

HIGH COURT OF JAMMU AND KASHMIR
SRINAGAR

Case No: SWP 777/2012

Dated : 10th DEC., 2014

TAHIR BASHIR AND ANR.

VERSUS

STATE & ORS

ORDER SHEET

CORAM:

HON'BLE MR. JUSTICE MUZAFFAR HUSSAIN ATTAR- JUDGE

Whether approved for reporting : yes.

FOR THE PETITIONER/s : MR. MIR MANZOOR

FOR THE RESPONDENT/s: MR. R.A.KHAN, AAG

(ORAL)

1/ One Bashir Ahmad Bhat, who was holding the rank of Selection Grade Constable (SGCT) in the respondent Department, was killed by unknown persons on 11-01-1993. F.I.R No. 03/1993 dated 12-01-1993 was registered in police station, Bandipora.

2/ In view of the mandate contained in J&K Compassionate Appointment Rules of 1994, notified vide SRO 43 of 1994, the petitioner No.2 – Shakeela Bano, widow of the deceased SGCT, sought consideration for appointment on compassionate grounds, which was not considered by the respondents. This aspect of the matter can be gathered from communication dated 11-10-2011, send by Commandant, JKAP 03rd Bn., Security Zewan, Srinagar to the Additional Director General of Police (ADGP), Armed/Law & Order, J&K, Srinagar. Meanwhile, petitioner No.1, son of the deceased SGCT, applied and sought consideration for being appointed on compassionate grounds. The said Commandant, vide

his aforesaid communication, recommended case of petitioner No.1 for appointment in police Department as Constable on compassionate grounds in terms of rules notified vide SRO 43 of 1994. The Staff Officer for ADGP, Armed/L&O, Jammu, vide his communication No. APHQ/Pers/SRO-43/A-33/2011/12-14 dated 02-01-2012, informed the Commandant that the claim of petitioner No.1 for being appointed on compassionate grounds, being time barred, cannot be considered. It is this communication, which is called in question in this writ petition.

3/ Respondents, in their Reply Affidavit, have stated that the deceased Constable was deputed to perform guard duty with other guard personnel of JKAP, 03rd Bn., at Kadalbal bridge, Pampore. It is also pleaded that on 09-11-1990, the said bridge was damaged with heavy explosive material by some unknown persons. On the alleged dereliction of duties, the deceased SGCT with some other officials was removed from services vide office order No. 1279 of 1990 dated 12-11-1990. It is also stated in the Reply Affidavit that during the period the deceased was removed from services, he was assassinated by some unknown persons on 11-01-1993 at Arin, Bandipora. At paragraph (5) of the Reply Affidavit, it is stated by the respondents that the order of removal from services was challenged by the deceased SGCT and other police personnel before this Court in SWP 904/1990. The said writ petition was allowed and the order of removal from services was quashed by the Court vide judgement dated 04-05-1994. The writ petitioners were allowed to resume their duties. Since the deceased SGCT, Bashir Ahmad Bhat was killed during pendency of the writ petition, obviously, he could not join the services.

4/ Learned counsel for the parties argued in tune with their respective pleadings.

5/ The Commandant, JKAP, 03rd Bn., in his recommendatory communication dated 11-10-2011, has given all the details about the circumstances, which called for considering petitioner No.1 for being appointed on compassionate grounds. The communication reveals that petitioner No.2, Shakeela Bano, had filed application on 06-03-1995, after the judgement was handed down by the Court, wherein she requested for grant of pecuniary benefits, which would be available to her deceased husband under rules. It is also mentioned in the communication that the office of the Commandant recommended for grant of family pension and other benefits in favour of the legal representatives of the deceased SGCT except the benefit flowing from SRO 43 of 1994. Perusal of the communication further reveals that petitioner No.1 applied for his appointment on compassionate grounds as Constable, for which recommendation was made by the Commandant.

6/ Learned counsel for the petitioners relied upon judgement of Hon'ble the Supreme Court reported in 2007 STPL(LE) 37551 SC and submitted that the case in hand is squarely covered by the aforementioned judgement of the apex Court. Copy of the said judgement is taken on record.

7/ The appointments, which are being provided on compassionate grounds to the eligible candidates in accordance with rules notified vide SRO 43 of 1994, is to mitigate the hardships and sufferings to which a family is subjected to on account of death of the bread earner. Such appointments cannot, however, be a substitute to love, affection and support, which a father provides to the family. In view of stand taken in the writ petition, petitioner No.2

had sought consideration for being appointed on compassionate grounds, which was not considered at any point of time. Meanwhile, she having become overage, petitioner No.1 sought consideration for being appointed on compassionate grounds. Non consideration of the claim of petitioner No.1 for being appointed on compassionate grounds by the respondents, is an act, which is not in consonance with the principles of equity, good conscience and justice, besides being violative of the mandate contained in rules notified vide SRO 43 of 1994. In such fact situation, the respondents could not deny appointment to petitioner No.1 on the ground that the claim is belated. The reasons, recorded in the impugned communication, in the facts of this case, is unacceptable. The judgement of Hon'ble the Supreme Court is applicable to the facts of this case.

8/ For the above stated reasons, this writ petition along with connected IAs is disposed of in the following manner :

*“By issuance of writ of certiorari, impugned communication No. APHQ/Pers/SRO-43/A-33/2011/12-14 dated 02-01-2012 (annexure D) is **quashed**. Respondents are directed to consider and offer appointment to petitioner No.1- son of the deceased SGCT, for being appointed on the post of Constable. Respondents to consider and pass appropriate orders within eight weeks from the date copy of this order is served on them.”*

9/ **Disposed** of along with CMPs.

TARIQ Mota
SRINAGAR
10-12-2014

(MUZAFFAR HUSSAIN ATTAR) J

