of the deceased has been given ex gratia relief to the tune of Rs. 10 lakh, compensation

under Workman's Compensation Act to the tune of Rs. 6,71,744.00, terminal benefits of Rs. 57,054, the deceased's family has also been

sanctioned and is in receipt of family pension of Rs. 3500 + DA and special pay of Rs. 750.00 per month. Therefore, this is not a case where by

the family of the deceased is, in any manner of thought, in a penurious condition so as to entitle the petitioner to such appointment. Even so, the

petitioner's case has duly been considered in accordance with the applicable Scheme and policy, not once, but consecutively for three years,

namely, 2006-07, 2007-08 and 2008-09 against the available 5% quota of direct recruitment vacancies, but all the time his score on the 100 point

scale system in terms of MoD ID No. 18(9)824-99/1998-D (Lab) dated 09.03.2001 has fallen below the score obtained by the last candidate

offered appointment on compassionate during these years. His case having thus been considered thrice, the petitioner cannot be heard to say that

he has been discriminated against. It is unambiguously stated by the respondents both in the impugned order as well as their reply that during the

years 2006-07 and 2007-08 candidates who secured 59 and 54 points and more could were only recommended for such appointment; whereas

the petitioner had secured only 53 points. For the third year viz. 2008-09, the petitioner had scored only 28 points, therefore, he could not be

recommended. His score was reduced to 28 points, because the respondents had earlier committed an error in awarding 25 points to the

petitioner to which he was not entitled. Respondents were within their rights to rectify any mistake that had crept in while considering the case of

the petitioner. If he was given 25 points to which he was not entitled under the relevant scheme of things and the said points were reduced

subsequently, no exception can be taken thereto. No right of privilege can be claimed by the petitioner on the mistake which stands rectified.

8. It needs to be observed here that the petitioner has not challenged the scheme or policy under which compassionate appointments are

considered in the Organization. Therefore, his submission that his case had to be considered on special grounds, beyond the 5% reserved quota, is

untenable.

9. For all what has been discussed above, there is no merit in the writ petition. The writ petition is, accordingly, dismissed, however, without any

order as to costs.