

**HIGH COURT OF JAMMU AND KASHMIR**  
**AT JAMMU**

Case: SWP No. 1192/2007 CMP Nos. 3025/07, 1685/07 & 637/09

Date of order: 28.10.2011

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Mudasir Hamid

v.

State of J&K and ors.

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Coram:

***Hon'ble Mr. Justice Muzaffar Hussain Attar, Judge***

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| 1. Whether approved for Law Journal?          | <b>Yes.</b> |
| 2. Whether approved for publication in press? |             |
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**Appearing counsel:**

For petitioner(s) : Mr. O. P. Thakur, Advocate

For respondent(s): Mrs. Neeru Goswami, Dy. AG for R- 1 and 2

Mr. A. H. Qazi, AAG for R- 4 and 5

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(Oral)

Petitioner's father was substantively holding the post of Master in the State Education Department and was posted as Incharge Headmaster in Government High School, Khari. It is pleaded in the writ petition that in the intervening night of 6/7<sup>th</sup> October, 1999, the father of petitioner was taken by Army personnel and since then his whereabouts are not known. It is also pleaded that on the complaint filed before the State Human Right Commission, recommendation was made for grant of ex-gratia relief and also for providing appointment on compassionate grounds in terms of Rules notified vide SRO 43 of 1994.

Petitioner passed his 10+2 examination in the year 2004. Respondents considered his claim for being appointed on compassionate grounds in accordance with the mandate of Rules notified vide SRO 43 of 1994. The consideration resulted in issuance of appointment order in favour of the petitioner and petitioner was appointed as Class IV in District Cadre Ramban in the pay scale of Rs. 4400-7440 vide Government Order No. 376-Edu of 2011 dated 24.06.2011. This petition is filed with the prayer that at the time of consideration of the claim of the petitioner for compassionate appointment, he was possessed of academic qualification 10+2, thus, his claim for appointment on compassionate grounds was to be considered against a vacancy in the lowest rank of non-gazetted service, in view of the mandate contained in the rule 3 of J&K (Compassionate Appointment) Rules, 1994 (for short Rules of 1994).

On notice issued, respondents have filed objections.

Heard learned counsel for the parties. Considered the matter.

Learned counsel for the petitioner submitted that claim of the petitioner for being appointed on compassionate grounds was considered on the basis of his academic qualification which he possessed in the year 1999. Learned counsel submitted that consideration accorded by the respondents is illegal, inasmuch as, his claim, at the time of consideration accorded by the respondents was to be made on the basis of Rule 3 and 4 of the Rules of 1994, inasmuch as, respondents were statutorily required to consider the petitioner's appointment in the lowest rank of non gazetted services.

Mrs. Goswami, learned Dy. AG appearing for the respondents on the other hand submitted that compassionate appointment is not provided to a family member, as a matter of right. Learned counsel submitted that a family member is appointed with the sole purpose of providing sustenance to the family. Learned counsel submitted that it is discretion of the Government to appoint a person on compassionate grounds and is also its discretion to appoint him on a class IV post. Learned counsel further submitted that since the petitioner has

joined, so is prevented from staking claim for being appointed on higher post.

By issuance of Government Order No. 376-Edu of 2011 dated 24.06.2011, the claim of the petitioner for his appointment on compassionate grounds has been accepted by the respondents. The only issue which requires to be settled is as to on which post petitioner could be appointed. The claim of the petitioner is that he being possessed of 10+2 academic qualification, was to be considered by the respondents for being appointed in the lowest rank of non-gazetted service, whereas the claim of the respondents is that he has been rightly appointed on the class IV post.

True it is that the appointment on compassionate grounds is not usual mode of recruitment on a public post. The post which is available with the Government is a public property and appointments are to be made in accordance with the mandate contained in Article 16 of the Constitution of India.

The State, in view of the Scheme contained in our Constitution, is a welfare State. The State, in order to effectuate intendment under lying the Constitution, took a

policy decision to provide sustenance to such families which are denuded of the source of sustenance so as to ensure that such families do not suffer from vagaries of life and such families, in order to sustain themselves, do not commit any unethical, immoral or illegal act. The policy decision, so taken by the State Government, is reflected in the rules notified vide SRO 43 of 1994. The statutory rules, so formulated by the State, are to be followed by them faithfully. Rule 3 of the Rules of 1994 specifically provide that appointment on compassionate grounds can be offered to a member of a family and such person will be appointed on a class IV in case he has read up to Matriculation and if his academic qualification is beyond Matriculation, then his claim is to be considered for his appointment on a post in the lowest rank in the non-gazetted service. Respondents are duty bound to comply with their own Statutory rules. Respondents cannot approbate and re-approbate as the statutory rules do not permit them to do the same. Petitioner's claim, in the facts and circumstances of this case, was to be considered for his appointment on a post in the lowest rank of non-gazetted service. Respondents have

failed to discharge their statutory obligation by not according such consideration to the claim of the petitioner.

The plea of the learned counsel for the respondents that petitioner having accepted appointment cannot stake claim for seeking consideration for being appointed on a higher post, would be against the mandate of Rule 3 of Rules of 1994. The family of the petitioner was deprived of source of sustenance and petitioner by accepting the appointment on a class IV post has only enabled the family to sustain itself through lawful means. It cannot be said that petitioner by accepting appointment on class IV, has no right to seek consideration which is provided by the statutory rules for being appointed on a higher post.

For the above stated reasons, this petition is disposed of in the following manner:

By issuance of writ of Mandamus, respondents are directed to re-consider the claim of the petitioner for his appointment on compassionate grounds strictly in accordance with mandate contained in the rules 3 and 4 of the J&K (Compassionate Appointment) Rules, 1994. Respondents to consider the claim and take a decision thereon within a period of eight weeks from the date copy of this order is served upon them.

Disposed of along with all connected CMP(s).

**(Muzaffar Hussain Attar)**  
**Judge**

JAMMU  
28.10.2011  
Paramjeet