

(2015) 12 J&K CK 0044

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1922 of 2003 and MP No. 2101 of 2003

Suresh Mitla

APPELLANT

Vs

State of J&K

RESPONDENT

Date of Decision : 18-12-2015

Acts Referred:

Compassionate Appointment Rules, 1994 — Rule 7
Constitution of India, 1950 — Article 226

Citation : (2016) 3 JKJ 513

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

Bench : Single Bench

Advocate : Mr. J.R. Arora, Advocate, for the Petitioner; Mr. W.S. Nargal, AAG, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. N. Paul Vasanthakumar, C.J.—This writ petition is filed praying to quash order dated 25.06.2003 rejecting the request of the petitioner

seeking compassionate appointment as Sub-Inspector in J&K Police (Executive) under the provisions of SRO 43 of 1994, on the same analogy as

has been adopted in the case of respondent No. 4, w.e.f. the date respondent No. 4 has been appointed with all other consequential benefits.

2. The case of the petitioner is that father of the petitioner and father of respondent No. 4. were working as Inspectors in Police Department. Both

of them have died in harness while serving in Vigilance Organization between the gap of 12 days. The petitioner and respondent No. 4 after the

death in harness of their respective fathers, applied for compassionate appointment under SRO 43 of 1994, as they were qualified and only eligible

persons in their respective families. The petitioner has passed B.Sc. Part-I,

whereas the 4th respondent has passed 12th standard. The Home Department recommended the case of both the petitioner as well as respondent No. 4 for compassionate appointment as Assistant Sub-Inspector by relaxing the Rules, however, the relaxation was granted by the General Administration Department in favour of respondent No. 4 and he was appointed as Assistant Sub-Inspector. Insofar as the petitioner is concerned, his application was kept pending without any justifiable reason and he filed writ petition SWP No. 1042/2002 and this Court by order dated 23.08.2002 directed the respondents to consider the claim of the petitioner seeking compassionate appointments within a period of three months from the date of receipt of copy of that order. The direction having not been complied with, the petitioner filed contempt petition bearing COA No. 25/2003 and during pendency of the contempt petition, the impugned order dated 25.06.2003 was passed by stating that petitioner was offered the post of constable, based on his qualification which he declined. The 4th respondent was given the post of Assistant Sub-Inspector by relaxing the qualification. It is also stated in the order that the relaxation can be granted on discretionary basis and the petitioner cannot claim it as a matter of right, as it was given to 4th respondent.

3. Learned counsel for the petitioner has cited judgment of Hon'ble the Supreme Court reported in 2002 (9) SCC 445 (Surya Kant Kadam v.

State of Karnataka) regarding disparity on compassionate grounds. In paragraph 2 of the said judgment it is held thus:

It is true that the appointment on compassionate ground in the State of Karnataka is not governed by any statutory rules but by set of administrative instruction and as such is not enforceable in a court of law. But the grounds on which the appellant makes out the case for consideration of his case, is the violation of Article 14 and discriminatory treatment meted out to the appellant. It is undisputed that the date on which the appellant was given a compassionate appointment as the second division assistant/clerk he had the necessary qualification for being appointed as Sub-Inspector of Excise. It is also undisputed that the respondents 3 & 4 were given appointment initially as second division assistant/clerk but later than the appellant. When the State therefore thought it fit to change the post of respondents 3 & 4 and appointed them to

the post of Sub-Inspector of Excise, unless there exists any justifiable reason there is no reason as to why the appellant should be treated with a hostile discrimination. In the aforesaid circumstance, we set aside the impugned order of the Tribunal rejecting the prayer of the appellant for being considered for the post of Sub-Inspector of Excise and we direct that the State Government may consider the case of appointment of the appellant as Sub-Inspector of Excise. Be it stated, in the event he is appointed it would be prospective and he will not be entitled to any retrospective benefit. The appeals are allowed accordingly.

4. In light of the said judgment of Hon'ble the Supreme Court, in which it has been held that even though the grant of relaxation is discretionary, there cannot be any discrimination. There is no distinguishable feature on facts. In reply affidavit filed by the respondents distinguishable facts are not mentioned. In such circumstance and in the light of the judgment of Hon'ble the Supreme Court holding that even in discretionary matters, Article 14 of the Constitution has to be followed.

5. Even though in the objections filed, it is stated that there is no power to grant relaxation of qualification but in terms of Rule 7 of the Compassionate appointment Rules, 1994, the government is empowered to relax educational qualification/technical qualification as the case may be.

6. Since the discretion having not been exercised by the General Administration Department to the case of the petitioner though there are no distinguishable facts, the same cannot be accepted, hence the impugned order is liable to be set aside. Accordingly, impugned order is set aside with a direction to respondent No. 1 to issue appointment order to the petitioner as Assistant Sub-Inspector as it was given to 4th respondent within a period of four weeks from the date of receipt of copy of this order.

7. The writ petition is disposed of in the above said terms. No costs.