

HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR

SWP No. 1242/2008

Date of decision: 28.04.2011

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**Jagroop Singh**

**vs.**

**State and ors.**

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CORAM:

**HON'BLE MR. JUSTICE SUNIL HALI, JUDGE**

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**Appearing counsel:**

For petitioner(s)	Mr. Sunil Sethi, Sr. Advocate with Mr. Ravi Abrol, Advocate
For respondent(s):	Mr. M. A. Bhat, Advocate

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| (i)  | Whether to be reported in<br>Press, Journal/Media: | Yes/No |
| (ii) | Whether to be reported in<br>Journal/Digest:       | Yes/No |
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Dispute in this writ petition relates to appointment of petitioner on compassionate grounds. The respondents while considering the case of petitioner and one Shri Mohd Aslam, who is stated to be similarly situated with him, have accepted the plea of said Mohd Aslam for appointment on compassionate grounds, whereas in case of petitioner it was rejected. In order to resolve the controversy involved in this writ petition, following facts are required to be noted.

The petitioner came to be appointed as Class IV employee in the Excise Department on 28.12.1998. The appointment order, however, does not disclose the nature of appointment. The petitioner has placed on record, list of employees, who have been appointed on the said date.

List reflects the names of persons who have been appointed on compassionate grounds. It reveals from the record that appointment of class IV employees made in the Excise Department became subject matter of challenge in various writ petitions in this Court which were subsequently quashed.

In pursuance to the direction issued by this court, the petitioner was also ousted, even though, it is contended by him that he was appointed on compassionate grounds. Number of employees who were similarly situated with the petitioner filed writ petitions in this court seeking directions that order of terminating the services of illegally appointed Excise Guards and orderlies is not applicable to the persons who have been legally appointed including the appointments made on compassionate grounds. It was not a backdoor appointment.

A direction was issued to the respondents in SWP No. 2147/1998, titled, "*Jia Lal vs. Union of India and ors*" for consideration of case of the petitioners. In pursuance to the directions issued, the Government passed order dated 28.03.2005. While considering their cases, claim of Mohd Aslam was accepted for being appointed on compassionate grounds. The petitioner had also filed a review petition bearing Review (SWP) no. 03-E/2001,

which came to be decided by this court on 17.5.2001, in which it was observed that while declining the claim of the petitioner for his appointment on compassionate ground, he was not heard. Order passed by the Excise Commissioner J&K dated 17.3.2001 was directed to be not given effect till the petitioner is heard and a fresh order is passed. It was also directed to take note of the directions passed in SWP No. 2147 of 1998 titled, Jia Lal vs. Union of India and ors, decided on 30.4.2001.

In pursuance to the directions issued by this court, the respondents have passed order dated 17.10.2006 rejecting the claim of the petitioner on the following grounds.

- a) That when petitioner's father died in harness in the year, 1979, at that time there were no rules regarding compassionate appointments;
- b) That the petitioner's appointment made in the year, 1998, was not on compassionate grounds, but a backdoor appointment.

It is, this order, which is subject matter of challenge before this court.

Petitioner's grievance is that his initial appointment and appointment of Mohd Aslam did not make mention that the same were compassionate appointments. After the decision of the court quashing the backdoor

appointments, a direction was issued to the respondents to examine the cases of 63 persons, who did not fall within the ambit of illegal appointment. On examination of their cases, compliance report was submitted in the Court on 03.10.2000, wherein it was admitted that the claim of the petitioner as well as Shri Mohd Aslam requires to be considered in accordance with the rule Governing compassionate appointments. In pursuance to the directions dated 13.10.2000, a consideration order was passed on 17.03.2001, wherein case of Mohd Aslam was accepted on the ground that he was initially appointed on compassionate grounds, whereas the claim of the petitioner was rejected. The compliance report further reveals that case of the petitioner and Mohd Aslam shall have to be considered in accordance with Rule Governing the compassionate appointment. In case of Mohd Aslam respondents have considered his case for being appointed on compassionate grounds, whereas case of the petitioner has been rejected. What is being contended is that direction issued in the Review Petition in case of Mohd Aslam has been considered favorably and he has been appointed on compassionate grounds. In the case of petitioner there was also a direction issued by this court in the review petition filed by him to consider his case in terms of compassionate appointment rules,

governing the field, but his case was rejected. Actions of the respondents seem to be per se discriminatory and violative of Article 14 & 16 of the Constitution of India.

On the other hand, stand of the respondents is that case of Mohd Aslam was considered in the light of the fact that his father had died on 26.11.1984, when the Compassionate Appointment Rules were in existence. SRO 122 of 1983 provides that minor children of the deceased Government employee are entitled for grant of suitable scholarship by the Education Department till they pass the matriculation examination and thereafter, be considered for appointment.

I have heard learned counsel for the parties.

The facts of the case are not in dispute. Only issue which is subject matter of controversy is, as to whether the petitioner was entitled to be considered for appointment on compassionate grounds or not. The stand taken by the respondents is that petitioner's father died in the year, 1979 when there were no rules in existence for making appointments on compassionate grounds and the same came into force in the year, 1984. Said rules came into force after effecting amendment in Rule 5 of the Jammu and Kashmir Civil Services (Decentralization of and Recruitment to Non Gazetted Cadres) Rules 1989. The application of rules is not

restricted for a particular period. Even if, the father of the petitioner died in the year 1979, when there were no rules in existence, still he is entitled to seek appointment on compassionate grounds after coming into force SRO 122/1983. Argument per se is not maintainable.

Other contention of the respondents is that there was no direction issued by this court in Review Petition to consider the case of the petitioner on Compassionate grounds. While perusing the direction issued by this court in the review petition filed by the petitioner, his case was ordered to be considered on compassionate grounds. Reference in the order has also been made to case of '*Jia Lal vs. union of India and ors*', which deals only with the issue of compassionate appointment.

The respondents have willfully tried to carve out a distinction in case of the petitioner and Mohd Aslam. They were similarly situated, as such, required similar treatment. In case of Mohd Aslam the respondents have relied upon the direction passed in review petition, whereas the case of the petitioner was rejected. The petitioner is also entitled to the similar treatment as has been applied in case of Mohd Aslam.

In view of the above, this petition is allowed and the respondents are directed to consider the case of petitioner on compassionate grounds for his appointment

as orderly in the Excise Department within a period of three months from the date a copy of this is served to the respondents by the petitioner.

Disposed of alongwith connected CMP(s).

**(SUNIL HALI)**  
**JUDGE**

Jammu:  
28.04.2011  
Karam