

IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

SWP No.856/2019
[WP(C) 13366/2019]
CM No. 703/2019

Reserved on : 23.12.2021
Pronounced on: 31.01.2022

Mst. Shabeena Khan

.....petitioner(s)

Through :- Mr.Lone Altaf Advocate.

V/s

Director, SKIMS and another

.....Respondent(s)

Through :- Mr. Sheikh Feroz Dy.AG

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

1 The petitioner is a married daughter of late Saleema Khan, who died in harness while serving as Senior Technician in the Sher-e-Kashmir Institute of Medical Sciences, Soura, Srinagar [SKIMS]. On the death of her mother, namely Saleema Khan, the petitioner, claiming to be the dependent family member of the deceased Government employee, applied for appointment on compassionate grounds in terms of the Jammu and Kashmir (Compassionate Appointment) Rules, 1994 (for short, Rules of 1994) issued by the Government vide SRO 43 of 1994. The petitioner claimed her dependence on the deceased mother on the ground that though she was married, yet she was taken as Khana Nisheen daughter by the deceased. Her case came to be processed and forwarded to the competent Authority of SKIMS through proper channel. A certificate of dependence

upon the deceased Government employee as is required under SRO 43 of 1994 was also issued by the Additional Deputy Commissioner, Srinagar on 06.10.2016.

2 It appears that when the matter came up for consideration before the competent Authority of SKIMS, it was opined by the competent Authority that the petitioner was not entitled to compassionate appointment for the reason that under SRO 43 of 1994, a female Government servant after marriage is not dependent upon her parents. The petitioner was informed of the decision of the competent Authority by the Senior Administrative Officer (Personnel) of SKIMS vide his communication No. SIMS/Per/1180/2016-6637 dated 11.11.2016. It is this communication the petitioner is aggrieved of and has challenged the same, *inter alia*, on the ground that, the decision of the competent Authority of SKIMS to deny the petitioner compassionate appointment in lieu of her mother who died in harness while serving SKIMS, is based on misinterpretation and poor understanding of SRO 43 of 1994 as amended vide SRO 201 dated 04.06.2007.

3 Learned counsel appearing for the petitioner contends that under SRO 43 of 1994, a married daughter, if dependent upon the deceased Government employee, is not excluded and, therefore, in the face of dependence certificate issued by the Additional Deputy Commissioner, Srinagar on 06.10.2016, the respondent-SKIMS could not have rejected the case of the petitioner. It is contended that the plea of the respondent-SKIMS that the dependence certificate was issued after a lapse of more than two years and seven months of the death of the deceased employee was not entertainable in view of the provisions of SRO 201 of 2007, is also without any substance, in that, SRO 201 of 2007 whereby

Rule 3(1) of Rules of 1994 was amended, only provides that no application for compassionate appointment under the said Rules would be entertained after the expiry of one year from the date of death of the deceased Government employee. It is submitted by the learned counsel for the petitioner that the dependence certificate may take some time and may be issued after the expiry of one year, but that alone cannot be the reason to reject the claim of dependent of the deceased Government employee.

4 On being put on notice, the respondents have caused their appearance through their counsel and have submitted their reply affidavit. In the reply affidavit, it is submitted by the respondents that reference to the impugned communication dated 11.11.2016 has been misquoted, in that, the said communication has been addressed to the Additional Deputy Commissioner, Srinagar requesting him to re-verify the dependence certificate in the light of succession certificate and other records which reveal that the petitioner was married to one Mohd Yasin Dar of Azad Basti, Natipora, Srinagar and has two kids. The plea of the petitioner that her mother was divorced by her father is also denied by the respondents. It is, however, a specific stand taken by the respondents that a married son or a daughter cannot be treated as dependent on the deceased parents and, therefore, they are not entitled to the benefit of compassionate appointment as envisaged under SRO 43 of 1994. The impugned communication is supported by the respondents by taking reference to the amendment effected to Rule 3(1) of Rules of 1994. It is submitted that the dependence certificate ought to be submitted by the applicant within one year from the date of death of the deceased Government employee and the same, if issued after the expiry of one year aforesaid, is not entertainable.

5 Heard learned counsel appearing for the parties and perused the material on record.

6 The only question that begs determination in this petition is, whether a married daughter, dependent on the deceased Government employee who dies in harness, is entitled for compassionate appointment under Rules of 1994. An allied question that would also require determination is whether, in the given facts and circumstances, the petitioner, a married daughter having husband and two kids was actually dependent on the deceased mother, an employee of SKIMS who died in harness in the year 2014.

7 It is trite law that compassionate appointment is an exception to the general rule of appointment in the public services and is made in favour of dependents of deceased employee dying in harness and leaving his family in dire financial crises and without any adequate means of livelihood. Ordinarily, for providing employment in public services, all aspirants having eligibility and qualification to hold a post should be given equal opportunity to compete in a fair and transparent process of selection in consonance with the mandate of Articles 14 and 16 of the Constitution. A deviation is made by the Government of India and almost every State Government and public institution so as to provide appointment on compassionate grounds as an exception to the general rule. The compassionate appointment is provided by the Government who is expected to act as a model employer, out of pure humanitarian consideration taking into account the fact that, unless an immediate source of livelihood is provided to the family of deceased employee, it would be difficult for such family to tie over the financial crises, it is plunged into with the death of only bread winner of the family. Like the Central

Government, the Governments of various States have also promulgated Schemes for compassionate appointment as is a social welfare measure. The compassionate appointment in most of the States are governed by a Scheme issued by way of an executive fiat, but, in the Union Territory of J&K, we have statutory rules governing compassionate appointments. It is not in dispute that SKIMS, for the purpose of granting compassionate appointment, has adopted and follows the Rules of 1994. Rule 2 of Rules of 1994 deals with application of rules and provides that one of the categories to which the Rules of 1994 apply is a government employee who dies in harness other than due to militancy related action. It is this category, I am concerned in this petition.

8. Rule 3 of Rules of 1994 which provides for appointment under the aforesaid Rules 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 a non-gazetted service having qualification above Matriculation or to a class IV post having qualification as prescribed under the relevant Recruitment Rules:

Provided that the applicant is eligible and qualified for such post or acquires such eligibility and qualification within a period of one year from the death of the deceased person specified in rule 2:

Provided further that no application for compassionate appointment under these rules shall be entertained after the expiry of one year from the date of death of the deceased person.

(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 he/she is a family member of a deceased Government employee or a civilian killed in the militancy related actions.

Notwithstanding the provisions of the rules contained herein for compassionate appointment, the family members of the civilians killed in militancy related action as specified in clause (iii) of rule 2 shall be entitled to a cash compensation in lieu of appointment in government service of an amount specified by the government which shall be payable in their favour in a manner to be notified by the Government:

Provided that if any one among the family members of the deceased civilian fulfils the eligibility criteria prescribed under the aforesaid Rules for appointment into the Government service or acquire such eligibility within one year from the date of death of the deceased person, then they shall have the option either to choose the government service or the cash compensation.”

9. From a reading of Rule 3 (supra), it clearly comes out that notwithstanding anything contained in any rule or order for the time being in force regulating the procedure for recruitment in any service or post 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 or Class IV post having qualification as prescribed under the relevant Recruitment Rules. This is so clearly provided in Rule 3(1) of the Rules of 1994. In essence, Rule 3(1) of the said Rules carves out an exception to the general rule of recruitment to Government services which, inter alia, requires issuance of proper Advertisement Notification and conduct of fair and transparent process of selection which ensures equal opportunity of all the eligible candidates to apply and compete. The benefit is envisaged only to an eligible family member of a person who has died in harness. The term “family member” has been defined in explanation (d) of Rule 2 of Rules which reads thus:

“Family Member means spouse, son, daughter, adopted son, adopted daughter, sister or brother dependent on the deceased”.

10. The definition of a family member reproduced above as is evident from its bare reading, does not make distinction between a son and a married son or a daughter and a married daughter; what it speaks of is that such a son or a daughter whether married or unmarried, must be dependent on the deceased. There could be many instances where an unmarried daughter, who is gainfully employed in a public or private sector, may not be dependent upon the deceased employee. The instances are not far to be found where a married daughter may still be dependent upon the earnings of the deceased Government employee. For example, an unemployed non-earning divorced daughter, particularly a Muslim woman, who may not be even entitled to maintenance after Iddat period in case of her divorce, may still be dependent upon her parents. Even a married daughter having physically challenged or fully disabled husband may be dependent upon the earnings of her parents. It is, thus, not correct to generalize that a married daughter or for that matter a married son can never ever be dependent upon the parents.

11 The plea of the respondents that the petitioner being a married daughter is excluded from the definition of a family member given in explanation (d) of Rule 2 of Rules of 1994 is without substance and flies in the face of clear and unequivocal definition of the term “family member”. Once the statutory rules governing the compassionate appointment do not make any distinction between a dependent daughter and a dependent unmarried daughter, it is not open to the employer to carve out this distinction of its own to deny the benefit of compassionate appointment to the dependent family member of its employee dying in harness. Once the

family member of the deceased employee, whether spouse, a son married or unmarried, a daughter married or unmarried, adopted son married or unmarried, adopted daughter married or unmarried, adopted sister or brother married or unmarried, is found on enquiry by the competent Authority dependent upon the deceased Government employee and otherwise fulfils other eligibility requirements, it is not open to the employer to deny the appointment to such member by constricting and limiting the definition of the family member given in the aforesaid Rules.

12. A daughter to her parents shall always remain a daughter and would not cease to be so on her marriage. Reading the word “daughter” given in the definition of family member in the Rules of 1994 as only an unmarried daughter and excluding the unmarried daughter therefrom would be tantamount to reading into the definition of family member something which the rules making the authority never envisaged. The respondents are not competent in law to read into, modify or alter the plain definition of family member given in the Rules of 1994. I am, therefore, of the considered view that having regard to the definition of daughter given in explanation (d) of Rule 2 of the Rules of 1994, a married daughter, who is otherwise dependent on the employee dying in harness, cannot be excluded for the benefit of compassionate appointment under the Rules of 1994.

13. Learned counsel for the petitioner has cited a couple of judgments before me to make good his point that wherever the compassionate appointment Scheme or Rules framed in this regard provide for excluding a married daughter, the Courts of law have frowned upon and have held such exclusion discriminatory and violative of Articles 14 and 16 of the Constitution. I am not deliberating upon the judgments cited at Bar by the learned counsel for the petitioner for the reason that the scheme of

appointment provided under SRO 43 of 1994 is statutory in character and does not exclude a married daughter dependent upon the employee dying in harness from seeking the benefit under the Rules of 1994, provided she is otherwise eligible. It is, thus, concluded that in terms of explanation (d) of Rule 2 of the Rules of 1994, the term “a son and a daughter” includes a married son and a daughter respectively. The said Rules do not make any distinction between a daughter and a married daughter and both would be included in the definition of “family member” and would be eligible to apply for compassionate appointment provided she is dependent on the Government employee dying in harness. The dependence of such applicant whether she is unmarried or married daughter is to be certified by the competent Authority. The Deputy Commissioner of the concerned District has been appointed as a competent Authority to issue certificate of dependence in favour of such applicants claiming compassionate appointment under the Rules of 1994.

14 It is true that in the instant case, the Additional Deputy Commissioner, Srinagar vide his No.Q33/SM/ADC/9097 dated 06.10.2016 has issued the dependent certificate in terms of Rules of 1994 in favour of the petitioner, who as per the certification of Additional Deputy Commissioner, Srinagar is the only daughter of the deceased Government employee dependent upon her. The respondents have, however, doubted the certificate of dependency given by the Additional Deputy Commissioner on the ground that he has not taken into consideration the fact that the petitioner was a married daughter having two kids and, therefore, was no more dependent upon the deceased employee. Be that as it may, the fact remains that the petitioner only because she is a married daughter cannot be excluded from the benefit of compassionate

appointment on the said ground alone. Whether or not, she was dependent upon the employee of the respondent-SKIMS dying in harness in 2014 is a matter of fact to be determined by the competent Authority under the Rules of 1994.

15. I am not impressed with the argument of learned counsel for the respondents that the dependence certificate having been issued by the competent Authority after two years of death of the Government employee was not entertainable. Rule 3(1) of Rules of 1994 as amended vide SRO 201 of 2007 (supra) only provides for submission of application for compassionate appointment under the aforesaid Rules within one year from the date of death of the deceased. The dependent certificate is issued by the competent Authority i.e the Additional Deputy Commissioner concerned only after a request in this regard is made by the employer/authority competent to appointment on compassionate grounds.

16 From a reading of dependent certificate dated 06.10.2016 (supra) issued by the Additional Deputy Commissioner, Srinagar, it clearly transpires that the certificate has been issued by him on the request received by him from the Administrative Officer (Personnel) of SKIMS vide his letter No. SIMS/Per/ 1180/2014/601-02 dated 28.02.2014. That being the position, the plea of the respondents that the dependent certificate was submitted beyond a period of limitation of one year is grossly misconceived and preposterous to say the least.

17 For the foregoing reasons, I find merit in this petition and by a writ of certiorari, quash the impugned communication issued by the respondent-SKIMS vide its No. SIMS/Per/1180/2016-6636 dated 11.11.2016. A direction is issued to the respondent-SKIMS to have the dependent/legal heir certificate dated 06.10.2016 (supra) issued by the

Additional Deputy Commissioner, Srinagar re-verified. A communication in this regard shall be issued by the respondent-SKIMS within two weeks from today. The Additional Deputy Commissioner, Srinagar, on receipt of request from the respondent-SKIMS, shall re-verify the certificate of dependence earlier issued by his office on 06.10.2016 by taking note of the fact that the petitioner, at the relevant time, was married and was having husband and two kids. Should the Additional Deputy Commissioner, Srinagar on re-verification certifies the dependency of the petitioner, which he will do within four weeks from the date of receipt of the request, the respondent-SKIMS shall process the case of the petitioner for compassionate appointment and consider her for such appointment within a period of four weeks thereafter.

(SANJEEV KUMAR)
JUDGE

31.01.2022
Sanjeev PS

Whether the order is speaking : Yes
Whether the order is reportable :Yes