

(1999) 09 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 4079 of 1997

Parvez Ahmad Shah

APPELLANT

Vs

State of J & K

RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

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

Citation : (2000) 1 SCT 1111

Hon'ble Judges : Syed Bashir-ud-Din, J

Bench : Single Bench

Advocate : M.I. Qadri, I. Sofi, Advocates appearing for the Parties

Judgement

Syed BashirudDin, J.—Petitioner was appointed as Assistant SubInspector in Jammu and Kashmir Police in relaxation of procedure and

eligibility under Government Order No. HOME165(P) of 1997 dated 30.4.1997, pursuant to Jammu & Kashmir Compassionate Appointment

Rules, 1994 (SRO 43 of 94 dated 22.2.1994), hereinafter for short the Rules.

2. The petitioner is seeking appointment as Inspector from the date he was appointed and joined as ASI in the Police Department. It is pleaded

that the petitioner has been appointed ASI, when two other persons Shri Shelly Singh and Shri Nazir Ahmad have been appointed as Inspectors in

relaxation of the procedure and eligibility to the posts of Inspectors under the rules. He submits that he was similarly situated as these two persons,

therefore, he could not be discriminated against and should have been treated likewise.

3. Respondents have filed their reply, wherein they have contended that the petitioner as also the other two persons have been appointed under the

rules pursuant to compassionate policy of the Government to give employment to one of the family members of the Government employee, who has been killed inter alia in militancy related incident. The petitioner has no right to a particular post. The appointment of the other two persons to the post of Inspector has been in a wholly different situation and circumstances peculiar to those cases. The petitioner has not been discriminated against. He has been instead shown compassion in order to tide over the indigence of the family whose bread earner has been killed in militancy related activity.

4. Parties have been heard.

Petitioner has been appointed under the Rules, pursuant to Rule 3, after the father of the petitioner a SubInspector of Police, Incharge as SHO, Police Station Kangan, was killed by militants on 29.11.1994. Under the Rules a family member of a Government employee who dies as a result of militancy related action and who himself is not involved in militancy related activities, can be shown the compassion of appointment, even if it may require dispensing with the normal procedure for recruitment, against a vacancy in a lowest rank or a higher post in the nongazetted service provided such family member has the qualification above matric or for a class IV post if he has read upto matric. Petitioner's case is covered by the rules in so far as he has been appointed against the vacancy of Assistant SubInspector in terms of Rules.

5. The appointment orders of the other two candidates, who are not parties to the Writ petition, show that Shelly Singh who is stated to be the son of a ExDSP, has been appointed as Inspector under the Rules on 19.7.1996. Nazir Ahmad whose father happen to be ExS.P. Security, was appointed as Inspector in February, 1993, pursuant to the Compassionate Appointment Rules of 1991 (SRO 283 of 91), at least over four years earlier to the appointment of petitioner. Shelly Singh was appointed at least nine months earlier to the petitioner. Petitioner has not placed on record any thing to show the fact situations of his case and these of the said two candidates are analogous or bear any likeness or similarity. Mere assertion of similarity, in two situations without bringing on record any probablising material will scarcely suffice. The circumstances which came to the notice of the Competent authority in each case while considering their

appointment on compassionate grounds can be different and varied.

Merely because the age and qualification has been relaxed in their case under enabling provisions of Rules, does not show that there has been any

discrimination. The Rules give powers to the Government to relax the age as also the qualification in appropriate cases. Merely, because the two

have been appointed as Inspectors and petitioner has been appointed as Assistant SubInspector could not ipso facto place the petitioner

circumstanceswise and situationwise at par with other two cases. It is also seen that while petitioner's father was SubInspector, the other two

persons whose sons have been appointed as Inspector, were S.P. and DSP (as stated by the Sr. Addl. Advocate General). Even, on that count

there is hardly any similarity in the situation, facts and circumstances of the two cases.

6. In SWP No. 1009/1997, titled Farooq Ahmed Wani v. State of J&K and othes, decided on 2461998, what this court in the context of death in

harness observed, hereafter, applies with full force to this case of appointment in the event of death in militancy related activities.

The appointment on compassionate grounds is not in the nature of an appointment as a matter of statutory right of appointee, but is a concession

granted by the State Government to a dependant of its employee who dies in harness with a view to tide over the extreme hardship of the indigent

family in a fit case.

The counsel for petitioner has cited the case of Smt. Kamala Gaind v. State of Punjab and others 1990, (Supp) Supreme Court Cases 800, in

support of hic contention that the respondents failure to supply justification for differently treating the cases, entitles the petitioner for appointment

as Inspector at par with the other two persons. In this case, appellant's husband was an Additional District Judge in Punjab Judicial Service, in

charge of a Designated Court, when he was killed by the terrorists. The appellant's son, a graduate was offered Class II State Service on the

Executive side, while as the persons similarly situated dependents of public servants on the Executive side were given Class I post. It was for these

reasons that the Apex Court directed a suitable ClassI post in P.C.S. Executive be provided to the appellant. This case holds no parallel to our

case. In this case, petitioner has not shown how he has been discriminated

against and how he has been unjustifiably appointed to the post of ASI.

The Rules clearly provide that dependant of a family member of a Government employee who died in militancy related incident, can be appointed

to a post of nongazetted service and the petitioner has been appointed not to the lowest post, but to the post of Assistant SubInspector. The two

instances which he has placed on record, are not coextensive with this case. Besides, the peculiarity and circumstances of each case are different.

No right of petitioner has been violated.

7. The petitioner accepted the compassionate appointment under the Rules and joined his duties. It was only after about over six months, that he

came forward to prefer instant petition for higher post. It is contended by petitioner's counsel that his client at no stage represented against his

appointment on compassionate grounds, after dispensing with normal recruitment procedure and mode under the Rules, to competent authority.

8. In *State of Bihar and others v. Samsuz Zoha*, AIR 1996 SC 1961 : 1996(4) SCT 51 (SC) , the Apex Court while dealing with the policy of the

State Government to appoint on compassionate grounds the dependant's son/daughters of the deceased employees who died in harness, observed

that the direction of the High Court for appointing such candidates to Class III posts or to give them promotion to Class III post, from Class IV to

which they were initially appointed, was not justified and that no right(s) is vested in a candidate to be appointed on compassionate grounds.

9. In result, the writ petition is dismissed.