

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPASW No. 73/2008
CMP no.82/2008

Date of order: 28.03.2011

Raj Kumar.	v.	State of J&K & ors.
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Coram:

Hon'ble Mr. Justice Dr. Aftab H. Saikia, Chief Justice.

Hon'ble Mr. Justice F. M. Ibrahim Kalifulla, Judge.

Appearing counsel:

For appellant (s) : Mr. Rupak Ratta, Advocate.

For respondent (s) : Mr. M. I. Qadri, Advocate General with
Mr. A. H. Qazi, AAG.

i) Whether approved for reporting in Law journals etc.: Yes.

ii) Whether approved for publication in press: No.

Dr. Saikia, CJ:

Heard Mr. Rupak Ratta, learned counsel appearing on behalf of the appellant as well as Mr. M. I. Qadri, learned Advocate General assisted by Mr. A. H. Qazi, learned Additional Advocate General appearing for the respondents.

2. The legality and correctness of judgment and order dated 21.04.2008 has been assailed by means of this Letters Patent Appeal.

(2)

3. The writ petition being SWP no. 473/2008 preferred by the writ petitioner seeking appointment on compassionate grounds after the death of his father on 12.02.1996 while working as shepherd in Animal and Sheep Husbandry Department, has been rejected by the Writ Court.

4. The factual matrix of the case herein as projected before the Writ Court is that the appellant's father Mr. Ramila Ram, died on 12.02.1996 and at the relevant time appellant was minor and, accordingly, he was not eligible to claim appointment on compassionate grounds in accordance with the Rules. Later on, on attaining his majority in the year 2005, he applied for such appointment on compassionate grounds through the medium of an application before the respondents. This application was rejected by the respondents by order dated 10.05.2005 and the same was communicated to him on 30.05.2006.

5. Having aggrieved by such refusal for appointment, appellant has approached Writ Court by initiating the instant writ proceedings.

(3)

6. Law for appointment on compassionate ground has been governed by statute, namely, SRO 43, i.e., Jammu and Kashmir Compassionate Appointment Rules 1994 (herein after for short 'the Rules'). The relevant provision for making a person eligible and qualified for compassionate appointment has been provided in Rule 3 which reads as under:

3. **Appointment under these rules:-** (1) Notwithstanding anything contained in any rule or order for the time being in force regulating the procedure for recruitment in any service or posts under the Government, an eligible family member of a person specified in rule 2 may be appointed against a vacancy in the lowest rank of non-gazetted service having qualification above Matriculation or to a class IV post if the candidate has read upto Matric;
Provided that the applicant is eligible and qualified or acquires eligibility and qualification within a period of six months from the death of the deceased person specified in rule 2.
(2) Nothing in sub-rule (1) shall derogate from the powers of the Government in General Administration Department to appoint at its discretion a candidate to a higher post in the non-gazetted service if h/she is a family member of the deceased Government employee or a civilian killed in the militancy related actions.

(4)

7. A close perusal of the Rules, above reproduced, clearly indicate that a person eligible for seeking compassionate appointment under the Rules must be eligible and qualified within a period of six months from the death of the deceased.

8. In the instant case, father of the appellant died on 12.06.1996 and the application before the respondents was filed by the appellant on being attained majority in the year 2005 and his application was rejected by the authority on 30.05.2006. In the case in hand, appellant was eligible and qualified for such appointment about after ten years which is contrary to the provisions prescribed in the statute governing the field.

9. In consideration of above, on being in full agreement with the findings expressed and reasons assigned by the Writ Court, we are of the considered view that this appeal is bereft of any merit.

10. This Letters Patent Appeal is, accordingly, dismissed.

(F. M. Ibrahim Kalifulla)
Judge

(Dr. Aftab H. Saikia)
Chief Justice

Jammu:
28.02.2011
Sunita.