

(2006) 06 J&K CK 0011
In the Jammu And Kashmir High Court

Parvez Ahmad Bhat

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 06-06-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 1 JKJ 433

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—These two writ petitions involve identical questions of fact and law, as such, I propose to dispose of both these petitions by a common judgement.

2. Petitioner Parvez Ahmad Bhat S/O Late Ghulam Rasool Bhat R/P Panzan, Chadura, on the death of his father, Late Ghulam Rasool Bhat, who was working as inspector in the Police Department, was given a compassionate appointment as Assistant Sub-Inspector (ASI), even though he had applied for the post of Sub-Inspector and his case was also recommended by respondent No. 2 to respondent No. 1 for relaxation of qualification and his appointment as Sub Inspector. Petitioner has also given instances of number of persons in the petition whose bread earner also died while in service, and they were appointed on higher post after relaxing their academic qualifications, but the case of the petitioner was not so considered. Thus on the basis of parity, the petitioner claims similar treatment.

3. Petitioner Khurshid Ahmad Sheikh S/O Late Ghulam Nabi Sheikh R/O Khirman Nand Ram, Khonabal, Handwara, on the death of his father

Ghulam Nabi Sheikh who was working as Deputy Forester in the Forest Department, was given appointment on compassionate grounds as Forest

Guard while as in the similar circumstances, respondents appointed respondent No 4 as Forester, whose father also died in harness while working

as Forester in the forest Department.

4. Respondents have filed the counter in which they have stated that providing of appointment on compassionate grounds is entirely within the

discretionary domain of the executive authority and the petitioners can not claim such appointment as a matter of right.

5. Heard learned Counsel for the parties and perused the record.

6. There are no two opinions about the legal position that compassionate appointment is not an indefeasible right in the hands of the petitioners to

claim appointment to a particular post that is to say that no indefeasible right had accrued to the writ petitioner for claiming appointment to a

particular post on compassionate ground.

7. The apex court in case Chandigarh Administration and another Vs. Jagjit Singh and another, has observed that parity can not be claimed while

applying, for appointment on compassionate grounds and if appointment is made, that can not be used as precedent and the Supreme Court or the

High Court can not pass directions in order to direct state authority to appoint a person on a higher post. It is profitable to reproduce para 8 of the

judgement hereunder:

...Generally speaking the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can

never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal

and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in

favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal

or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another

unwarranted order

...In other words, the High Court cannot ignore the law and the well accepted norms governing the writ jurisdiction and say that because in one

case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant, legal principles. The orders and actions of the authorities cannot be equated to the judgements of the Supreme Court and High Courts nor can they be elevated to the level of the precedent as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises).

8. This court has also observed in the case titled *Abid Bashir Tayubi v. State of J&K and Ors.* 2003 (1) SLJ 115 j&k that parity can not be

claimed and direction can not be sought for commanding the State authority to make appointment on compassionate grounds against a higher post

despite of the fact that some other similarly situated persons came to be appointed against higher posts. It is profitable to reproduce paras 12 and

13 of the judgment hereunder:

12. In the light of the object of the Rules and the settled proposition of law, the claim of the petitioner for appointment against higher post on the

basis of higher qualifications, or any other grounds, whatsoever, is not sustainable as the object is only to alleviate the financial distress by offering

sustenance.

13. The claim for parity in appointments made in identical circumstances to the higher post is also not sustainable for the reason that if the State has

done any favour to some person against the mandate of the Rules and the law laid down by the Supreme Court, the State cannot be directed to treat

other persons alike against the concept of settled law. In such circumstances, it cannot be said to be a case of positive discrimination in terms of

Article 14 of the constitution of India. Before seeking parity, it is to be made out whether the order with which parity is sought, is legal and valid in

law. If such an order is passed dehors the rules, no parity can be claimed and thus it is not a case of discrimination.

9. A Division Bench of this court also in case *Gulzar, Ahmad Mir v. State of J&K* 2001 SLJ 297 J&K has observed that compassionate appointment is

entirely within the discretionary domain and the executive authority may make

appointment purely on compassionate grounds. It is apt to reproduce a relevant portion of para 7 of the judgment hereunder.

...The core grievances of the appellant is that he has been unequally treated in as much as the appellant is equally circumstances with one Mr.

Rattan Lal who has been appointed to the post of ASI of Police on compassionate ground. The equal circumstances of the appellant with Rattan

Lal is to the extent that both the fathers were working as Head Constable at the relevant time. Both the fathers were gunned down by the

extremist. The father of the appellant in 1990 and the father of one Rattan Lal in 1994. To that extent the appellant and Rattan Lal are equally

circumstanced....It must be grasped that the equality clause is applicable to equal circumstances. If un-equal is treated equally it amounts to

discrimination in reverse. The fact that one Mr. Rattan Lal possessed post Graduation qualification and the appellant is only under matric at the

time of his appointment would, clearly show that there was intelligible differentia between the appellant and one Mr. Rattan Lal.

10. Thus the Division Bench has held that person seeking appointment on compassionate grounds can not seek parity and can not claim, as a

matter of right that he should be appointed against higher post for the reason that some other similarly situated person came to be appointed. In the

given circumstances, parity cannot be pressed in service. However, learned Counsel for the petitioners relied on a judgment reported in AIR 2000

SC 2415. It appears that the facts of the said case are different and the ratio laid is also different. In the said case it appears that three persons

came to be appointed on compassionate grounds against a particular post and later on junior to the petitioner therein came to be promoted-and

accordingly petitioner filed a writ petition challenging their promotion and they were arrayed as private respondents. In that writ petition, the apex

court held that petitioner was appointed earlier in point of time whereas respondents were appointed later on and all the three were possessing

same academic qualification and were eligible for promotion, the petitioner should not have been discriminated. It was not his case that they were

appointed directly on compassionate grounds against higher post. Accordingly that judgment is distinguishable.

11. Learned Counsel for the petitioner has also relied on a judgment of a

coordinate bench of this court delivered on 2-12-2005 in SWP No.

990/2003 titled Giuliani Rasool Ganai v. State and Ors. With respects, I may say that the coordinate bench has lost sight of the judgments of the

apex court as also Division Bench and Single Bench referred to hereinabove. Admittedly petitioners were not eligible for appointment against

higher post. They have sought relaxation of academic qualification and other requirement, but that was not done and came to be appointed against

the posts referred to hereinabove and they have accepted the same and alter considerable time, sought indulgence of this court. Thus it is crystal

clear that they were not eligible at the time of making appointment on compassionate grounds. As already discussed above, it is the domain of the

respondents against which post, they were to be appointed. In terms of Rule 3, they were to be appointed against a vacant post in the lower rank

of a non-gazetted service and they had no right to claim appointment against a particular post, as discussed above.

12. A person appointed on compassionate appointment cannot ask for a higher post in terms of SRO 43 of 1994. The Rule does not indicate any

substantive right in favour of the affected person not only vests with the Government a discretion for appointment to the higher post and once the

claimant accepts a particular post without any protest, he cannot be allowed to ask for higher post. I am fortified in my view by a Division Bench

judgement of this court reported as Gulzar Ahmad Mir v. State of J&K 2000 SLJ 297 by holding that:

...in a compassionate appointment the seeker of appointment has no legally enforceable right to claim an appointment to a particular post. A

compassionate appointment is entirely within the discretionary domain and the executive authority may appoint a seeker to a post purely on

compassionate grounds....

13. Supreme Court while dealing with a similar case reported as Haryana State Electricity Board Vs. Krishna Devi, has observed that:

It is well settled that employment on compassionate ground is given only on pure humanitarian consideration and no appointment can be claimed as

a matter of right. The main object was to provide immediate financial help to the family of the deceased employee. It is also well settled that

employment under compassionate ground cannot be made in absence of rules or

instructions issued by the Government or any public authority

14. Once the petitioners were appointed on compassionate grounds against a particular post and they joined the said post without raising a little

finger, they are estopped from claiming appointment against a higher post as they have abandoned the right, if any, by conduct on accepting the

appointment and thus waived his right.

15. A Division Bench of this court in case reported as 2001 SLJ 385 (SC) while relying on a judgement of the apex court in case Motilal

Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, has observed that when appointment is made against any post and the

petitioner accepts the appointment, he can not claim appointment on a higher post and is estopped from making such claim. It is profitable to

reproduce observations of the apex court hereunder:

Waiver means abandonment of a right and it may be either express or implied from conduct, but its basic requirement is that it must be an intentional act

with knowledge.

16. Viewed thus, these petitions are mis-conceived and without any force. Accordingly these petitions are dismissed along with all connected

CMPs. A copy of the judgement be placed on each file.