
(2014) 11 J&K CK 0035
In the Jammu And Kashmir High Court
Case No : SWP No. 512/2010

Rubeena Akhtar

APPELLANT

Vs

State of JandK and Others

RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:

Citation : (2015) 1 JKJ 473

Hon'ble Judges : Ali Mohd. Magrey, J.

Bench : Single Bench

Advocate : Bilal Ahmad, Advocate, vice and S.A. Makroo, Advocate, for the Appellant; J.A. Kawoosa, Senior A.A.G, for the Respondent

Final Decision : Allowed

Judgement

Ali Mohd. Magrey, J.â?"The petitioner, sister of one Showkat Ahmad Ganai son of Ghulam Mohi-ud-Din Ganai, resident of village Chee, District

Anantnag, who was killed by militants on 05.11.1999, has filed this writ petition challenging communication No. GAD/Mtg/III/44/2009 dated

10.02.2010, to the extent it relates to her, whereby Deputy Secretary to Government, General Administration Department has conveyed to the

Deputy Commissioner, Anantnag, that the cases of the three persons named therein, which included the petitioner, were not covered under SRO

43 of 1994 as they were not dependent upon the deceased. Petitioner has also prayed for a writ of mandamus to command the respondents to

reconsider her case for compassionate appointment under SRO 43 or, in the alternative, to grant cash compensation of Rs. 5,00,000,00 in favour

of the family members of the deceased in terms of Rule 3(iii) of the aforesaid SRO. Reply/objections to the writ petition on behalf of respondents 1

to 3 have Deen filed by the Additional Secretary to Government, General Administration Department; whereas respondent No. 4, i.e., the Deputy Commissioner, Anantnag, has filed his separate reply.

2. I have heard learned counsel for the parties, perused the material placed on record, including the pleadings of the parties, and considered the matter.

3. The essential facts to the extent that the brother of the petitioner, named above, was killed by militants on the fateful day near his home at his native village and that the deceased was not involved in any militant activity are not denied by the respondents. The only ground to repudiate the claim of the petitioner taken by the General Administration Department, is that the petitioner was not dependent upon the deceased. This statement is categorically denied by none other than respondent No. 4, the Deputy Commissioner, Anantnag, in paragraph 2 of his reply under the head 'parawise reply' wherein he has stated that ""it is denied that the petitioner was not dependent upon the deceased brother who got killed by some unknown militants in the militancy related incident on 5.11.1999."" In fact, the said statement made in the reply-affidavit filed by respondent No. 4 is fully buttressed by the documents placed on record.

4. It appears that immediately after the petitioner's brother was killed, she approached the concerned authority for issuance of dependency and income certificate which was issued in her favour by the office of Deputy Commissioner, Anantnag, on 13.05.2002, a photocopy whereof has been placed on record of this petition as annexure B2. Perusal of the said document, signed by the Assistant Commissioner, Anantnag, reveals that the same was issued on the basis of the enquiry conducted by the Tehsildar, Anantnag. The aforesaid document states that ""on the basis of enquiry conducted by the Tehsildar Anantnag vide his No. 231/Adm/R dated 12.7.2001 one Showkat Ahmad Ganai S/o. Gh. Mohi-ud-Din R/o Chee Tehsil Anantnag District Anantnag got killed in militancy related incident on 4.11.1999"". It further states that ""it is established that the applicant Rubeena Akhtar was dependent upon the deceased"". The document also mentions that the deceased was survived by his father, mother, grandmother whose age is shown therein to be 65 years, 60 years and 85 years, respectively, and the petitioner, and that the monthly income of

the family was Rs. 1500.00. In fact, the Tehsildar, Anantnag, vide letter No. 103/Misc/R dated 26.10.2002, had forwarded the compassionate

appointment case of the petitioner to the Deputy Commissioner, Anantnag, certifying therein, inter alia, that the petitioner was dependent upon the

deceased and that she qualified for compassionate appointment. Her educational qualification was stated to be a middle pass.

5. Admittedly, the matter remained pending with the respondents for almost a decade and, it appears, in the meanwhile, in the year 2009, the

petitioner was married as a Khananisheen daughter meaning thereby that she continued to live with her parents.

6. Mr. J.A. Kawoosa, learned Sr. AAG, raised two arguments: first, that it has been found that the petitioner has married, therefore, the

dependency factor is no more there; and second, that since the family has lived for 13 years and managed their financial affairs, they have tied over

the immediate financial crisis and, therefore, their claim at this belated stage cannot be allowed.

7. Appointments on compassionate grounds in the State are governed by the provisions of the Jammu and Kashmir (Compassionate Appointment)

Rules, 1994 (for short, the Rules) framed by the Governor in exercise of the powers conferred by Section 124 of the Constitution of Jammu and

Kashmir. In terms of Rule 2(iii), these rules apply to the compassionate appointment, inter alia, of a person who is a family member of a civilian

who dies as a result of militancy related action etc. not involved in militancy related activities and the total income of the family from all sources

does not exceed Rs. 5,000,00 per month as assessed by the Revenue Officer not below the rank of an Assistant Commissioner. In terms of clause

(d) under the heading "'explanation'", family member has been defined to mean spouse, son, daughter, adopted son, adopted daughter, sister or

brother dependent on the deceased. Rule 3 thereof provides for appointment under the Rules. It prescribes that notwithstanding anything contained

in any rule or order for the time being in force regulating the procedure for recruitment in any service or post 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 non-gazetted service or Class IV post

having qualification as prescribed under the relevant Recruitment Rules; provided that the applicant is eligible and qualified for such post or

acquires such eligibility and qualification within a period of one year from the date of death of the deceased person specified in Rule 2 of the Rules.

8. It is thus seen that, apart from other things, the condition is that applicant ought to be dependent upon the deceased. In the instant case, the

competent revenue authority has in clear terms reported that the petitioner was dependent upon the deceased. However, as mentioned above, the

contention of the Mr. Kawoosa is that the petitioner has married. The notion underlying the submission seems to be that once a girl is married, the

dependency factor envisaged by the Rules would not survive. Such a notion and the contention sought to be built thereon is far fetched.

9. According to the submission of Mr. Kawoosa, the dominant object of the Rules is to help the family to mitigate the immediate financial crisis

caused by the death of the sole bread earner. If that be so, and as it is, the hardship of a family, which may consist of number of other dependents

of the deceased, would not pass on and get centralized into the state and status of a single family member--the applicant seeking the appointment

on compassionate basis--so that, if that member of the family marries during the pendency of the application for compassionate appointment, the

financial crisis of the family would automatically be overcome. The Rules do not define the word 'family'; they only define the term 'family member'

entitled to seek appointment. It is based on the scheme of the policy that the family sponsors such of its member for such appointment as fulfills the

eligibility requirements provided by the Rules. The Rules provide for such appointment to an eligible 'family member', on the ground of hardship of

the whole family, not only on account of applicant's individual hardship. The eligible family member actually acts as a vicarious beneficiary on behalf

of the whole family. This is also substantiated by not only the wording of Rule 2(iii) of the Rules which lays down a condition that total income of

the 'family' from all sources should not exceed Rs. 5,000/- per month, but also from clause (iv) of the procedure for payment of cash compensation

in lieu of appointment in Government service prescribed by the Government in terms of sub-rule (3) of Rule 3 of the Rules, which seeks to ensure

regular flow of minimum income for sustenance of the 'family'. Therefore, if the eligible member of the family happens to be a female and she

marries during the pendency of the application, her marriage would not, ipso facto, ameliorate the financial condition of the family or alleviate their

penury. Going by the object of the scheme to help the family to mitigate the immediate financial crisis, as submitted by Mr. Kawoosa, the marriage

of the eligible female family member during the pendency of the application would not alter the situation so as to disentitle the family of the benefit

provided by the Rules.

10. It otherwise sounds bizarre that marriage of a female member of such family would remove her dependency factor envisaged by the Rules. If

that were so, no one should be striving for empowerment of women. Then the catchphrase ought to be: let them be brought up and married, and

going by the notion put forward, they would get automatically empowered and the dependency factor would vanish. Assuming for a second it was

so, how would it help the family to tie over the financial crises caused due to the death of the sole bread earner, to mitigate which underlies the

object of the rules, is not comprehensible. This is a strange and unacceptable notion.

11. There is another very important aspect of the matter which, in fact, radiates the harsh, but latent, facet of the submission. If the applicant were

the brother of the deceased and he had married during the pendency of the application for compassionate appointment, would the learned counsel

representing the respondents raise the same argument as has been raised by him vis-a-vis the petitioner? The answer clearly is no. Not only in

effect and in essence, but actually, the argument is raised only because the applicant happens to be a lady. In other words, the applicant in the

matter of employment on compassionate grounds is sought to be discriminated on the basis of sex, which is prohibited by the mandate of Article

14 generally and Article 16, in particular, of the Constitution of India. The argument raised by the learned counsel is, therefore, wholly unfounded

and untenable.

12. Let us look at the issue from a different angle: suppose an eligible family member is appointed on compassionate grounds today and tomorrow

she is married; would she disqualify for the job? The answer has to be no. This connotes that the eligibility would relegate to the date when such

candidate makes an application for appointment under the Rules and any such intervening factor between the date of making of the application and

the date of appointment or even thereafter would be inconsequential.

13. In light of the above, it is held that the marriage of a female member of a family, dependent on such a deceased person as is envisaged by the

Rules, would not disentitle her from claiming the benefit under the Rules, especially so when she lives with 'the family', as in the instant case, or

undertakes, to the satisfaction of the appointing authority, to bear the needs of the other members of the family, particularly so when there is no

male member available in the family, or, if there is one, he does not fulfill the criteria prescribed by the Rules.

14. As regards the other submission of the learned counsel that the family has tied over its critical condition as to the financial affairs, the documents

placed on record depict the abject poverty and penury of the family, inasmuch the monthly income of the family is reported to be Rs. 1500,00. As

seen above, the Rule provides that the total income of the family from all sources should not exceed Rs. 5,000,00 per month. The respondents

have not brought anything on record to belie the reports/certificates of their own functionaries. The time lapse is attributable to the inaction of the

respondents for long over a decade. It is a ploy on the part of the respondents to bring in the lapse of time to repudiate the claim of the petitioner.

It is easy to imagine, while sitting in conditioned environs, that all is well, but difficult to feel the pangs of hardship and penury caused due to loss of

a sole bread earner by a family. The least the respondents could do is to ascertain the present financial status of the family, which, admittedly,

comprised of three old members, then of the age ranging between 60 to 85 years. That has not been done and, as said above, nothing has been

placed on record of this petition to support the submission.

15. Coming to the reliefs prayed for, it may be observed that the alternate prayer made for payment of compensation of Rs. 5,00,000,00 in terms

of the amendment made in the Rules by SRO 199 dated 04.07.2008 cannot be granted, for, the amendment would not be applicable

retrospectively. However, the ground ascribed for denial of appointment on compassionate grounds to the petitioner is held to be untenable and

not supported by law or facts.

16. For the reasons discussed above, this petition is allowed. The impugned communication No. GAD/Mtg/III/44/2009 dated 10.02.2010, issued

by Deputy Secretary to Government, General Administration Department,

holding the petitioner as not being dependent upon the deceased and thereby denying appointment on compassionate grounds to her, is quashed. Respondents are directed to reconsider the case of the petitioner in light of the observations made above and take a decision thereon within two months from today. Given the facts and circumstances narrated above, this is a fit case where the respondents ought to be burdened with heavy costs for having unreasonably slept over the matter for such a long period of time and then coming with a plea that the claim is stale, when the fact of the matter is that the claim is not rejected by them on that ground. However, taking a lenient view, it is ordered that the parties shall bear their own costs.