
(2014) 08 J&K CK 0049
In the Jammu And Kashmir High Court
Case No : SWP No. 1267 Of 2013

Shabrooz Ahmad Rather

APPELLANT

Vs

State of JandK and Others

RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:

Citation : (2015) 1 JKJ 482

Hon'ble Judges : Mohammad Yaqoob Mir, J.

Bench : Single Bench

Advocate : Sheikh Mushtaq, Advocate, for the Appellant; Shuj-ul-Haq vice J.A. Kawoosa, for the Respondent

Judgement

Mohammad Yaqoob Mir, J.â?"Admitted position as emerges from the perusal of the records and the submissions made is that, one Mst. Nigeena

Bano was killed by un-identified gunmen on 30.03.2004 regarding which a case FIR No. 62/2004 has been registered in the Police Station

Awantipora. Petitioner, brother of the deceased applied for grant of compassionate appointment in relaxation of educational qualification. His case

was recommended but no decision was taken as a result whereof petitioner filed SWP No. 2761/2011 which stands disposed of on 03.07.2012.

In the said judgment it has been noticed that the case of the petitioner was processed at different levels ultimately referred to General

Administrative Department vide communication dated 30.11.2009 for grant of relaxation in educational qualification in terms of proviso to Rule

3(1) of SRO 43 of 1994 [Refer JKS Soft JKS/460]. Finally respondent No. 2 (Commissioner Secretary to GAD) has been directed to consider

and take a decision for grant of relaxation in age limit and educational qualification, on the same lines as has been done in the case of private

respondents therein i.e. Manzoor Ahmad Mir S/o. Mohammad Ibrahim Mir R/o Kakapora Pulwama and Mohammad Rafiq Bhat S/o. Ghulam

Mohi-ud-din Bhat R/o Piplish Tral Pulwama, with further direction that necessary orders for appointment of the petitioner on compassionate

grounds in accordance with the rules be passed thereafter. The decision was to be taken within a period of four weeks.

2. In compliance whereof Government Order No. 1268-GAD of 2012 dated 30.11.2012 has been issued. Perusal of the same would suggest that

the order is not in compliance but in breach of the judgment. On imaginary ground claim of the petitioner has been rejected. In the order it has been

mentioned that the case of the petitioner was re-examined, payment of cash compensation in accordance with SRO 199 of 2008 [Refer 2008 (7)

JKS JK-44] has been granted. Since the case of the petitioner is not covered under rules, relaxation in qualification is not warranted. Dissatisfied

with the said Government order instant petition has been filed.

3. Respondents 1 to 4 have filed reply, Para 2 of which is reproduced as under:

That the relaxation was granted in favour of respondents 5 and 6 in qualification bar vide Govt. Orders dated 12.11.2012 and 13.11.2012. In this

regard, it is submitted that fresh cases were processed earlier in the year 2010 (upto 11/2009) and accordingly relaxation was granted. The case

of the petitioner alongwith similar other cases were processed in the year 2010 for relaxation. However, the stand regarding settling of all cases of

NOKs of civilians killed in militancy involved relaxation process for year 2010 was taken in view of shortage of Class IV posts earmarked for

settlement of militancy related cases and also for utilizing of funds made available by the Ministry of Home Affairs, Government of India. All other

cases which were processed after 2012 were disposed of accordingly; as such no differential treatment has been given to the petitioner.

4. Case of the petitioner pertains to the year 2004, same has been processed in the year 2010 as is admitted, similar was the position of

respondent No. 5 and 6 whose cases were finally considered on the directions of the court and relaxation has been granted in their favour vide

Government Orders dated 12.11.2012 and 13.11.2012.

5. Learned counsel for the petitioner highlighted that the respondents have granted relaxation of age as well as qualification in number of cases, in

support whereof he has placed on record Govt. Order No. 1673/GAD/2009 dated 30.11.2009 and 1577/GAD of 2009 dated 12.11.2009 also

have placed on record Order No. 123/2011/DCP/SRO dated 28.11.2011 and order No. 121/2011 dated 28.10.2011.

6. According to learned GA there are number of similar cases. Government as a policy matter has taken a decision that all cases which were

processed up to 2010 were considered for relaxation in age as well as qualification for appointment, whereas cases processed after the year 2010

were not allowed relaxation but were paid cash compensation in terms of SRO 199 of 2008.

7. J & K (Compassionate Appointment) Rules 1994 notified vide SRO 43 of 1994 were in vogue, when the cause accrued to the petitioner, same

provide for appointment on compassionate grounds in terms of Rule 5(2) as the deceased admittedly a civilian died in militancy related action.

Powers under Rule 7 were to be exercised and it is in the backdrop of Rule 5 and 7 the case of the petitioner was processed but remained

pending for quite a long time. The compassionate appointment rules were amended as notified vide SRO 199. The said amendment provides that

the family members of the civilian killed in militancy related action shall be entitled to a cash compensation in lieu of appointment of Government

services but the same is controlled by a proviso which reads as under:

Provided that if any one among the family members of the deceased civilian fulfills the eligibility criteria prescribed under the aforesaid Rules for

appointment into the Government service or acquires such eligibility within one year from the date of death of the deceased person, then they shall

have the option either to choose the Government service or the compensation.

8. When the petitioner is eligible and similarly situated cases have been treated in a different manner, how can the petitioner be ignored, glaring

example is of respondents 6 and 7, whose cases have been considered vide Govt. Order 123/2011/DCP/SRO dated 28.11.2011 in relaxation of

age/qualification. Respondent No. 6, Manzoor Ahmad Mir has been appointed on compassionate grounds. Similarly, respondent No. 7 Mohd

Rafiq Bhat has been appointed on compassionate grounds.

9. SRO 199 does not negate the right of the petitioner for being considered for compassionate appointment. The earlier judgment rendered in

SWP No. 2761/2011 for the stated reasons has not been followed properly, the order of consideration i.e. Government Order No. 1268 GAD

2012 has been passed casually in deviation to the rules as well as to the mandate of the judgment, therefore quashed. In the aforesaid background

and the observations made, the respondent No. 2 (Commissioner Secretary to GAD) shall accord consideration afresh to the case of the petitioner

for relaxation as may be required. Appropriate decision be taken within a period of six weeks from the date copy of the order is served upon him.

Result of the consideration shall be conveyed to the petitioner. Right is reserved to the petitioner to re-agitate, if thereafter, any cause survives.

Disposed of as above alongwith connected CMPs.