
(2010) 07 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 763 of 2009 and CMP No. 1020 of 2009

Satya Devi

APPELLANT

Vs

State of Jammu & Kashmir and Others

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 4 JKJ 785

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Muzaffar Hussain Attar, Judge

1. Heard. Admit.

2. Notice.

3. Mr. Kakkar appeared and submitted that he has instructions to accept notice on behalf of respondents 1 to 3. Learned counsel also submitted

that objections already filed by him supported by an affidavit be treated as counter affidavit. His statement is taken on record. Prayer allowed.

Mrs. Neeru appeared and submitted that she has instructions to accept notice on behalf of respondents 4 and 5. Learned counsel further submitted

that counter affidavit filed by respondents 1 to 3 is adopted by respondents 4 and 5. Her statement is taken on record. Prayer allowed.

4. Learned counsel for petitioner submitted that in view of the facts obtaining in this case, he does not want to file rejoinder affidavit. His statement

is taken on record.

5. With the consent of learned counsel for the parties, this petition is taken up for final disposal.

6. Husband of the petitioner, who was substantively holding the post of Pump Driver in PHE Department, died in harness on 2nd January, 2003.

Petitioner immediately thereafter filed an application seeking consideration for appointment on compassionate grounds. Her case was considered

by the State authorities at various levels and was forwarded to the competent authority in the Government viz. Respondents 2 and 3 for

considering her claim for appointment on compassionate grounds in Government services. It appears from the documents which are placed on writ

record that even the recommendations were made by the respondents 4 and 5 within a period of six months from the date of death of the husband

of the petitioner.

7. When the respondents failed to take a decision on the claim of the petitioner, she was constrained to approach this Court by filing Writ petition

SWP No. 51 /2009. The said writ petition was disposed of by the Court vide its order dated 15.01.2009, directing the respondents to take final

decision about the claim of petitioner for her compassionate appointment within a period of six weeks. It was also directed that the result of the

decision be communicated to the petitioner.

8. Respondents have passed Government Order No. 583-GAD of 2009 dated 24.04.2009, rejecting the claim of the petitioner. Paragraph 4 of

the impugned order is reproduced as under:

Whereas in terms of Rule 3 of Jammu and Kashmir Compassionate Appointment Rules 1994, in force at the relevant point of time, an applicant

should have been qualified and eligible or who acquires the said eligibility within a period of (6) months from the date of death of the deceased

person. The Government as a matter of policy considers grant of relaxation upto (5) years beyond (37) years for entry into Government service, in

respect of the cases falling under SRO 43 of 1994. The relaxation policy is followed on uniform basis in all such cases. The case of the petitioner

has been examined by applying this uniform policy for grant of (5) years beyond prescribed (37) years but she was still overaged by (5) years (11)

months and (1) day as on 01.01.2006 and accordingly her claim was rejected. The decision of the Government was accordingly conveyed to PI-

IE, I & EC Department on 13.09.2006. It has also been found that the petitioner had also served a legal notice on 13.11.2008 which was duly

replied informing the petitioner about the rejection of her claim vide communication No. GAD (L) E-405/08 dated 29.01.2009.

9. Petitioner, being aggrieved of the said order, has challenged the same in this writ petition inter alia on the grounds that the claim for

compassionate appointment was made by the petitioner within the time provided by Rules notified vide SRO 43 of 1994; the recommendation

were made by the department within a period of six months to the respondents 2 and 3; respondents having failed to take a decision in the matter

resulted in delayed consideration of the claim of the petitioner for being appointed on compassionate grounds, the ground taken in the impugned

order for rejecting claim of petitioner is not tenable in law and it is a ground unknown to the service jurisprudence.

10. Respondents have filed counter affidavit. In the counter affidavit/objections, the only stand taken is that respondents have adopted uniform

policy for granting five years relaxation in the upper age limit. As this case was not covered by said policy, it was for this reason that the claim of

the petitioner has been rejected.

11. Heard learned counsel for the parties. Considered the matter.

12. Learned counsel for parties argued in tune with their respective pleadings.

13. Learned counsel for petitioner submitted that respondents policy that the relaxation cannot be granted beyond five years is illegal, but the case

of the petitioner is still covered by said policy as petitioner does not require relaxation in her age beyond five years.

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 under lying the Rules notified vide SRO 43 of 1994 is salutary in nature and the intendment 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 the 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 suffers disability on any account. 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 Rule's will be defeated.

16. The stand taken by 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.

17. In the facts of this case, application has been made within a period of six months and even the recommendation by the authorities made within

a period of six months from the date of death of husband of the petitioner. Considering this aspect of case, the petitioner would not require relaxation beyond five years period.

18. For the above state reasons this petition is allowed in the following manner:

a) By issuance of writ of Certiorari, Government Order No. 583-GAD of 2009 dated 24.04.2009 is quashed.

b) By issuance of writ of Mandamus, respondents are directed to provide appointment on compassionate ground to the petitioner within a period

of two months from today by granting relaxation in upper age limit. Petitioner is entitled to cost of Rs. 10,000/- which shall be paid to her within

aforesaid period.