
(2002) 06 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : LPA (SW) No. 594 of 1999, LPA (SW) No. 21 of 2000

Nirmala Devi, Riaz Ahmed

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 12-06-2002

Acts Referred:

Jammu and Kashmir (Compassionate Appointment) Rules, 1994 — Rule 3

Citation : (2003) 3 SCT 14

Hon'ble Judges : T.S.Doabia, J and S.K.Gupta, J

Bench : Division Bench

Advocate : B.S. Manhas, S. Sharma, B.S. Dutta, Advocates appearing for the Parties

Judgement

T.S. Doabia, J.—As to whether a person seeking compassionate appointment can insist that he or she should be appointed against a post

which is above Class IV, is the issue which is required to be gone into in these two appeals. There can be no dispute that the broad proposition

that a person seeking compassionate appointment has no absolute right to get a letter of appointment or to claim that he or she should be

appointed against a particular post.

2. The question arises as to what would be the position where the administrative authorities of their own lay down rules and indicate that where a

person possesses a particular qualification then is to be appointed in a particular manner. The appellants submit that under the Jammu and Kashmir

Compassionate Appointment Rules of 1994, there is a clear provision that a person being offered compassionate appointment if he possesses

Matriculation qualification then he or she is to be appointed against a post which is above Class IV post. As a matter of fact this is so provided in

Rule 3 of the aforementioned Rules. For facility of reference, this is being reproduced below :

3. Notwithstanding anything contained in any rule of order for the time being in force regulating the procedure for recruitment in any service or

posts under the Government, an eligible family member of a person specified in Rule 2 may be appointed against a vacancy in the lowest rank of a

nongazetted service having qualification above Matriculation of a Class IV post if the candidate has read upto Matric.

3. The short submission made by the learned counsel for the appellants that once the respondents decided to make compassionate appointment,

then Rule 3 could not be ignored. This is the sum and substance of the argument put across by the learned counsel appearing for the appellants.

4. Learned counsel for the State submits that there is no vested right in the appellants to seek appointment against a particular post. This is a matter

which has been considered time and again by this Court. One of such decisions is reported as *Amolak Singh v. State*, 1999 KLJ 47. As a matter

of fact the State Government has been following this Rule and elaborate discussion would be found in a Division Bench Judgment of this Court in

Jyoti Mawa v. State and others, LPA No. 94/99, decided on 9.2.2000. Some judicial pronouncements were quoted in the aforementioned

judgment. These are being quoted again :

In *Shanti Devi v. State of Haryana*, 1992(6) SLR 320, a Division Bench of Punjab and Haryana High Court has observed that object of granting

compassionate appointment is to see that kith and kin of the deceased are provided with livelihood so that they can live a respectable life.

According to the Division Bench, this object can be achieved only if post offered is commensurate with the academic qualification of a person

seeking appointment. Appointment to the lowest post would amount to humiliating the person concerned. Relevant observations are being quoted

as under :

` Logic behind such instructions being that such kith and kin should be provided with a source of livelihood that they should have respectable living,

which can only as if posts is consonance with the academic qualification are offered. The object of such instructions is not to humiliate a person by

offering a very lower post.

5. The Supreme Court of India in case reported as Smt. Kamala Gaiind v. State of Punjab and others, 1992(5) SLR 864 observed that even in the

case of compassionate appointment, there has to be some rationale. Son of the Addl. Distt Judge who was claiming compassionate appointment

was not given Class I post whereas others were given. Directuib as ussyed it orivude gun with a job in Punjab Civil Service (Executive) Branch.

6. In Sajawarjit Sharma v. State of J&K and others, SWP No. 142 of 1997, decided on 16th May, 1997, it was observed that job which is to be

offered should be commensurate with the educational qualifications. What was observed in the aforementioned judgment, is being noticed :

`The petitioner being a matriculate and because of the untimely demise of the father could not continue his duties and also because of the

circumstances he had to accept whatever meagre is offered to him to save himself and his family from starvation but that is not the intent of the

scheme and the rules promulgated to provide appointment on compassionate grounds that may result in harassment. The job offered should be

commensurate to the qualification to lead a respectful life in society. There was no difficulty or dearth of posts with the respondents to consider the

petitioner for appointment against the post of Jr. Assistant.

7. The aforementioned decisions were noticed in LPA No. 94/99 and ultimately it as observed that in terms of Rule, if a person possesses

qualification which is above Matriculation then he or she is to be offered a post other than Class IV post. In view of what has been stated above, it

is concluded :

i) that an employee has no vested right to seek compassionate appointment;

ii) once the State takes a decision to make compassionate appointment, then it is bound by Rule 3 and the appointments are to be made in

accordance with that Rule.

8. These appeals are accordingly allowed. The respondents are directed to consider the claim of the appellants in accordance with Rule 3. Let the

consideration be done within three months from the date copy of the order is made available by the appellants to the respondents.

Appeals allowed.