

(2010) 11 J&K CK 0005
In the Jammu And Kashmir High Court
Case No : LPA SW No. 50 of 2010

State of J. and K. and Others

APPELLANT

Vs

Safia Begum

RESPONDENT

Date of Decision : 26-11-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Jammu and Kashmir (Compassionate Appointment) Rules, 1994 — Rule 2 , 3, 4, 5

Citation : (2010) 4 JKJ 968

Hon'ble Judges : Aftab H. Saikia, C.J; Muzaffar Hussain Attar, J

Bench : Division Bench

Advocate : Shaista Hakim, for the Appellant; Surinder Kour, for the Respondent

Final Decision : Dismissed

Judgement

Muzaffar Hussain Attar, J.—In the administration of justice, amongst others, one of the fundamental duties of the Court is to shape up rights

of people by chiseling the statute. The expression 'Government employee' appearing in Rule 2 of the Jammu and Kashmir (Compassionate

Appointment) Rules 1994 (for short 'Rules of 1994') requires to be unveiled in its true and correct legal fashion, so as to achieve the object

underlying the Rules of 1994.

2. One Mohammad Sadiq (deceased) was appointed as Pharmacist in the year 1991, on ad hoc/stop gap basis. The deceased continued in

service of the Appellants till February 08, 2003 on which date he breathed his lost. His widow, namely, Safia Begum, sought consideration for

being appointed on compassionate grounds. Her case for appointment on compassionate grounds was recommended by the Block Medical

Officer, Mendhar vide communication dated 05th March, 2003, the Chief Medical

Officer, Poonch vide communication dated 11th March, 2003

and the Director Health Services, Jammu vide communication dated 31st May, 2003. In the communication of the Director Health Service, Jammu

request for regularization of the services of the deceased, in terms of Government order No. 1304-GAD of 2001 dated 09th November, 2001

was also made. In the said communication, reference was also made to an identical case which was settled by the Government by issuing

Government order No. 304 GAD of 2001 dated 19th July, 2002. Respondent has placed on writ record documents showing that One Smt.

Naseer Begum widow of Mohammad Ramzan was ordered to be appointed on compassionate grounds in identical circumstances. The

Appellants, having failed to address the claim of the Petitioner for being appointed on compassionate grounds, was constrained to approach the

Court by filing SWP No. 1357/2005. It was prayed in the writ petition by the Respondent-writ Petitioner that Appellants be directed to consider

her claim for appointment on compassionate grounds or on Class IV post or on any other equivalent post in place of her deceased husband, on the

basis of Rules of 1994 or any other equivalent post in place of her deceased husband and in the alternative it was prayed that similar treatment be

ordered to be meted out to Petitioner which has been given to Smt. Naseer Begum.

3. In the writ petition, it was pleaded that the deceased remained in the employment of the Appellants from the year 1991 to 2003 and because of

the untimely death of the deceased the family of the deceased was ushered into a very difficult period and it has become difficult for the

Respondent-writ Petitioner to sustain herself because of lack of financial support.

4. Respondents, in objections filed before the writ court, took a stand that as the deceased was working on adhoc basis till his death, so the case

of the Respondent-writ Petitioner is not covered by the rules notified vide SRO 43 of 1994.

5. Learned writ Court heard and decided the writ petition in which judgment was pronounced on 29th September, 2009. The contention of the

Appellants that as the deceased had the status of adhoc employee, so was not covered by the compassionate appointment rules, was negated by

the learned writ Court by relying on earlier judgment of the Court. In terms of

the judgment impugned in this LPA, writ petition was allowed and

Appellants were directed to consider the claim of the Respondent/writ Petitioner for appointment on compassionate grounds strictly in terms of

Rules governing the field subject to her qualification and eligibility. Three months period was given for completing the process from the date copy

of order would be served upon the Appellants.

6. Appellants, being aggrieved of the said judgment, have called the same in question in this LPA.

7. We have heard learned Counsel for the parties. Considered the matter.

8. Learned Counsel for Appellants submitted that as the deceased was an adhoc employee, so the Rules 1994 are not attracted and Respondent-

writ Petitioner is not entitled to seek consideration for appointment on compassionate grounds.

9. Mrs. S. Hakim, learned Deputy Advocate General was at pains to explain to the Court that the expression 'Government employee' occurring in

the Rules of 1994 would not include an adhoc employee. Learned Counsel, in order to support her contention, referred to and relied upon the

judgment of the Hon'ble Supreme Court in case titled State of Haryana and Others Vs. Rani Devi and Another, , case titled General Manager,

Uttarnchal Jal Sansthan and ors v. Laxmi Devi and Ors. reported in AIR 2009 SCW 5014. Learned Counsel also submitted that a writ of

Mandamus cannot be issued to command the Government and its authorities to do an act, which is not countenanced by the law and the Rules.

Learned Counsel further submitted that the Government and its authorities cannot be directed to give a benefit to a person on the basis of a wrong

decision, which decision had crystallized into a benefit in favour of some other person. Learned Counsel in this behalf referred to and relied upon

case titled State of Bihar and ors v. Kameshwar Prasad Singh and Anr. reported in AIR 2000 SCW 2389.

10. Mrs. Surinder Kaur, learned Counsel appearing for the writ Petitioner-Respondent submitted that the Court has held in judgment that not only

the family members of the adhoc employee, but even daily wager is entitled for being appointed on compassionate grounds. Learned Counsel

submitted that judgment under appeal, being legal, does not call for any interference.

11. In view of the mandate contained in Article 14 and 16 of the Constitution of India, a post available with Government is public property and in

the event competent authority decides to fill up the post, then all eligible candidates are to be notified about the said decision of the authority and

those who respond to the advertisement notification, are to be considered for being selected/appointed on the basis of their merit and suitability.

12. The State and its authorities, in view of the our Constitutional scheme, are duty bound to ensure about the welfare of the people, however,

within its financial capacity. A person, who is employed by the Government on a post available in service or even on ex-cadre basis becomes a

Government employee. The appointment of a person to a service and or on ex-cadre basis though originates from a contract but such a person

attains a status and is governed by the Rules/Executive orders occupying the field. A person employed by the Government on rendering his

services is being paid remuneration which is settled by the Rules. The pay and other perks paid to an employee by the Government and its

authorities becomes source of sustenance for the employee himself and his family members. The affairs of the family are carried on, on the strength

of pay that is being paid to an employee. Due to untimely death of an employee, the family is denuded not only of the love, affection and care of the

said person but of the source of sustenance as well. The family, who suffers such a tragedy is not only emotionally and psychologically shattered,

but is abruptly deprived of the source of sustenance as well. The state, in view of our constitutional philosophy, is duty bound to take care of the

welfare of its people. This is, of course, one of the fundamental duties of the State. When a family is ushered into aforementioned circumstances,

because of the death of the sole sheet anchor of the family, it is reduced to penury and is mostly bound to totter at the brink of starvation. In order

to save such family from destitution and starvation, the State Government has taken a policy decision to provide succor to them. The roots of this

policy decision are deeply embedded in our Constitutional philosophy. The policy decision so taken was enthused with life by issuance of Rules

called J&K (Compassionate Appointment) Rules 1994. The Rules 2 to 5 of the Rules of 1994 are reproduced as under:

2. Application of Rules:

These rules shall apply to the compassionate appointment of a person who is a family member of:

i) a Government employee who dies in harness other than due to militancy related action;

ii) a Government employee who dies as a result of militancy related action and is not involved in a militancy related activities;

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

does not exceed Rs. 3,500/- per month as assessed by the Revenue Officer not below the rank of an Assistant Commissioner;

iv) a permanent resident junior Commissioned Officer or Non-Commissioned Officer of the armed force or an officer of equivalent rank of the

para military force who is killed in action connected with law and order duties within the State of Jammu and Kashmir or as a result of enemy

action on the line of actual control.

3. Appointment under these rules:

(1) Notwithstanding anything contained in any rule or order for the time being in force regulating the procedure for recruitment in any service or

posts 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 a

non-gazetted service having qualification above Matriculation or to a class IV post if the candidate has read upto Matric.

Provided that the applicant is eligible and qualified or acquires eligibility and qualification within a period of six months from the death of the

deceased person specified in Rule 2.

(2) Nothing in Sub-rule (1) shall derogate from the powers of the Government in General Administration Department to appoint at its discretion a

candidate to a higher post in the non-gazetted service if he/she is a family member of a deceased Government employee or a civilian killed in the

militancy related actions.

(4) Appointment in case of death in harness:

Appointment under these rules in respect of a family member of a Government employee who dies in harness due to a cause other than militancy

related action shall be made by the Head of the Department concerned, provided that:

i) Where no post is available in the office or subordinate offices of the Head of the Department, the proposal for appointment shall be submitted to

the Administrative Department concerned and where there is no post available in the Administrative Department concerned also, the case shall be

referred to General Administration Department for appointment of the candidate in any other Department; or

ii) Where any such appointment is to be made in relaxation of rules, such cases shall be submitted to the General Administration Department in co-ordination.

5. Appointment in other cases:

(1) Appointment under these rules in respect of member of a family of a Government employee or a civilian who has died as result of militancy

related action or in respect of a family members of the officer or armed force or para military force shall be made by the General Administration

Department in accordance with the procedure herein after prescribed.

(2) A family member of a Government employee or a civilian who dies as a result of militancy related action may apply for appointment against any

suitable vacancy to the Deputy Commission of the District in which he or she resides. The Deputy Commissioner after making such enquiry as may

be necessary, may forward the case to the Government in the General Administration Department through the Home Department for his or her

adjustment against a suitable vacancy in any department under the Government.

(3) A family member of a deceased member of armed force or paramilitary force who is eligible under these rules may apply for appointment

against a suitable vacancy to the Government in the Home Department through the Commanding Officer of the Unit in which the deceased member

of the armed force or para military force was last serving. The Home Department after determining the eligibility may forward the case to the

Government in the General Administration Department.

13. Rule 2 of the Rules of 1994 make the rules applicable to family member of:

(i) A Government employee who dies in harness other than due to militancy related action;

(ii) A Government employee who dies as a result of militancy related action and is not involved in militancy related activities.; and

(iii) A civilian who dies as a result of militancy related action not involved in militancy related activities etc.

14. Rules 4 and 5 of Rules 1994 confer power on authorities for making appointment on compassionate grounds.

15. Rules of 1994 have been carved out as an exception to the normal rule of appointment to the public post. This deviation from normal rule of

appointment to a post from open market in view of the laudable purpose to be achieved by offering appointment on compassionate grounds, has

been accepted to be one of the lawful modes of appointment to the service. The purpose underlying for creation of such class, as already stated, is

to save the family of the deceased employee and also the deceased civilian or military officer from vagaries of starvation.

16. It is in this backdrop the expression 'Government employee' occurring in the Rules of 1994 is to be understood and interpreted, so as to

achieve the purpose underlying the said rules. Different eventualities have been revealed in the Rules of 1994, which would entitle the family

member to be considered for appointment on compassionate grounds viz. Government employee who dies in harness, Government employee who

dies as a result of militancy related actions and a civilian who dies as a result of militancy related action not involved in militancy related activities.

The purpose underlying the Rules of 1994 is not only to secure the interest of family of the deceased employee, but that of deceased civilian as

well. In this backdrop, the expression 'Government employee' occurring in the Rules of 1994 is to be understood and interpreted. There would

have not been any difficulty in arriving at a particular conclusion had the rule making authority itself defined 'Government employee' in the rules

itself. The rule making authority has consciously put the expression 'Government employee' in the Rules of 1994. If it would have been the intention

of the Government to restrict the benefit arising under the Rules of 1994 to the family members of permanent Government employee alone, nothing

would have prevented the competent authority to say so in the rules by accordingly defining the 'Government employee'. The Government

employee is a person, who is employed by the Government for taking service from him. The Government employee, as occurring in Rules of 1994,

is a permanent Government employee, a temporary Government employee and an adhoc Government employee. This interpretation derives the

support from the clause III of Rule 2 of the Rules of 1994, when it provides for according consideration for compassionate appointment to the family members of a civilian. The Government, when it offers appointment on compassionate grounds to a family member of the deceased civilian on the same principle, logic and rationality, the expression 'Government employee' occurring in Rules of 1994 would include even temporary and adhoc employees. The purpose underlying these special rules of compassionate appointment can be achieved only when such an interpretation is placed on expression 'Government employee' occurring in Rules of 1994. It is for this reason Appellants have appointed Naseer Begum.

17. The judgments referred to by the learned Counsel for Appellants are of no help to the Appellants inasmuch as the facts and legal position projected in those cases are materially different from the case in hand. In the case of State of Haryana and others, a direction was issued for appointment of family member of Apprentice Canal Patwaris. At paragraph 3 of the said judgment, it is mentioned that the State Government had taken a decision which was notified on 9th May, 1972 providing therein that scheme of benefit of ex-gratia payment to the dependant of the employees of the Haryana Government who died while in service was not applicable to adhoc employees. It is on the basis of this plea, a stand was taken by the State of Haryana before the Hon'ble Supreme Court in the case (supra) that the scheme in respect of payment of ex gratia grant or giving an appointment to one of the dependants of the deceased Government employee is not applicable to casual, ad hoc employees or employees who are just apprentices. It is in this factual background that the Hon'ble Supreme Court has held that Respondent, in the said case, were not entitled to for being considered and appointed on compassionate grounds. The case of General Manager, Uttaranchal Jal Sansthan, proceeded on the rules issued and framed by the Government of Uttar Pradesh and the Rules itself defined the Government servant to mean (i) permanent in such employment; or (ii) though temporary had been regularly appointed in such employment; or (iii) though not regularly appointed had put in three years continuous service in regular vacancy in such employment. Rule 3 of those Rules provided that Rules would apply to recruitment of dependents of the deceased Government servants to public services and posts in connection with the affairs of the State of Uttar

Pradesh. In view of the definition of the Government servant provided in the rules itself, the appointment on compassionate grounds was to be

restricted to such types of employees alone. The facts of this case are also different from the facts of the case in hand. The Hon'ble Supreme Court

in case titled Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, at paragraph 59 has held as under:

59. A decision, as is well known, is an authority for which it is decided and not what can logically be deduced therefrom. It is also well settled that

a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

18. In view of the law laid down by the Hon'ble Supreme Court in Bhavnagar University's case the judgment referred to and relied upon by the

learned Counsel for Appellants is not applicable to this case, as the facts of this case are materially different from the facts of the said case.

Another judgment referred to and relied upon by learned Counsel for Appellants providing that direction cannot be issued for committing or

repeating a wrong, is an established norm of law. There can be no quarrel with this proposition of law. Article 14 and 16 of the Constitution of

India cannot be implored to attain negative goals. In this case no direction is sought against the Appellants for committing a wrong or repeating a

wrong.

19. Appellants, in view of our above referred discussions, are duty bound to accord consideration to the claim of the Respondent-writ Petitioner

for being appointed on compassionate grounds within period as provided in the impugned judgment.

20. For the above stated reasons, we find no merit in the appeal. It fails and is accordingly dismissed.