

(2018) 09 J&K CK 0018

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 2484 Of 2012

Sanjeev Kapoor @APPELLANT@Hash State Of Jk & Ors

Date of Decision : 07-09-2018

Acts Referred:

Compassionate Rules of 1994 — Rule 7

Citation : (2018) 09 J&K CK 0018

Hon'ble Judges : M. K. Hanjura, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

1. The facts culled from the instant petition are that the mother of the petitioner, namely, Shrimati Kamla Devi, Community Health Officer (CHO),

Primary Health Centre, Lohai, Block Billawar, died in harness on the 27th day of January, 2010. She was survived by two sons and two daughters. At

the time of the death of his mother, the petitioner was 39 yearsâ?? old and was holding a degree of Graduation to his credit. The father of the

petitioner, Shri Jagdish Raj, had pre-deceased the mother of the petitioner. The petitioner, therefore, applied before the Director, Health Services,

Jammu/ respondent No.3, under and in terms of SRO 43 of 1994, for compassionate appointment. The Block Medical Officer, Billawar, vide his

communication dated March 3rd, 2010, recommended the case of the petitioner for necessary appointment in terms of SRO 43 of 1994 to the Chief

Medical Officer, Health and Family Welfare, Kathua, who, in turn, forwarded the case of the petitioner to the Director, Health Services, Jammu/

respondent No.3 vide his communication dated March 9th, 2010. The respondent No.3, it is stated, forwarded the proposal for the appointment of the

petitioner to the Commissioner/ Secretary to Government, Health Department, J&K Government/ respondent No.2, in terms of his communication

dated March 22nd, 2010, with the recommendations that the case of the petitioner for compassionate appointment be considered in relaxation of upper age limit of 02 years, 01 month and 24 days. The respondent No.3 supported the said recommendations by all the details and justified the relaxation of the upper age limit prescribed for recruitment in Government service. Thereafter, the matter came up for consideration before the respondent No.2, who, vide his communication dated October 21st, 2010, rejected the case of the petitioner. It is stated that the communication, impugned herein this petition and attached as Annexure-H to the writ petition, is illegal, arbitrary and per se discriminatory inasmuch the State has not applied its mind to the recommendations made by the Department of Health that justified the relaxation of upper age limit in the case of the petitioner, whereas, in similarly circumstanced cases, the upper age limit has been relaxed beyond the period of five years and the compassionate appointment has been offered to the dependents of the deceased Government employees. It is further stated that the respondent No.1 cannot adopt different yardsticks for different persons and the persons, who have no say in the corridors of power, cannot be treated differently.Â

2. The respondents have failed to file the Counter Affidavit. However, they have filed the objections at the pre-admission stage, wherein they have stated that the case of the petitioner was considered by the General Administration Department for the relaxation of his age and it was turned down on the ground that he did not meet the requirement of the age as provided in making appointments in the Government service. The respondents have proceeded to state that the petitioner applied for compassionate appointment under SRO 43 of 1994 for the post of Junior Assistant. However, since his case required the relaxation of upper age limit by 02 years, 01 month and 24 days, therefore, the matter was taken up with the General Administration Department twice which was turned down on the plea that the same was not covered under the Relaxation Policy and, accordingly, the case of the petitioner could not be considered for appointment on compassionate basis. It is stated that, even otherwise also, the primary and the basic purpose of granting compassionate appointment is to relieve the family of the deceased Government servant from financial destitution which is not the position in the instant case as the petitioner has neither pleaded the same in his petition nor has been placed, alongwith his application seeking

compassionate appointment, anything on record which would suggest that his family is in a condition of penury and without any means of livelihood. In

the end, the respondents have urged that the petition of the petitioner be dismissed.Â

3. Heard and considered.Â

4. Rule 7 of the Compassionate Rules of 1994, promulgated vide SRO 43 of 1994, gives the Government the power and the teeth to relax the upper

and lower age limit, educational/ technical qualifications in deserving cases and all such cases are required to be processed through the General

Administration Department in co-ordination. To regulate the power of the Government vested in terms of Rule 7 of the Rules of 1994, the

Government has come up with a welfare policy of relaxation of age by 05 years, although, in the case of the petitioner, relaxation of only 02 years, 01

month and 24 days, was sought. The rejection of the case of the petitioner qua the relaxation of his age is contrary to the policy of relaxation issued

and evolved by the Government. The impugned communication has been passed post-haste, without assigning any reasons and without spelling out the

details on which it has been based. It states as under:

Â â??I am directed to refer your letter No. Es-5/NG/K/258/9535 dated 22-03-2010, regarding the subject cited above and to state that the proposal

has not met the agreement of the General Administration Department, the case not being covered under SRO-43/relaxation policy.â??

5. From a bare look of the aforesaid communication, what can be seen from a naked eye is that there has been absolutely no application of mind by

the maker/ makers, author/ authors, on whose dictates the same came to be passed.Â The law on the subject, as evolved by this High Court, is lucid

and clear. In the case of â??Satya Devi v. State of JK & Ors.â??, reported in â?? 2010(4) JKJ 785â??, this Court held as under:Â

14. A post available with the Government is a public property and is to be filled up in accordance with the mandate contained in Articles 14 and 16 of

the Constitution of India as applicable to the State of J&K and all the eligible candidates are to be considered for filling up a post. The State

Government has made Rules called Jammu and Kashmir (Compassionate Appointment) Rules 1994 notified vide SRO 43 of 1994. The Rules, so

formulated for making appointment on compassionate grounds, is deviation from

the normal rule of making appointment to Government Services. The purpose underlying the Rules notified vide SRO 43 of 1994 is salutary in nature and the intentment sought to be achieved is really noble one inasmuch as State which is welfare State in Constitutional Scheme, is duty bound to take care of its citizens and to mitigate their hardships within its financial limits in accordance with the mandate of Constitution and law. The compassionate appointment Rules confer power on the competent authority in the Government to provide appointment to one of the family members of the government employee, who dies in harness. The purpose of providing employment to one of the family members is to ensure that the family which is deprived of source of sustenance, is brought out of the situation in which it is landed and to ensure that the family members of the deceased employee are in position to keep their flesh and bones together. The State Government in these circumstances in order to achieve the purpose and object underlying the Rules notified vide SRO 43 of 1994 is not to reject the claims on technical grounds. On the one hand, the State by promulgating the Rules notified vide SRO 43 of 1994 is trying to achieve a laudable purpose but by rejecting the claims on hyper-technical ground is, on the other hand, defeating the very purpose.

15. Every individual case is required to be considered on its own facts. The State cannot have uniform policy in relaxation of upper age limit in respect of persons who suffer disability on any count. Every case will be governed by its own facts. The State by adopting uniform policy of not granting age relaxation beyond five years is thus clubbing unequals into one group, which action of the respondents falls foul of constitutional guarantees contained in Articles 14 and 16 of the Constitution of India. Unequals can never be treated equally. The facts in all the cases can neither overlap nor can be similar. Each individual case will have its own features and circumstances. Every case is thus required to be considered on its own merits, as otherwise, the purpose to be achieved through compassionate appointment Rules will be defeated.

16. The stand taken by the respondents in the impugned order that in the case of the petitioner there was requirement of grant of upper age relaxation beyond five years so her claim was rejected, does not satisfy a reasonable mind, not to talk of satisfying the purpose of providing appointment on

compassionate grounds. The ground taken in the order impugned, being irrational and unreasonable, cannot be countenanced in law.â??

Â On the strength of the law laid down above, the respondents were under a legal obligation to consider the case of the petitioner, decide it by passing a speaking order and not in the mode and manner which has been adopted herein this case.

6. Looking at the petition of the petitioner from another perspective, the petitioner has stated that the respondent Department has discriminated him

in the matter of appointment as the requisite relaxation has been given in the cases of some similarly situated persons. To bring home this argument,

the petitioner has, alongwith his petition, placed on record three orders, the first one, bearing No.564-HME of 2006 dated 9th of October, 2006, which

provides that sanction has been accorded to the relaxation of upper age bar by 05 years, 03 months and 26 days in favour of Smt. Neerja R.J. Singh

w/o Late Dr. Ramanjit Singh R/o Kanahma, Tehsil Tangmarg, at present Huzuribag, Talab Tilloo, Bohri, Jammu, for compassionate appointment as

Junior Assistant. The second one, is a Government order No. 255-HME of 2010 dated 23rd of April, 2010, whereby Sh. Sudesh Kumar has been

appointed in relaxation of the qualification bar. The third one is an order No. 742-Edu of 2010 dated 22nd of October, 2010, whereby sanction has

been accorded to the temporary appointment of Smt. Gulshan Bala W/o Late Sh. Rajesh Sharma for her appointment as class-IV employee in

relaxation of the upper age limit by 02 years, 10 months and 05 days.

7. In the aforesaid three similarly situated cases, sanction has been accorded for the appointment of the persons mention therein on compassionate

basis in terms of SRO 43 of 1994, in relaxation of age and qualification. However, the case of the petitioner has been rejected, that too, without

assigning any reason, muchless a cogent one. The action of the State has to be transparent. The State cannot discriminate between similarly

circumstanced persons. Ours is a welfare State which aims at the goal where everyone is/has to be, as far as possible, looked after. The case of the

petitioner could have been considered on the same parameters and analogy as was evolved in the cases of the above-named persons. The

respondents have treated the case of the petitioner as a â??sui generisâ?? case and have invidiously discriminated him.Â

8. In view of the preceding analysis, the petitioner of the petitioner is allowed and the impugned communication No. Health/116/NG/2010 dated

October 21st, 2010, issued by the respondent No.2 is quashed. The respondents are directed to accord fresh consideration to the case of the petitioner

for his appointment on compassionate basis in terms of the rules governing the field as also having regard to the discussion made hereinabove.

9. Writ petition disposed of as above.Â