

(2011) 02 J&K CK 0024

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 661/09

Tariq Ahmed Wani

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 28-02-2011

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2011) 2 JKJ 103

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Muzaffar Hussain Attar, J.—Can the benefit flowing from Jammu & Kashmir (Compassionate Appointment) Rules 1994, (for short Rules of

1994) be extended to the family member of a person who dies in militancy related action outside state of Jammu and Kashmir, requires

consideration and exposition.

2. The life of one Manzoor Ahmed wani S/o Gh. Qadir Wani R/o Yamrach Teshil Kulgam (for short the deceased), was brought to an abrupt end

due to bomb explosion on 3rd of March 2000, near Surhind District Fatehgarh Punjab, when he was traveling from Jammu to Delhi. Claim was

made by the Petitioner for being considered for being appointed in accordance with the mandate of Rules 1994.

3. The claim was initiated immediately after the death of deceased. Documents placed on record show that Naib Tehsildar sent a report to the

Tehsildar Kulgam on 26th of July 2000, giving details about the family strength of Petitioner and the monthly earnings etc. The Petitioner has also

placed on writ record order No. DCP/N/CA/02/170-223 dated 23rd Nov. 2002, and it is pleaded in the writ petition that appointment on

compassionate grounds was offered to Zamroda Akther as one Aijaz Ahmed Palla died in similar circumstances, but the claim of the Petitioner for

appointment on compassionate grounds has been rejected.

4. On notice issued in this case, reply affidavit has been filed by Respondents. The main ground taken in the reply affidavit is that the accident took

place outside the state of J&K so benefit of rules of 1994 could not be extended to family of the deceased. It is the main ground taken in the

impugned order by Respondents to deny the claim of Petitioner.

5. Heard Id counsel for parties. Considered the matter.

6. The state of J&K which is a welfare state, has taken conscious decision of providing compassionate appointment in order to provide succor, to

the family member of a Government employee who dies in harness; a government employee who dies as a result of militancy related action; and a

civilian who dies as a result of militancy related action not involved in militancy related activities. This policy decision was given shape of law by

issuance of rules of 1994. Rule 2 of the Rules of 1994 which provide for application of Rules is reproduced as under:

2. Application of Rules: These rules shall apply to the compassionate appointment of a person who is 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 military 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

paramilitary force who is killed in action connected with law and order duties within the state of J&K or as a result of enemy action on the line of

actual control.

7. In order to attract the Rules of 1994, a person staking claim for

compassionate appointment has to satisfy the requirement laid down in Rules of 1994. Rule 2 (iii) has been re-cast vide SRO 211 of 1995 dated 28.08.1995, which is reproduced herein below:

(iii) a civilian who dies as a result of militancy related action [or due to enemy action on the line of Actual Control/International Border within the

State of Jammu & Kashmir] not involved in militancy related activities and total income of the family from all sources does not exceed ***Rs.

5000/- per month as assessed by the Revenue officer not below the rank of an Assistant Commissioner

8. While interpreting the Rule, the court has to look at the plain language of the statute and also to look at the purpose sought to be achieved by the

said statute. The purpose sought to be achieved by the rules of 1994 is to provide succor to family of the deceased so as to ensure that the family

does not totter at the brink of starvation. The rules of 1994, have solemn and salutary purpose to achieve. The benefit flowing from the said rules is

applicable to all the citizens of Jammu and Kashmir State. The State in view of the mandate contained in Article 21 of the Constitution as also

under its inherent powers, is duty bound to provide succor to family of the deceased by providing employment to one of family member, however,

within its financial capacity. The rules of 1994 have universal application and cannot be confined to the boundaries of J&K State alone. Territorial

restrictions cannot be placed on the application of such rules. In view of the plain language of rules of 1994, the benefit of rules cannot only be

given to the family member of those who die within the territorial limits of J&K State, but is also available to the kin of those of citizens of J&K

state, who die beyond the territorial limits of the State of J&K, provided they satisfy other requirements which are enumerated in the rules of 1994.

The next to kin of such deceased person will get right in terms of rules of 1994 to stake claim for appointment on compassionate grounds provided

he/she satisfy all the statutory requirements. The restrictions sought to be placed on the rules of 1994 through the impugned order is incongruous to

the salutary purpose sought to be achieved by the said rules. The only conclusion that can be drawn in interpreting the rules of 1994 is that the

benefit cannot be restricted to the territories of state of J&K alone. The benefit extended to citizen of J&K has to travel beyond the boundaries of

state of J&K and would be available to families of those who die beyond territories of J&K but who satisfy the other statutory requirements as well.

9. In terms of Rules of 1994 a citizen of J&K gets clothed with an important right of being appointed on compassionate grounds. The benefit

flowing from compassionate appointment, Rules are available to a citizen of J&K and he carries the said right with him, notwithstanding the fact

that cause thereof accrues beyond frontiers of State of J&K. In terms of SRO 211 of 1995 one more category of person(s) is added to secure the

benefit of compassionate appointment viz the kin of person who dies due to enemy action on the line of actual control/international border within

state of J&K. The law making authority has made a conscious decision to extend benefit of compassionate appointment to the kin of

aforementioned category who dies in J&K State. Had the intention of confining the compassionate appointment to the kin of deceased of only

those who die in state of J&K then legislatures would have specifically stated so. Even such a condition would collapse in view of our constitutional

philosophy.

10. Compassionate appointment Rules are beneficial in text and character. They have been engineered and designed to prevent the collapse of a

family due to death of one its members. The Rules of 1994 cannot be said to create an artificial demarcation between a state subject who dies in

militancy related activity in state of J&K and that who dies in similar circumstances beyond the territory of state of J&K. The Rules of 1994 are in

a way also compensatory in nature. These Rules possess the potential of compensating, to some extent, the immeasurable loss suffered by family

due to the death of one of its family members in the circumstances enumerated in these rules. These Rules have nexus with mitigating hardship of

affected family. Family is the nucleus around which the Rules of 1994 have been woven. The family is thus to secure benefit irrespective of fact

whether death occurs in state of J&K or beyond its territories.

11. Assume a situation that a Govt., employee dies beyond territory of state of J&K, will the benefit flowing from Rules of 1994 be denied to the

family. The answer has to be no, as otherwise, the whole purpose of rules will stand defeated. On this analogy also the benefit flowing from Rules

of 1994 cannot be denied to the family of civilian who dies outside state of J&K in militancy related action.

12. As the impugned order has been passed on the ground which is greek to letter and spirit of rules of 1994, same cannot be sustained in law.

13. For the above stated reasons, this petition is allowed. Impugned order No. I22/P.A(T) dated 21.06.2008 is quashed and the Respondents are

commanded to consider the claim of the Petitioner afresh for appointment on compassionate grounds in accordance with the rules of 1994.

Respondents to conclude this exercise within a period of two months from the date copy of this order is served.

14. Disposed of along with all connected CM Ps.