

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 57/2023

Reserved on 14.05.2025
Pronounced on 23.05.2025

1. Union Territory of JK through
Commissioner/Secretary to Govt.
General Department, Civil Secretariat,
Srinagar/Jammu.

...Petitioner(s)/Appellant(s)

2. Divisional Commissioner, Kashmir.
3. Deputy Commissioner, Kupwara.

Through: Mr. Hakim Aman Ali, Dy. AG vice Mr. Waseem Gul, GA

Vs.

1. Zahoor Ahmad Khan Age 25 years
S/o Mohammad Yousuf Khan
R/o Diver Lolab, Kupwara.
2. Sajad Ahmad Khan
S/o Mohammad Yousuf
R/o Diver Lolab, Kupwara.
3. Financial Commissioner, Home Department,
J&K Govt. Civil Secretariat,
Srinagar/Jammu.

...Respondent(s)

Through: Mr. Mir Majid Bashir, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

J U D G M E N T

Sanjeev Kumar, J

1. This intra-court appeal arises out of an order and judgment dated 1st September 2022 passed by the learned Single Judge of this Court [“the Writ Court”] in SWP No. 775/2018 titled *Zahoor Ahmad Khan vs. State of JK & Ors.* whereby the Writ Court has allowed the writ petition filed by the respondent No. 1 and directed the appellants herein to offer the respondent No. 1 compassionate appointment under SRO 43 of 1994 in relaxation to age and qualification, if required.

2. Before we advert to the grounds of challenge urged by Mr. Hakim Aman Ali, learned Dy. AG in support of this appeal, we deem it appropriate to set-out few relevant facts.
3. The brother of the respondent No. 1 namely Fareed Ahmad Khan was reportedly killed by some unknown gunmen in the year 1994. Respondent No. 1 was 11 years old at that time. With regard to the incident, an FIR also came to be registered with the concerned Police Station. Respondent No. 2 namely Sajad Ahmad Khan, another brother of the deceased applied for compassionate appointment in terms of SRO 43 of 1994. The case of Sajad Ahmad Khan came to be processed and before he could accept his appointment under compassionate grounds, he came to be appointed in the Police Department in the year 2007. As a result of his appointment in the Police Department on regular basis, Mr. Sajad Ahmad Khan, withdrew his request for appointment on compassionate grounds in lieu of the death of his brother namely Fareed Ahmad Khan. On the request of Mr. Sajad Ahmad Khan, the case for compassionate appointment in the name of respondent No. 1 came to be processed in the Office of Deputy Commissioner, Kupwara.
4. The matter was considered in the District Level Screening-cum-Coordination Committee and on the basis of recommendations thereof, the Deputy Commissioner, Kupwara sanctioned cash compensation of Rs. 4.00 lacs in favour of NOKs of the deceased vide his Order No. DCK/R/546 of 2013 dated 29.03.2013. The claim of respondent No. 1 for compassionate appointment was thus declined. The decision taken by Deputy Commissioner, Kupwara of releasing the cash compensation of Rs. 4.00 lacs in favour of NOKs of the deceased was communication to the GAD vide communication dated DCK/LS/ARA/16/700-701 dated 19.10.2016. This communication was called in question by respondent No. 1 in SWP No. 775/2018. It is this petition which has been allowed by the Writ Court in terms of the impugned judgment.
5. Impugned judgment has been assailed by the appellants primarily on the ground that the Writ Court has not considered the settled legal position of law as elaborately laid down by the Hon'ble Supreme

Court in its recent judgment in the case of **The State of West Bengal vs. Debabrata Tiwari & Ors. 2023 Live law (SC) 175**. It is submitted that the Writ Court failed to appreciate that in the instant case, respondent No. 1 had approached the appellants for seeking compassionate appointment after a period of more than 15 years after the death of the deceased.

6. It is argued by Mr. Hakim Aman Ali, learned Dy. AG that the Writ Court also failed to take note of the fact that one of the brother of deceased namely Mr. Sajad Ahmad Khan already stood appointed in the Police and, therefore, the family had successfully tided over the financial crisis which it had been put due to untimely demise of the bread-earner of the family.
7. *Per contra*, Mr. Mir Majid Bashir, learned counsel appearing for the respondent No. 1 would support the judgment passed by the Writ Court and submit that the respondent No. 1 was only 11 years old at the time of death of deceased and, therefore, could have applied for compassionate appointment only after attaining the majority. He would, therefore, argue that the delay, which has occasioned due to the reasons beyond the control of respondent No. 1, is to be ignored. The Writ Court has taken a compassionate view in the matter and allowed the writ petition. He would further submit that the cash assistance of Rs. 4.00 lacs ordered by the Deputy Commissioner, Kupwara has not been accepted by respondent No. 1.
8. Having heard learned counsel for the parties and perused the material available on record, we need to first take note of some admitted facts.
9. The deceased was killed in a militancy related incident in the year 1994. Respondent No. 1 was only 11 years old. His elder brother namely Sajad Ahmad Khan on acquiring eligibility submitted his application for compassionate appointment under SRO 43 of 1994. The application was considered by the Deputy Commissioner, Kupwara, who vide his Order No. 236/DCK/Adm. of 2009 dated 16.11.2009 ordered the appointment of Mr. Sajad Ahmad Khan in the Animal Husbandry Department. By the time, Mr. Sajad Ahmad Khan, also stood appointed in the Police Department in a regular selection process. He, therefore, submitted an application for withdrawal of his

name from the appointment, to be substituted by his brother i.e., respondent No. 1. This happens in the year 2009.

10. The matter with regard to the appointment of respondent No. 1 on compassionate grounds was considered by the District Level Screening-cum-Coordination Committee headed by the Deputy Commissioner, Kupwara. Upon considering the relevant factors, the Committee recommended the release of cash compensation of Rs. 4.00 lacs in lieu of Government job in favour of NOKs of the deceased Fareed Ahmad Khan.
11. This decision of the Deputy Commissioner, Kupwara is ruled by the respondent No. 1. The communication of the Deputy Commissioner, allowing cash compensation in favour of NOKs of the deceased dated 19th October 2016 was assailed by the appellants in SWP No. 775/2018 which the Writ Court has allowed in terms of the order and judgment impugned in this appeal.
12. Indisputably, in this case, respondent No. 1 approached the appellants for appointment after a period of 15 years. Not only the family had comfortably survived till the year 2009, but one of the family members namely Mr. Sajad Ahmad Khan too had been appointed in the Police Department. The financial crisis which the family was put in due to unfortunate killing of deceased Fareed Ahmad Khan, the bread-earner of the family, was over. There was, thus, no reason or justification to offer to the second brother of the deceased an employment under SRO 43 of 1994.
13. It is now well settled that the object of providing employment on compassionate grounds is to enable the family of the deceased to tide over the sudden crisis which it is put in due to the death of the bread-earner of the family. The death of a person killed in militancy related incident or of an employee in harness does not entitle his family to such source of livelihood. The authority concerned which is to offer the compassionate appointment is obliged to examine the financial condition of the family of the deceased and it is only when it is satisfied that, but for the provision of employment to one of the dependents, the family will not be able to tide over the crisis.

14. The question as to whether an application for compassionate appointment should be considered after a delay of 15 years has been considered by the Hon'ble Supreme Court in **Debabrata Tiwari**. Paragraph 7.5 of the judgment is noteworthy and is set out below:

“7.5. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in **Hakim Singh** would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.”

15. At this stage, we also deem it appropriate to set out paragraph 7.2 of the judgment supra, to steer clear the point that the compassionate appointment is not a source of recruitment, but is only a benevolent gesture on the part of State to ensure that the dependents of the

deceased employee or a person killed in a militancy action are not deprived of the means of livelihood. What are the parameters to be kept in mind are enumerated in para 7.2 which reads thus:

“7.2. On consideration of the aforesaid decisions of this Court, the following principles emerge:

- 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 dependants 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.
- v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by

the family, the age, dependency and marital status of its members, together with the income from any other source.”

16. In the instant case, not only the respondent No. 1 approached the appellants for compassionate appointment after a period of more than 15 years after the death of the bread-earner of the family, but by the time he approached the appellants, one of the family members had already been gainfully employed in the Police Department of the Government of J&K.
17. In view of the clear position emerging from the judgment in **Debabrata Tiwari** case (supra) and admitted fact situation obtaining in the case, we find merit in this appeal and the same is accordingly allowed. The impugned judgment of the Writ Court is set-aside and as a consequence whereof, SWP No. 775/2018 is also dismissed.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
23.05.2025
Altaf

Whether approved for reporting? Yes