

(2015) 11 J&K CK 0021

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 479 of 2003

Sohan Lal

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 JKJ 51

Hon'ble Judges : Mr. N. Paul Vasanthakumar, CJ.

Bench : Single Bench

Advocate : Mr. Sahib Aggarwal, Advocate, for the Petitioner; Mr. S.F. Iqbal, Dy. AG, for the Respondent

Final Decision : Disposed off

Judgement

Mr. N. Paul Vasanthakumar, C.J. - This writ petition is filed seeking to quash Government Order No. 31-Works of 2002, dated 17.12.2002

whereby petitioner's claim seeking compassionate appointment was rejected on the ground that the petitioner has not applied within the time

stipulated in SRO 43 of 1994.

2. The case of the petitioner is that his father while working as Work Supervisor died on 27.03.1992 and the petitioner attained majority in

December, 1996 and he applied for compassionate appointment in the year 1999 and as per the Rules prevailing in the year 1992 i.e. SRO 283 of

1991, there is no limitation for submitting application and the lesser age upto four years can be relaxed.

3. The said aspect having not been considered and SRO 43 of 1994 is relied on to reject the claim of the petitioner, which is not permissible.

Which rule is applicable to consider the claim of the appellant as his father died

prior to issuance of SRO 43 of 1994, was already considered by the Division Bench of this Court in 2013 (2) JKJ 126 [HC] (S. Vikram Singh v. State of J&K and Ors.). In the said judgment it is held that the rule applicable is the rule when cause of action has accrued i.e. the time of death of the Government employee and as per the earlier Rules prior to issuance of SRO 43 of 1994, even a minor is entitled to compassionate appointment on attaining majority and only fact which has to be ascertained is to find out whether the family of the deceased Government employee continues to be in penury and compassionate appointment would mitigate such hardship. In paragraph nos. 15 and 16 of the judgment it is held thus:-

15. The litmus test in all such cases is whether the person claiming benefit of appointment on compassionate grounds continues to be exposed to the hardship that befell him because of the sudden demise of Govt, employee on whom he was dependent. The appellant lost his father when he was one and half years old. The accident that claimed life of his father, left him permanently disabled for rest of his life. Only because the appellant has lived on handouts and leg-ups during his childhood and somehow kept his head above water, must not persuade us to believe that he has survived the worst years and does not face any hardship because of the tragic demise of his father at the time he was a suckling baby. When we assess whether a family or a member thereof that has lost the only breadwinner has been able to tide over the crisis, we should not only be influenced by the fact that the members of the family because of one or the other reason have been able to survive. Death of a dependent of a Govt, servant who has died in harness, is not the test to satisfy ourselves that such dependent has not survived the crisis in which he was plunged because of sudden demise of the Government servant. We have to be compassionate in the matter as the label given to the Rules would suggest and examine whether the dependent of a Government servant who died in harness claiming appointment on compassionate grounds would have been better off had the Government servant not lost his life.

16. In the present case, the appellant before us, was an infant on the date he lost his father. His will power did not allow the tragedy that befell him, to dampen his spirit and blunt his urge to pursue his academic career. He with

his 75% permanent disability continues to be exposed to the hardship with which he was visited on death of his father. The appellant therefore is entitled to be considered for appointment on compassionate grounds in terms of Rules occupying the field on the date of death of his father

4. Hon'ble the Supreme Court in the decisions reported in (2007) 9 SCC 571 (State Bank of India and Ors. v. Jaspal Kaur) and (2009) 7 SCC 295 (Maharani Devi and Anr. v. Union of India and Ors.) considered similar issue as to the claim of compassionate appointment of a candidate and the Rule which will apply for considering such claim. Hon'ble the Supreme Court held that the effect of subsequent policy decision will not affect the accrued right of a candidate seeking compassionate appointment and the consideration of the claim should be under the Rules which prevailed on the date of death of the Government servant as the right of the legal heir got crystallised on the date of death of the Government servant. It is also to be noted at this juncture that retrospectively amending Rule, fixing strict norms, is also not valid as accrued vested right under the scheme in vogue cannot be taken away as reported in (1997) 6 SCC 623 (Railway Board v. C. R. Rangadhamaiah). If the amended scheme is beneficial to the candidate the same can be considered as held by Hon'ble the Supreme Court in the decision reported in (2015) 3 SCC 399 (Vijaya Ukarda Athor (Athawale) v. State of Maharashtra and Ors.).

5. Considering the said aspect, the impugned order is set aside and the 3rd respondent is directed to send the proposal seeking relaxation of age to the General Administration Department within a period of four weeks from the date copy of this order is served on him. On receipt of the proposal, the General Administration Department is directed to consider grant of relaxation in terms of SRO 283 of 1991 and convey to the 3rd respondent based on which the 3rd respondent shall pass necessary orders. Let this exercise be completed within a period of three months.

6. This writ petition is disposed of in the above terms. No costs.