

(2002) 12 J&K CK 0006
In the Jammu And Kashmir High Court
Case No : LPA (S) No. 481 of 2002

Romesh Singh

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 30-12-2002

Acts Referred:

Jammu and Kashmir (Compassionate Appointment) Rules, 1994 — Rule 2, 3, 7

Citation : (2003) 2 JKJ 344 : (2004) 2 LLJ 18

Hon'ble Judges : B.C. Patel, C.J.; Muzaffar Jan, J

Bench : Division Bench

Advocate : D.S. Thakur, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—The Appellant, being aggrieved of an order made by the learned Single Judge on 2.9.2002, in SWP No. 2233/2002, has preferred this appeal.

2. From the record it transpired that, Daya Ram, father of the appellant, died on 08.10.88. The appellant at the relevant time was ten years of age

and a student. He passed 8th class in the year 1995 and after attaining the age of majority he applied for appointment on compassionate grounds.

It is the case of the appellant that his case was recommended to extend the benefit of SRO 43, however, the Chief Engineer PWD(R&B), after

considering the case of the appellant in term of the relevant rules in force, rejected the claim of the petitioner-Appellant, after holding that he was

not eligible being a minor in the year 1989 or 1991, and also not qualified for appointment after a lapse of eleven years. It is against this order, that

a petition was filed, inter-alia, requesting for quashing the order and also for issuance of writ of mandamus directing the authorities to appoint the

appellant on compassionate grounds, in terms of SRO 43.

3. The learned Single Judge, after considering various aspects of the matter rejected the petition. Admittedly before the learned Single Judge, after

a lapse of eleven years, the petition was preferred. The learned Single Judge has observed that during all this period the family as well as the

appellant herein had sustained themselves. The learned Judge felt that after a lapse of eleven years there is no prima facie case even for admission

of the writ petition. Having no merits, the petition was dismissed and hence this appeal.

4. So far as the rules with regard to compassionate appointment is concerned, the Govt. has framed the rules in this behalf, which are known as

Jammu & Kashmir (Compassionate Appointment) Rules, 1994 (herein after referred as Rules). Sub-clause (i) of Rule 2 is required to be

considered. Rule 2 reads as under:-

2- These rules shall apply to the compassionate appointment of a person who is a family member of:-

(i) a Govt. employee who dies in harness other than due to militancy related action;

(ii) and (iii) xx xxx xxxx xxx

who are the persons eligible for such appointment is found in Rule 3, which reads as under:-

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

posts under the Govt. an eligible family member of a person specified in Rule 2 may be appointed against a vacancy in the lowest rank of a non-

gazetted service having qualification above Matriculation or to a class IV post if the candidate has read upto matric:

Provided that the applicant is eligible and qualified or acquires eligibility and qualification within period of six months from the death of the

deceased person specified in Rule 2

4. So far as the power of relaxation is concerned, Rule 7 provides that the Govt. may relax the lower or upper age limit or educational/technical

qualification, as the case may be in deserving cases. All such cases shall be processes through General Administration Department in Coordination.

In the background of the aforesaid rules, the matter is to be considered.

5. The learned Counsel has submitted that there is no provision or limitation within which one has to apply for compassionate appointment and, therefore, one can apply at any time.

6. Learned counsel submitted that so far as the proviso, to Rule 3 is concerned, it only refers to the eligibility and qualifications of the person

concerned, however, he is not eligible or qualified, but acquires eligibility and qualification within a period of six months from the death of the

deceased person specified in Rule 2 he is to be considered. The rule does suggest that he has to make an application within a period of six months,

and, within that period, he has to acquire the eligibility or qualification. Thus learned counsel submits that a minor would attain majority and,

therefore, on attaining majority, if he makes an application, his application is required to be considered. The period of six months so included in the

proviso, according to the learned counsel, is illegal and bad.

7. These arguments were never advanced before learned single Judge and there is nothing to indicate that such submissions were made. In absence

of the limitation prescribed in the rules, one has to apply at the earliest and at the most within a reasonable period. This aspect will be considered at

a latter stage.

8. On the ground of compassionate appointment a person would not be required to pass through usual tests which others are required to pass

through. No doubt he is to be appointed in the class IV post, if the candidate has read upto Matric, and if he is a Matriculate, then in the lowest

rank of Non-gazetted service. However, by-passing the strict procedure, he is to be appointed and, therefore, one has to approach at the earliest,

so as to see that in case of a vacancy he accommodated.

9. One has to consider that a family, survived without any difficulty for a period of eleven years from the date of death of the deceased

Government servant. Can it be said that person died in harness.

10. In case of Union of India (UOI) and Others Vs. Bhagwan Singh, , in para 8, the Apex Court has pointed out that Ram Singh died on 12.9.72.

There were two major sons and the mother of children, who were apparently capable of meeting the needs of the family, and so they did not apply

for any job on compassionate grounds for nearly 20 years and, admittedly have pulled on apparently without any difficulty. The Apex Court

pointed out that:

In this background we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the

authorities to consider the case of the respondent for appointment on compassionate grounds and to provide him with an appointment, if he is

found suitable.

11. The Apex Court in a case titled Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , has pointed out as under:

.... in all claims for appointment on compassionate grounds, there should not be any delay in appointment the purpose of providing appointment on

compassionate grounds is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided

immediately to redeem the family in distress.

12. Following this decision in Phoolwati v. Union of India 1991 Suppl (2) SCC 689, the Apex Court pointed out that the reason for making

compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a Govt. servant who dies in harness,

when there is no other earning member in the family.

13. In a case of Umesh Kumar Nagpal Vs. State of Haryana and Others, , the Apex Court pointed out in para 2 as under:-

As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of

appointment nor any other consideration is permissible. Neither the Govt. nor the public authorities are at liberty to follow any other procedure or

relax the qualifications laid down by the rules for the post. However, to this general rule, which is to be followed strictly in every case, there are

some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependants of the

employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian

consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends

meet, provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such

employment. The whole object of granting compassionate employment is thus to

enable the family to tide over the sudden crises. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Govt. or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of 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.

14. Thus, the authority before offering must be satisfied that the person has died in harness and the authority further must be satisfied, on examination of the financial condition of the family of the deceased, that it is not possible for the members of the family to pull on, without assistance.

15. In the instant case, it is admitted position that at the time of death of the Government servant the appellant was a minor. Neither his mother nor any other member of the family, eligible for the post, has applied at the relevant time. The Apex Court, in case titled Sanjay Kumar Vs. The State of Bihar and Others, has pointed out in para 3 as under:-

This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread-earner who had left the family in penury and without any means of livelihood.

16. The Court pointed out that in case, Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, this view has been expressed.

17. In the case of Sanjay Kumar (Supra) when the first application was made by the petitioner on 2.6.88, the petitioner was a minor and was not eligible for appointment. This was conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.

18. Thus, it is very clear that the Appellant-petitioner at the time of death of his father was a minor. Therefore, he cannot insist that on attaining the

age of majority he is entitled to apply. Here we find that the appellant filed the writ petition before the Court when he was 24 years of age and thus

it appears that immediately on attaining majority he did not approach the authority.

19. In the case of Jagdish Prasad Vs. State of Bihar and Another, , the son was a minor, (four years old), at the time of father's death and after a

long delay application was made. The Apex Court held that he is not entitled to claim compassionate appointment. In case of Haryana State

Electricity Board and another Vs. Hakim Singh, request for compassionate appointment was made when deceased employee's son attained

majority. In that case the maximum period prescribed was three years for making such a request. However, the High Court held that in case of

minor child the period of three years would be applicable from the date he becomes major. Setting aside the interpretation, the Apex Court

pointed out that if the family members of the deceased employee can manage for fourteen years after his death, one of his legal heirs cannot put

forward a claim as though it is a line of succession by virtue of a right of inheritance. The Apex Court pointed out that the object of the provision is

to give succour to the family to tide over the sudden financial crises. The request was rejected by the Apex Court in such situation.

20. The learned counsel submitted that the mother, widow of the deceased employee, residing in a far of area, and almost being 'pardanasheen',

she did not apply. The Apex Court in the case titled Haryana State Electricity Board Vs. Naresh Tanwar and Another, , has pointed out that

compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an

exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family

of the deceased employee. The very object of appointment of dependent of deceased employee who died in harness is to relieve immediate

hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for

years. In case of State of U.P. and Others Vs. Paras Nath, the Apex Court pointed out that the provision for offering an employment to a

dependent of a Govt. servant, dying in harness, in preference to any body else, is to mitigate the hardships caused to the family of the employee on

account of unexpected death while still in service. To alleviate the distress of the family such appointments are permissible on compassionate

grounds, provided the rules provide. However, the Court pointed out that when the application is made after a long period of time, such as 17

years, the High Court was not right in granting any relief.

21. The Apex Court in *Umesh Kumar Nagpal* (1994) 4 SCC 238, has also pointed out that the Government or the public authority concerned has

to examine the financial condition of the family of the deceased and, only if it is satisfied, that but for the provision of employment, the family will not

be able to meet the crises, that a job is to be offered to the eligible member of the family. The Court also pointed out that mere death of an

employee in harness does not entitle the member of family to such source of appointment.

22. It is also required to be noted that ordinarily in case of death of a husband, the widow is required to be offered a job, because it may happen

that if a son is offered a job and in future, for one reason or the other, he separates from the mother, then the mother will face the same difficulty.

These aspects must be borne in mind by the authority concerned. In the given case, the mother being unable to work or infirm, preference may be

given to the other family member i.e. son or a daughter at her request provided other adult members of the family under-take in writing in favour of

one member of the family who is eligible to apply and further that no one shall claim the right. What is required to be pointed out is that the

authority is required to consider these aspects and only after appreciating these aspects, one is required to offer the job.

23. It is also required to be noted that the State Govt. has made sufficient provision to see that the person who has completed seven years of

service and who dies while in service, the members of his family may not suffer. Vide SRO 310 dated 8.5.86, in the Civil Service Regulations, an

amendment has been carried out. Section (b) of Schedule 15 refers to family pension. Clause 20 (ii) (bbb) has been inserted. That rule reads as

under:-

(bbb) Notwithstanding anything contained in Sub-clause (bb) above where a Govt. servant dies while in service after having rendered not less

than 7 years continuous service, the rate of family pension admissible to the

beneficiary of the deceased shall be equal to the pay last drawn by the deceased officer before his death. Pension at the enhanced rates equal to the last pay shall be payable for a period of 7 years from the date following the date of death of the Government servant or for deceased Govt. servant would have attained the age of superannuation, whichever is earlier.

After having drawn family pension at such enhanced rates, it will be allowed at the rate equal to 50% of pay last drawn or twice the family pension admissible as per Sub-rule (ii) (aaa) whichever is less and the amount so admissible shall be payable for a period of 7 years from the date the payment of enhanced pension as per preceding para ceases or till the deceased would have attained the age of 62 years whichever is earlier.

Therefore, the family pension will be payable at the ordinary rates laid down in Sub-rule (ii) (aaa).

24. Thus, the family members of the deceased shall be entitled to the amount equal to the last pay drawn by the deceased employee before his death. The pension at the enhanced rate, equal to the last pay drawn shall be payable for the period of seven years from the date of death of the Govt. servant or upto the date the deceased servant would have attained the age of superannuation, whichever is earlier. Thus, the members of the family will be entitled to get these benefits.

25. We have referred to Pension Rules, not with a view to point out that the member of the family of the deceased employee, who has died, is not entitled to compassionate appointment. But, with a view to point out that there may be a Govt. Servant, who might have expired before completing seven years, or there may be other civilians entitled under these rules to get compassionate appointment, and, therefore, while considering such applications the authorities, have to consider whether any financial assistance is needed. Keeping this aspect in mind, Rule making authority has not fixed any income of the family members. Therefore, one has to consider the source of income available to the heirs of the deceased is such that two ends cannot meet. If the source is insufficient, can it be said that family needs assistance? There may be others unemployed having no source of income. The authority has to consider these aspects. When the Apex Court has pointed out that it is with a view to tide over sudden crisis, these

aspects are required to be borne in mind. The authority or the Government has to consider all these aspects. As pointed out by the Apex Court in

various judgments that mere death of an employee in harness does not entitle his family member to such source of livelihood. These aspects are

required to be borne in mind by the Government or the public authority while examining the financial conditions of the family of the deceased.

26. In case State of J&K v. Mohinder Singh, (LPA (SW) 127/98), decided by the court on 30.08.2000, Division Bench of this Court had an

occasion to consider the claim for compassionate appointment, after a gap of seven years, when the family income exceeded Rs. 2000 per month.

27. In that case, as pleaded by the respondent in the writ petition, after the death of his father he became major. On 18.1.96 licence was issued by

the licencing authority and thereafter he applied for compassionate appointment. The Division Bench considered the case 1997 (1) SCT 812,

Nisar Ahmad Abdulmiya v. State of Gujarat, wherein the decision of the Apex Court in case Smt. Sushma Gosain and Others Vs. Union of India

(UOI) and Others, was relied upon. The Division Bench considered the decision of the Apex Court in case Umesh Kumar Nagpal Vs. State of

Haryana and Others, , Haryana State Electricity Board Vs. Naresh Tanwar and Another, , Haryana State Electricity Board and another Vs.

Hakim Singh, , State of U.P. and Others Vs. Paras Nath, , Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, .

S. Mohan Vs. Government of T.N. and Another, , Ajit Singh and Others Vs. State of Punjab and Others, , and after considering other provisions

the Court Observed that in the background of the case and the law declared by the Apex Court, the respondent was not entitled to any relief,

whatsoever, and set aside the judgment delivered by the learned Single Judge. Thus, the Division Bench of this Court has already held that after a

period of long delay, application cannot be accepted.

28. When the rules are required to be considered, one has also to be bear in mind that compassionate appointment is not only required to be

offered to the Govt. employee but also to a civilian who dies as a result of militancy related action, 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. Considering the peculiar situation in this State, it is not that only the heirs of the deceased who died while serving in the

Govt. will be entitled to a job but the civilians are also held entitled to get the job on account of militancy related actions.

29. Considering the fact that for a period of seven years the family members were getting the salary as per the last pay drawn by the deceased

employee and for a period of eleven years the Appellant-petitioner did not bother to apply, the mother at the relevant time was entitled to get the

job and she has not applied, would indicate that they were not in financial crisis so as to invoke the provision. From these facts, if the authorities

have taken this view, it hardly requires any interference.

30. Reading proviso to Rule (3) of Rules, which refers to acquiring of eligibility and qualification within a period of six months from the date of

death of the deceased, the person will have to be considered within that period. To say that within what period the person has to make an

application to the appropriate authority for seeking appointment on compassionate ground, one has to read proviso to Rule 3. Reading the proviso

it is very clear that even if the person is not eligible or not qualified, but within a period of six months, if he is qualified or he has acquired eligibility,

then in that case his case is required to be considered. Thus, six months time is provided even for a person who was not eligible or qualified at the

relevant time. If he fails to acquire the qualification or eligibility within six months, his case cannot be considered. Therefore, maximum period is

provided six months. It is also required to be borne in mind that considering the fact that after the death of a person, for observing religious

ceremonies and rituals, a person may take sometime. It is equally possible that the person may not be out of shock immediately and, therefore,

within reasonable period application is required to be made. Therefore, within a period of six months one must apply. Considering the language of

the proviso one must apply within a period of six months, but not thereafter. We have also to bear in mind that if a person has died in harness then

one would immediately approach the authority for seeking help.

31. The rules also provide for scholarship upto the rate of Rs. 100 per month to the family members of a deceased employee, till such time as they

pass matriculation examination. Therefore, even for a minor the Govt. has taken

care.

32. In view of this, it is clear that a person has to make an application at the earliest, not late than six months.

33. We find no merit in this appeal and the same is dismissed.

This Judgment is pronounced in open Court in view of Rule 138 (4) of the Jammu & Kashmir High Court Rules, 1999 which reads as under;

(4) where a case is heard by two or more Judges and Judgment is reserved, their Judgment or Judgments may be pronounced by any of them. If

no such Judge is readily available such Judgment or Judgments may be pronounced by any other Judge.