

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

SWP No. 60/2015

Pronounced on: 09.05.2025

Thinles Dorjey

.... Petitioner/Petitioners(s)

Through:- Mr. G.M. Bhat, Advocate.

V/s

State of J&Kand others

.....Respondent(s)

Through:- Mr. T.M. Shamsi, DSGI

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. Petitioner seeks quashing of communication dated 08.01.2014, vide which, the case of the petitioner for compassionate appointment has been rejected being time-barred. Further direction is also sought to the respondents to accord consideration to the compassionate appointment of the petitioner under SRO-43 of 1994.
02. The father of the petitioner, Gang Tsering, was an employee of Youth Services & Sports Department, who died in harness on 21.10.2000, leaving behind his widow, son (petitioner), and daughter as his legal heirs. The mother of the petitioner being illiterate did not apply for compassionate appointment and the petitioner was minor at the time of death of his father. Later, he applied for compassionate appointment and the case according to him remained pending till the petitioner completed his matriculation and also attained majority age. The petitioner, accordingly, applied for grant of compassionate appointment on 09.04.2008 to the Deputy Commissioner/CEO, LAHDC, Kargil for his appointment on compassionate basis on Class-IV post lying vacant in the Education

Department Kargil, enabling the family of deceased to earn for their livelihood.

03. Learned counsel appearing for the petitioner submits that the respondents did not take any action to the petitioner's application, thus, constraining the petitioner to issue a notice to the respondents on 09.11.2013. In reply to the notice served by the petitioner, the respondents vide their communication dated 08.01.2014, while observing that at the time of death of deceased employee, his son was only 9 years and 7 months old, rejected the case of the petitioner after considering the same to be time-barred. The petitioner is aggrieved of the impugned order on the ground that his father was an employee who died in harness during active service leaving behind the dependents who are still under distress and starvation having no source of income to sustain in far flung area of district Kargil, therefore, it was incumbent upon the respondents to consider the petitioner for appointment on compassionate grounds. The mother of the petitioner and widow of the deceased employee being illiterate could not apply for the compassionate appointment at the relevant time. The petitioner applied for the same as soon as he attained majority and obtained the requisite qualification for appointment under SRO-43 of 1994.

04. Learned counsel for the petitioner submits that the respondents have rejected the case of the petitioner only on the ground that he has applied after a long time and it is a time-barred case. The respondents without considering the fact that the post is available and the petitioner is eligible for the post have rejected the case without taking into account the hardships faced by the family of the deceased.

05. Objections have been filed by the respondents. The respondents submit that the petitioner was not eligible to be appointed on compassionate ground at the time of his father's death, as he was only 9 years and 7 months old and after a lapse of more than seven years cannot be considered for the same. It is further submitted that the purpose of appointment on compassionate basis is to mitigate the hardships due to the death of the earning hand of the family and to enable the family to get over the financial crisis and same cannot be claimed and considered after a lapse of so many years. It is further submitted that in terms of Rule 3 of Jammu and Kashmir (Compassionate Appointment) Rules, 1994, the applicant should be eligible and qualified at the time of death or should acquire such eligibility and qualification within a period of one year from the date of death of the deceased person. Since the petitioner did not fulfill the requisite conditions of Rule 3, therefore, the case of the petitioner has rightly been rejected.
06. The petitioner has claimed compassionate appointment in terms of SRO-43 of 1994 on a post commensurate with the qualification. The admitted facts are that the petitioner's father died on 21.10.2000 and at that time, the petitioner was only 9 years and 7 months old. It is also admitted by the petitioner that none of the other family member had the requisite eligibility or even applied for the post on compassionate grounds at that time. The petitioner applied for the post in the year 2008, when he acquired the requisite eligibility, however, the case of the petitioner was recommended and the same was rejected by the respondents being time-barred.

07. For the petitioner to be considered on compassionate basis in terms of SRO-43 of 1994, the petitioner had to fulfill the conditions specified therein. Rule 3 of SRO-43 of 1994 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 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. 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 date of 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 delegate 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 action.

(3) 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 fulfills the eligibility criteria prescribed under the aforesaid Rules for appointment into the government service or acquires 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.

08. Thus, the petitioner at the time of the death of his father or one year thereafter, did not possess or acquired the requisite eligibility or

qualification and, therefore, his case could not fall under the provision of SRO-43 of 1994. It is well settled that the object of appointment on compassionate basis is to provide immediate succor to the family which has suffered distress or hardship on the untimely death of the sole bread earner. The object of providing such relief is not opening an alternative mode of recruitment to public employment.

09. The Apex Court in “**State of Himachal Pradesh v. Shashi Kumar, (2019) 3 SCC 653**”, has observed that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. That the basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. That it is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. The pertinent observations of this Court have been extracted as under:

"41. Insofar as the individual facts pertaining to the Respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The Respondent waited thereafter for a period in excess of seven years to move a petition Under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by

the delay on the part of the dependant in seeking compassionate appointment."

10. Further, the Apex Court in "**State of West Bengal v. Debabrata Tiwari and others, 2023 LiveLaw (SC) 175**", while holding that the compassionate appointment is not a source of recruitment and cannot be claimed after the financial crisis has been resolved has held as under: -

- i. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., to enable the family of the deceased to get over the sudden financial crisis.
- ii. Appointment on compassionate grounds is not a source of recruitment. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependents of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis.
- iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.
- iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

11. Thus, compassionate appointment is not a vested right which can be exercised at any time in the future and cannot be claimed or offered after the crisis is over or a significant amount of time has passed. The petitioner was not eligible to be considered under SRO-43 of 1994 at the time of death of his father as he was a minor. Though the petitioner later applied for compassionate appointment and his case was

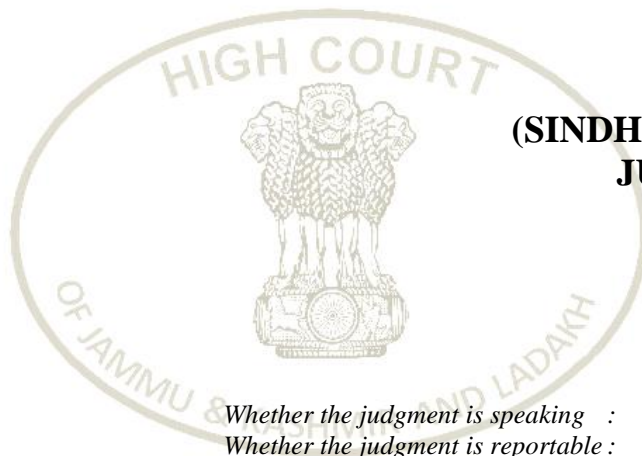
recommended, but same was not approved on the ground of being time-barred. The father of the petitioner having been expired in the year 2000 and the petitioner having applied in the year 2008 i.e. after passing of almost seven years. By that time, he could have already managed to sustain himself and overcome the financial hardships. The petitioner has relied upon SRO-43 of 1994, however, in view of the law laid down by the Hon'ble Supreme Court and the provisions contained under SRO-43 of 1994, the petitioner's claim for compassionate appointment cannot be entertained at this stage, therefore, the case of the petitioner fails both on the merits as well as on account of being time-barred.

12. **Dismissed.**

SRINAGAR:

09.05.2025

Vishal



**(SINDHU SHARMA)
JUDGE**

Whether the judgment is speaking :

Yes

Whether the judgment is reportable :

Yes