

IN THE HIGH COURT OF JAMMU AND KASHMIR  
AT SRINAGAR

(THROUGH VIRTUAL MODE)

Reserved on: 14.11.2020  
Pronounced on: 31.12.2020

LPA No.103/2019

State of J&K & others

...Appellant(s)

Through: - Mr. M. A. Chashoo, AAG.

Vs.

Ghulam Mohammad Banday

...Respondent(s)

Through: - Mr. M. A. Wani, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.  
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

Sanjeev Kumar 'J'

1) This intra-Court appeal by the erstwhile State of Jammu and Kashmir (now Union Territory) is directed against the order and judgment dated 9<sup>th</sup> of August, 2018, passed by the learned Single Judge ["the Writ Court"] in SWP No.1662/2916 titled Ghulam Mohammad Banday vs. State of J&K & Ors. The Writ Court has allowed the writ petition of the respondent ["the writ petitioner"] and has quashed the consideration order issued by the appellants vide Government order No.274-PW(R&B) of 2016 dated 5<sup>th</sup> of September, 2016, with a direction to the appellants to appoint the writ petitioner

on any Class-IV post on compassionate basis within a period of six weeks.

2) The appellants being dissatisfied and aggrieved of the judgment of the Writ Court have filed the instant appeal, primarily, on the ground that the Writ Court has not correctly appreciated the clear provision made in SRO 122 of 1983, which was in force at the time of death of deceased father of the writ petitioner, providing for age relaxation of four years. The writ petitioner at the time of death of the deceased employee was only eight years old and thus required age relaxation of ten years which was not permissible under SRO 22 of 1983. That apart, the appellants have also sought to challenge the impugned judgment on the ground that granting compassionate after ten years of death of the deceased employee would defeat the object behind the compassionate appointments which are granted by the State by way of an exception to the general rule that all appointments to public service are to be made on the basis of regular selection process giving opportunity to all eligible candidates.

3) Before adverting to the grounds of challenge urged by the appellants and analyze the reasoning of the Writ Court, we think it appropriate to briefly notice few material facts.

4) Father of the writ petitioner, late Ghulam Nabi Banday, was a Road Supervisor in the Department of Public Works. He died in harness on 24<sup>th</sup> of September, 1987. The Writ petitioner, at that time, was only eight years old. The writ petitioner passed his middle

standard examination in the year 1993 and, accordingly, submitted an application to the appellants for compassionate appointment. The claim of the writ petitioner was found to be belated and was thus not considered by the appellants.

5) The writ petitioner filed SWP No.120/1999 seeking a direction to the appellants to appoint him on compassionate basis. The writ petition was dismissed by the learned Single Judge on the ground that in terms of SRO 43 of 1994, the writ petitioner had not acquired the requisite minimum qualification within six months from the date of his father's death. Aggrieved, the writ petitioner filed LPA No.118/2014 to throw challenge to the judgment of the learned Single Judge. The appeal was allowed by the Division Bench of this Court. The appellants were directed to consider the case of the writ petitioner in terms of the rules as were in vogue at the time of death of the deceased employee and not as per SRO 43 of 1994, promulgated later.

6) The judgment of the Division Bench was not immediately complied with which constrained the writ petitioner to file a contempt petition. On being put on notice in the contempt petition, the appellants placed on record the consideration order rejecting the claim of the writ petitioner for compassionate appointment. The rejection order issued by the appellants became subject matter of challenge in SWP No.1662/2016 which has been allowed by the Writ Court in terms of the judgment impugned in this appeal.

7) After hearing the parties and having gone through the record, the Writ Court found that the claim of the writ petitioner had been ignored by the appellants in disregard of the judgment rendered by the Division Bench of this Court in LPA No.118/2014, in that, the appellants considered the case of the writ petition under the Rules of 1989 whereas the direction of the Division Bench was to consider the case under the rules which were in vogue at the time of death of the deceased employee. It was noticed by the Writ Court that indisputably on the date of death of the deceased which took place in the year 1987, SRO 122 of 1983 was in vogue and, therefore, the consideration accorded was bad in the eyes of law and in disregard to the judgment passed by the Division Bench of this Court. For the aforesaid reasons, the Writ Court, in terms of the judgment dated 09.08.2018, allowed the writ petition and quashed the consideration order dated 05.09.2016 and directed the appellants to appoint the writ petitioner on any Class-IV post within a period of six weeks. It is this judgment of the Writ Court which is assailed before us by the appellants in this appeal.

8) Having heard learned counsel for the parties and perused the record, it is necessary to first notice few admitted facts.

9) Indisputably the deceased employee died in harness on 24<sup>th</sup> of September, 1987. The relevant rules providing for appointment on compassionate basis to the dependents of the deceased employee which were then in vogue, were issued by the Government in terms of SRO 122 of 1983. It may be relevant to note that the Government had

notified the Jammu and Kashmir Civil Services (Decentralization of and Recruitment to Non-Gazetted Cadres) Rules 1969 [“the Rules of 1969]. These Rules, for the first time, made a provision for appointment on compassionate grounds. The Rules of 1969 came to be amended in the year 1983 and rule 5(1)(viii) was added vide SRO 122 dated 24<sup>th</sup> of March, 1983. The substituted Rule is of paramount importance for our purpose and is, thus, reproduced here-under:

“viii, A vacancy occurring in a department due to the death of a Government employee in harness may be filled up in accordance with the prescribed rules, subject to the condition that son/adopted son daughter/ adopted daughter/ wife or dependent sister brother of a deceased government employee is provided employment in the Department on any vacancy in the non gazette cadre in the lowest rank or against any post for which he/ she may be fully qualified:

Provided that:-

- (I) The appointing authority shall satisfy itself through personal enquiries or otherwise and after obtaining a report from the concerned Revenue Officer not below the rank of Assistant Commissioner that the grant of concession is justified having regard to the number of dependents left by the deceased Government servant, the assets and liabilities left by him, the income of the earning member(s) if any, and also his liabilities.
- (II) In most deserving cases, the concerned Head of the Department may recommend to the competent authority-

(a) for relaxation of his/ her age bar not

beyond 40 years in the case of upper age limit and by not more than four years in the case of lower age limit.

- (b) for relaxation of qualification in the case of posts for which minimum qualification prescribed is Matriculation or its equivalent subject to the condition that the beneficiary at the time of such appointment is not below the level of Middle Standard and that he/ she acquires such qualification within a period of not more than two years failing which his/ her services shall be terminated;
- (c) for grant of suitable scholarship not less than Rs. 100 per month in each case by the Education Department to the minor children left behind by the deceased Government employee till such time as they pass the Matriculation examination and thereafter be considered for appointment.
- (III) Benefit of compassionate appointment shall not be granted to more than one dependent of the deceased Government employee.
- (IV) In case of beneficiaries being illiterate, the concerned Head of the Department may consider his/ her case for employment on any post defined in Schedule II of J&K CSRs subject to the age limitation prescribed above.
- (V) Cases of those beneficiaries who are better qualified but are not in a position to find suitable posts in the Engineering and other technical Departments be considered for appointment against suitable posts in other Departments under the orders of the Chief Minister in co-ordination.
- (VI) No benefit will be admissible under this scheme in a case in which the monthly income reported by the Assistant

Commissioner exceeds Rs. 1000 per month.

Provided further that the case of compassionate appointment shall be finalized within a period of three months from the date of death of Government employee under the orders of the Minister-in-charge.”

10) From a plain reading of the extracted rule, it clearly transpires that an exception was carved out to the regular process of selection and appointment by making provision for appointment to the dependent(s) of the deceased employee on any vacancy in the non-gazetted cadre in the lowest rank or against any post for which he or she may be fully qualified. The Head of the Department was given discretion to recommend to the competent authority for relaxation of upper age bar not beyond 40 years and lower age bar by not more than four years. A provision was also made for relaxation of qualification in case of posts for which minimum qualification prescribed was matriculation or its equivalent subject to the condition that the beneficiary at the time of such appointment was not below the level of middle standard and that he would secure such qualification within a period of not more than two years. In nutshell, it was the clear import of SRO 122 of 1983 that employment to the dependent of the deceased employee dying in harness would be given to a person who is eligible for a post in the lowest rank of the non-gazetted cadre but to mitigate hardship, the competent authority in most deserving cases was empowered to grant relaxation both in the lower and upper age as also the minimum qualification. It was, however, clearly provided that

relaxation in the maximum age bar will be given up to 40 years and not beyond that whereas in the case of lower age bar, relaxation that could be granted by the competent authority would not be more than four years.

11) Looking to the provisions as they were at the time of death of the deceased employee, the writ petitioner, who was, admittedly, not eligible either in terms of qualification or age and, therefore, could have been considered only in relaxation to his age and qualification. The competent authority under the Statutory Rules aforesaid was competent only to give a relaxation of four years. The writ petitioner, who was 8 years old at the time of death of his father, even by relaxation of 4 years was not eligible. Strictly speaking, if the case of the writ petitioner is considered in terms of SRO 122 of 1983, which, admittedly, was in vogue at the time of death of deceased employee, the writ petitioner would not be entitled to appointment.

12) It is true that the appellants could not appreciate the import of the judgment of the Division Bench and once again committed mistake and considered the case of the writ petitioner in terms of Jammu and Kashmir Government Employees (Death in Harness) Dependents Appointment Rules, 1989, issued vide SRO 194 of 1989, when it was very clear to the appellants that at the time of death of the deceased employee, it was SRO 122 of 1983 which was in vogue. In that view of the matter, no exception can be found with the view of the Writ Court that the consideration accorded by the appellants vide

Government Order No. 274-PW (R&B) of 2016 dated 05.09.2016 was in disregard of the Division Bench judgment in LPA No.118/2014 and, therefore, bad in the eyes of law. We, however, find no justification in the order of the Writ Court straightway directing the appellants to offer appointment to the writ petitioner against the available Class-IV post in the department. The most that could have been directed was to consider the case of the writ petitioner afresh in terms of SRO 122 of 1983. We could have done that easily but we are of the considered view that it would serve no purpose.

13) We have reproduced the provisions of SRO 122 of 1983 and the same have also been taken note of by the Writ Court. We find no scope to interpret the extracted provision to mean that the beneficiary of compassionate appointment can claim relaxation in the minimum prescribed age by four years even if he applies after attaining the majority. Such interpretation clearly militates against the plain language of the provision. Viewed from any angle or considered by any stretch of reasoning, we do not see any justification to accept this absurd interpretation sought to be put by the learned counsel for the writ petitioner. The clear import and the meaning of the provision extracted above is that if on the date of death, the beneficiary seeking compassionate appointment is underaged, same can be relaxed to the maximum of four years. In that view of the matter, even if the case of the writ petitioner is considered under SRO 122 of 1983, the result would remain the same. It is because of this reason, we do not intend

to direct the appellants to re-consider the case of the writ petitioner under SRO 122 of 1983.

14) Otherwise also, the deceased died in harness in the year 1987. 33 years have gone by and the family, which might have plunged into financial crisis due to the death of its breadwinner, has tide over the crisis and survived for all these years. Offering appointment to the writ petitioner at this stage would be contrary to the object underlying the scheme of compassionate appointment though statutorily recognized by the appellants. As is well settled, the compassionate appointment to the dependents in lieu of death of their breadwinner (employee) is not another source of recruitment but is given for a specific purpose and to give succour to the family of the deceased employee so that they could come out of the loss of their breadwinner and lead a life of dignity.

15) A Division Bench of this Court in the case of **Romesh Singh v. State of J&K & Ors, 2003 (2) JKJ 344**, while interpreting a similar provision made in proviso to Rule 3 of SRO 43 of 1994 held thus:

“Reading proviso to Rule (3) of the Rules, which refers to acquiring of eligibility and qualification within a period of six months from the date of death of the deceased, the person will have to be considered within that period. To say that within what period the person has to make an application to the appropriate authority for seeking appointment on compassionate ground, one has to read proviso to Rule 3. Reading the proviso it is very clear that even if the person is not eligible or not qualified, but within a period of six months, if he is qualified or he has acquired eligibility, then in that case his case is required to be considered.

Thus, six months time is provided even for a person who was not eligible or qualified at the relevant time. If he fails to acquire the qualification or eligibility within six months, his case cannot be considered. Therefore, maximum period is six months. It is also required to be borne in mind that considering the fact that after the death of a person, for observing religious ceremonies and rituals, a person may take sometime. It is equally possible that the person may not be out of shock immediately and, therefore, within reasonable period application is required to be made. Therefore, within a period of six months one must apply. Considering the language of the proviso one must apply within a period of six months, but not thereafter. We have also to bear in mind that if a person has died in harness then one would immediately approach the authority for seeking help.”

16) While delineating the object of granting compassionate appointment, the Hon‘ble Supreme Court in the case of **Umesh Kumar Nagpal v. State of Haryana and others, (1994) 2 SCC 138**, in Para 2, has held as under:

“.....As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment nor any other consideration is Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be

eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.....”

17) Similarly, the issue as to whether beneficiary of compassionate appointment can, as a matter of right, apply for such appointment after attaining the majority long after the death of the deceased is also considered by the Division Bench of this Court in the case of **Romesh Singh** (supra). What is held in Para 19 of the judgment is noteworthy and is reproduced here-under:

“19. In the case of Jagdish Prasad v. State of Bihar, (1996) 1 SCC 301, the son was a minor, (four years old), at the time of father's death and after a long delay application was made. The Apex Court held that he is not entitled to claim compassionate appointment. In case of Haryana State Electricity Board v. Hakim Singh (1997) 8 SCC 85 request for compassionate appointment was made when deceased employee's son attained majority. In that case the maximum period prescribed was three years for making such a request. However, the High Court held that in case of minor child the period of three years would be applicable from the date he becomes major. Setting aside the interpretation, the Apex Court pointed out that if the family members of the deceased employee can manage for fourteen years after his death, one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The Apex Court pointed out that the object of the provision is to give succour to the family to tide

over the sudden financial crises. The request was rejected by the Apex Court in such situation.”

18) There are umpteen judgments on the point and the legal position is clearly well settled. The grant of compassionate appointment long after the death of deceased employee on the ground that the beneficiary claiming appointment was minor at the relevant time and attained majority after a considerable period of time, goes against the object of making compassionate appointments and, therefore, not permissible in law.

19) In the instant case, the appointment on compassionate grounds to be provided to the dependents of the deceased government employees dying in harness is governed by Statute which carves out an exception to the General Rule of selection and appointment to public service/government employment and the provisions of the Statute are required to be strictly adhered to. There is no scope for transgressing or deviating from the clear and unequivocal statutory provisions, more so, when such provision providing for relaxation of lower age only up to four years is not called in question.

20) For the foregoing reason, the appeal is allowed. The impugned order and judgment dated 9<sup>th</sup> of August, 2018, of the Writ Court is set aside.

(Rajnish Oswal)  
Judge

(Sanjeev Kumar)  
Judge

Srinagar  
31.12.2020  
“Bhat Altaf, PS”

*Whether the order is speaking:*  
*Whether the order is reportable:*

*Yes/No*  
*Yes/No*