

(2022) 09 J&K CK 0015

In the Jammu And Kashmir High Court

Case No : Service Writ Petition No. 775 Of 2018

Zahoor Ahmed Khan

APPELLANT

Vs

State Of J&K And Ors

RESPONDENT

Date of Decision : 01-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Jammu And Kashmir (Compassionate Appointment) Rules, 1994 — Rule 2, 2(iii), 3(3), 5, 5(1)

Citation : (2022) 09 J&K CK 0015

Hon'ble Judges : Javed Iqbal Wani, J

Bench : Single Bench

Advocate : M.A. Ganai,, Irfan Andleeb

Final Decision : Disposed Of

Judgement

Javed Iqbal Wani, J

1. In the instant petition filed under Article 226 of the Constitution of India, the petitioner, by a writ of certiorari, has sought quashment of impugned Communication No. DCK/LS/ARA/16/700-701 dated 19.10.2016 addressed by respondent No. 4 to respondent No. 2 as also a writ of mandamus, for commanding the respondents to consider the case of the petitioner for compassionate appointment.

FACTS:

2. The brother of the petitioner, namely, Farid Ahmed Khan, is stated to have got killed by some unknown gunmen in the year 1994. An FIR is also stated to have got registered with the concerned Police Station in this regard. An amount of Rupees One Lac is stated to have been paid as compensation to the family of the deceased. Proforma respondent No. 5 herein being the brother of the petitioner herein states to have applied for compassionate appointment under SRO 43 on account of the death of the above named brother of the petitioner, however, the

proforma respondent No. 5 is stated to have got appointed in the Police Department in the year 2007 during the pendency of his case for compassionate appointment, as a consequence whereof, the proforma respondent No. 5 herein withdrew his case for consideration for compassionate appointment by bringing the fact of his appointment to the notice of the Deputy Commissioner, Kupwara by virtue of an application dated 22.5.2008. An enquiry is also stated to have been conducted on the said application of the proforma respondent No. 5 by the Deputy Commissioner, Kupwara and a report in this regard had been furnished by Tehsildar, Kupwara dated 23.10.2010 endorsing and authenticating the appointment of the proforma respondent No. 5 in the Police Department, withdrawal of his claim for compassionate appointment and substitution of the petitioner herein for claim for compassionate appointment.

3. The petitioner earlier filed writ petition bearing SWP No. 2682/2011 seeking therein the quashment of Order No. 236/DCK/Adm of 2009 dated 16.11.2009 to the extent of respondent No. 5 (proforma respondent No. 5 in the instant writ petition) with a further relief for commanding the respondents to consider his representation and process his case for compassionate appointment under SRO 43.

4. The writ petition (supra) came to be disposed of in terms of Order dated 26.10.2015 passed by this Court, giving liberty to the petitioner herein to pursue the representation already made before the authorities. The respondents, however, are stated to have addressed the impugned communication dated 19.10.2016 inter se declining to offer compassionate appointment to the petitioner under SRO 43 on the sole ground that the petitioner was under age at the time of the death of his brother, thus, not being eligible, instead holding him entitled to a cash compensation of Rupees four lacs.

5. The impugned communication dated 19.10.2016 being challenged in the instant petition inter alia on the grounds that the same has been addressed in gross violation of Rules governing the field and in presence of a provision for relaxation of age provided in the Rules read with Govt. Order No. 663-GAD of 1997 dated 19.5.1997 and that the impugned communication lacks legal force in view of the decision rendered by a Division Bench of this Court dated 10.11.2016 passed in LPA (SW) No. 96/2017 titled as State of J&K vs. Chuni Lal and another and that the petitioner has been denied relaxation of age while issuing impugned communication although the respondents have had in similar cases accorded relaxation both in age and education of claimants for compassionate appointment and that the petitioner is a handicapped person having been subjected to hostile and illegal discrimination by the respondents.

6. Per contra, objections to the petition have been filed by the respondents No. 1 and 2 wherein dismissal of the writ petition is being sought on the grounds that the petitioner has raised disputed questions of fact and that the petitioner was under qualified and of eleven years of age at the time of death of his brother as reported by Deputy Commissioner, Kupwara prescribed in terms of SRO 43 of

1994 read with SRO 199 of 2008, which provides for cash compensation of Rupees Four Lacs in lieu of appointment to a case pertaining to SRO 43 involving relaxation in prescribed age and/or qualification.

7. It has further been stated that in the case of the petitioner as well, the District Level Screening-cum-Coordination Committee through Deputy Commissioner, Kupwara sanctioned an amount of Rupees Four Lacs vide Order No. DCK/R/546 of 2013 dated 29.03.2013 deposited under Cash Compensation Certificate No. 5690205 dated 27.8.2013 which the petitioner did not agree to and instead sought compassionate appointment in lieu of cash compensation. The parity sought by the petitioner with the case of Chuni Lal (supra) decided by the Division Bench of this Court is being disputed by the respondents in the objections on the ground that the said case has been based on different facts and that after the change in the policy of compassionate appointments in the year 2008 vide SRO 199, the Deputy Commissioner, concerned has settled various cases for providing cash compensation in lieu of employment to the dependents of a deceased. The family of the petitioner is stated to have not been in distress, entitling the petitioner to appointment on compassionate grounds after the brother of the petitioner is stated to have got appointed in the Police Department. Lastly, the claim of the petitioner lodged in the petition is being opposed on the ground that the case of the petitioner has been dealt with in accordance with the policy in vogue and that the petitioner cannot compel the respondents to change its policy by providing him job.

8. Heard learned counsel for the parties and perused the record.

9. It is trite law that compassionate appointment is an exception to the general 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 a service. The purpose underlying for creation of such class is to save the family of the deceased-employee or civilian/military killed during militancy related activities from vagaries of starvation.

10. Before proceeding to advert to the issues involved in the petition, here a reference to Rule 2(iii) of Jammu and Kashmir (Compassionate Appointment) Rules, 1994 (SRO 43/94) (for short, Rules of 1994) becomes imperative which deals with the situation where a civilian dies as a result of militancy. Rule (2) AND Rule (5) of the Rules of 1994 is reproduced hereunder:

"Rule 2(iii) of the Jammu and Kashmir (Compassionate Appointment) Rules, 1994 (SRO 43/94) deals with a situation where a civilian dies as a result of militancy and in case appointment is sought by a person who is the member of the family and in case the total income of the family is not more than Rs. 3500 per month, then compassionate appointment can be allowed. Rule 2(iii) of the Rules read as under:

"2: Application of the Rules:- These rules shall apply to the compassionate appointment of a person who is a family member of:-

.....

(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 and Kashmir) not involved in militancy related activities and total income of the family from all sources does not exceed Rs. 3500 per month as assessed by the Revenue Officer not below the rank of an Assistant Commissioner"

Rule 5(1) also deals with this aspect of the matter and is also being reproduced below:-

"5. Appointment in other cases.- (1) Appointment under these rules in respect of a member of the family of a Government employee or a civilian who has died as a result of militancy related action or in respect of a family member of the officer of armed force or para military force, shall be made by the (Deputy Commissioner concerned) in accordance with the procedure hereinafter prescribed."

11. In pursuance of Sub-Rule (3) of Rule 3 notified vide SRO 199 dated 04.07.2008, a procedure for cash compensation came to be prescribed in lieu of appointment in the Government t in respect of the beneficiary under SRO 43 of 1994.

12. In the instant case, the admitted facts would reveal that the brother of the petitioner and proforma respondent No. 5 herein got killed in militancy related incident in the year 1994 whereafter the proforma respondent No. 5 being brother of the petitioner herein applied for compassionate appointment and consequently was offered said appointment in terms of Order No. 236/DCK/Adm of 2009 dated 16.11.2009. However, before the said order could be acted upon by the proforma respondent No. 5, he got appointed in the year 2007 in the Police Department and had, at that relevant point of time, laid an application before the official respondents surrendering his claim and for substituting the petitioner herein in his place as claimant for the compassionate appointment.

13. It is also not in dispute that the petitioner at the time of the death of his brother in the year 1994 was of the age of eleven years and in the year 2007 when proforma respondent No. 5 got appointed in Police Department and sought substitution of the petitioner as claimant for compassionate appointment, was of the age of 24 years and of the age of 26 years when the official respondents offered compassionate appointment to the proforma respondent No. 5 on 16.11.2009. Upon the failure of the respondents to substitute the petitioner as claimant against his brother when the respondents offered appointment to his brother in terms of Order dated 16.11.2009, the petitioner questioned the action taken by the respondents inasmuch as, the appointment offered to his brother besides other grounds on the ground that the brother of the petitioner is living

separately and as such would not be a source of sustenance for the petitioner and rest of the family. The said writ petition being SWP No. 2682/2011 came to be disposed of in terms of Order dated 26.10.2015. There was, thus, no reason for the respondents to have delayed the consideration of the case of the petitioner for appointment on compassionate grounds in the year 2007 itself when the proforma respondent No. 5 surrendered his claim for appointment on compassionate grounds and sought substitution of the petitioner in his place as claimant for such appointment. No explanation whatsoever in this regard is offered either in the reply filed by the respondents or in the impugned communication dated 19.10.2016 as to what prevented the official respondents from offering compassionate appointment to the petitioner when he was not under age. Even if assuming that the petitioner was not possessed of the prescribed qualification for appointment on compassionate grounds in the year 2007, yet in terms of the relaxation provisions contained in SRO 43 of 1994, the respondents could have accorded relaxation in this regard in favour of the petitioner.

14. The respondents manifestly have delayed the consideration of case of the petitioner till 2013 when the respondents claimed to have sanctioned cash compensation in favour of the petitioner in lieu of compassionate appointment under and in terms of the provisions of SRO 199 of 2008 dated 04.07.2008. The claim lodged by the petitioner in the petition for compassionate appointment on the bedrock of parity with Chuni Lal being petitioner in SWP No. 1902/2007 and respondent in LPASW No. 96/2016 cannot be overlooked by this Court, in that, perusal of the judgment rendered in Chuni Lal's case (*supra*) and of the case set up by the petitioner manifestly demonstrates that the respondents have been applying different yardsticks in the case/s of compassionate appointments wherein in some cases, the respondents have been extending relaxation both in age and qualification and in some cases denying the same so much so in some cases offering appointment on compassionate grounds even after issuance of SRO 199/2008 and in some cases providing cash compensation in lieu of compassionate appointment pending consideration before issuance of the SRO 199/2008 like in the case of the petitioner whose case for compassionate appointment had been pending consideration before the respondents since 2007 before the issuance of SRO 199/2008.

15. The respondents admittedly have unilaterally offered cash compensation to the petitioner in lieu of compassionate appointment and deposited with the bank without any demand or acceptance by the petitioner. The said exercise seemingly has been undertaken by the respondents in order to defeat the rightful and legitimate claim of the petitioner lodged at the appropriate time with the respondents for compassionate appointment.

The contention of the respondents that the petitioner's case is distinct and different from that of the case of the Chuni Lal (*supra*) may be to some extent true, yet the object underlying the principle of offering of compassionate

appointment in Chuni Lal's case and that of the petitioner is identical and similar.

16. In the light of what has been observed, considered and analyzed hereinabove, the impugned communication dated 19.10.2016 is not legally sustainable. Accordingly, the writ petition is allowed. Impugned communication No. DCK/LS/ARA/16/700-701 dated 19.10.2016 is quashed and the respondents are commanded to offer the petitioner compassionate appointment under and in terms of the provisions of SRO 43 of 1994 and in the process accord relaxation, if required, in age and qualification in lieu of the cash compensation awarded vide Order No. DCK/R/546 of 2013 dated 29.03.2013 without any further delay preferably within a period of six weeks from the date a copy of this order is served upon the respondents by the petitioner.

17. Petitioner is, accordingly, disposed of.