



Government of Jammu & Kashmir
Public Works (R&B) Department
Civil Secretariat, Jammu.

Subject: SWP No. 2378/2016 IA No. 01/2016, IA No. 01/2018
titled Mehmood Ayaz Butt V/s State and others.

Government Order No: 07 -PW(R&B) of 2021
D A T E D : 11 .01.2021

Whereas, one Shri Ghulam Haider Butt was working as Junior Engineer in R&B Department and met with an accident and died on spot in 1997;

Whereas, his son namely Shri Mehmood Ayaz Butt applied for appointment on compassionate grounds. The applicant, at the time of death of his father was under aged and hence ineligible for appointment on compassionate grounds. The applicant was however informed by this department that once he attains the age of maturity, his case will be entertained;

Whereas, in 2002 the applicant attained the age of maturity and at that time he had qualified 12th class and was therefore appointed as Class-IV in R&B Department, in relaxation of rules vide Government order No. 339-PW(R&B) of 2004 dated 11.08.2004;

Whereas, Shri Mehmood Ayaz Butt accepted his appointment as Class-IV. He was also pursuing course of Diploma in Civil and Environment Engineering during that time which he completed in the year 2005;

Whereas, Shri Mehmood Ayaz Butt, after a gap of 08 years filed a writ petition bearing SWP No. 1463/2012, seeking appointment commensurate to his qualification, which he acquired in 2005. The writ petition was decided by the Hon'ble Court vide judgment dated 04.03.2014, the relevant portion of the order is as under:-

".....the instant petition is disposed of with a direction to respondent no. 1 and 2 to consider and decide the representation and pass appropriate consideration order within a period of one month from the date of copy of this order is made available to them.

Whereas, pursuant to above Court Order, the case of the petitioner was examined and considered and referred to General Administration Department for advice with regard to appointment of applicant under SRO 43 of 1994 comensurating to his qualification;

Whereas, the General Administration Department returned the case vide U.O. No. GAD(L)F-492/2014/995 dated 24.12.2014 with the advice that:-

"the Department is advised to pass appropriate consideration order in terms of the order/judgment dated 04.03.2014 passed by the Hon'ble Court at Jammu in SWP No. 1463/2012 as the petitioner's plea for appointment on a higher post under SRO 43 of 1994 is devoid of merit."

Whereas, the case of the petitioner was examined and the department vide Government order no. 23-PW(R&B) of 2015 dated 18.02.2015 rejected the claim of petitioner.

Whereas, Shri Mehmood Ayaz Butt filed a fresh writ petition bearing SWP No. 2378/2016 before the Hon'ble High Court at Jammu seeking appointment commensurate to his qualification, which he has acquired in 2005, which was

disposed of by the Hon'ble Court vide order dated 05.02.2020, the relevant portion of the order is as under:-

".....Let a consideration order in the case of the petitioner, as aforesaid, be passed within a period of six weeks from the date, a certified copy of this order is made available to the respondents.

Whereas the case of the petitioner has once again been examined pursuant to the above Hon'ble Court orders and in terms of the rules governing the field and it has been observed that the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over certain financial crises and not to provide employment. This is because as a rule, appointments in public service should be made strictly on the basis of open invitation of applications; neither any other mode of appointment nor any other consideration is permissible. However, to this general rule which is to be followed strictly in all cases of public employment, there are certain exceptions carried out in the interest of justice and to meet certain contingencies. One such exception is in favour of dependants of an employee dying in harness, leaving his family in penury and without any means of livelihood. In such cases, out of 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 of one of the dependants of the deceased employee who may be eligible for such employment. The whole object of granting compassionate appointment is to enable the family to tide over the financial crises. Laying down the above principles in *Umes Chandra Nagpaul V/s State of Haryana (1994) 4SCC(L&S) 930*, the Hon'ble Supreme Court has cautioned that the object is not to give a member of such family a post not less than the post held by deceased employee.

Whereas, the Hon'ble Supreme Court has cautioned and held that there is no right to claim compassionate appointment

against higher post. In State of M.P. V/s Ramesh Kumar Sharma (1994) SUPP (3) SCC 661, the respondent was over the post of Lower Division Clerk on his prayer for compassionate appointment but refused and claimed the post of APP Grade II for which he had requisite qualification. It has been held by the Supreme Court that under the Rules of compassionate appointment, the respondent had no right to any particular post of his choice and he can only claim to be considered for the post. Moreover, even if in an earlier occasion the Government gave compassionate appointment in the post of APP Grade II that would be no ground for claiming such post by the respondent. In, Director of Education (Secondary) v/s Pushpendra Kumar (1998) 5CC 192, the Supreme Court has turned the plea of discrimination in rejecting the claim of the dependent son as a Teacher and as Inspector/Assistant Sub-Inspector of Police after he had been offered a post of Clerk and joined the post without objections. Supreme Court has made it clear that compassionate appointment cannot be insisted upon for a particular post.

Whereas, besides, the petitioner after accepting the appointment on compassionate basis has exhausted his right as the object of compassion has been met.

Therefore, in compliance to the direction passed by the Hon'ble High Court and in view of the above facts the case was examined in the department and found devoid of merit.

By order of the Government of Jammu and Kashmir.

Sd/-
(Shailendra Kumar) IAS
Principal Secretary to Government,
Public Works(R&B) Department

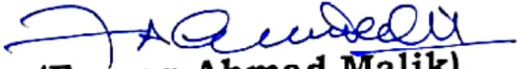
No. PW(R&B)/Legal/18/2019-I

Dated: 11 -01-2021

Copy to the:-

01. Joint Secretary (J&K) Ministry of Home Affairs, Government of Indian, New Delhi.

02. Commissioner/Secretary to Government, General Administration Department
03. Chief Engineer PW(R&B) Department, Jammu.
04. Director, Archives & Archeology Department, Jammu.
05. Executive Engineer, PW(R&B) Division Doda.
06. OSD to Hon'ble Advisor (B) for information.
07. Shri Ravinder Gupta, AAG J&K High Court Jammu.
08. Private Secretary to Principal Secretary to Government, PW(R&B) Department.
09. Concerned.
10. Government Order File/Stock file.


(Farooq Ahmad Malik),
Under Secretary to Government,
Public Works(R&B) Department