



GOVERNMENT OF JAMMU AND KASHMIR
SCHOOL EDUCATION DEPARTMENT,
CIVIL SECRETARIAT JAMMU/KASHMIR

(Legal Section)

Subject:- SWP No: 1877/2015 titled Irfan Javaid Zargar V/S State and others.

Government Order No: 200- Edu of 2016

D a t e d: 01- 06 - 2016

Whereas, the father of the petitioner who was working in Education Department died in harness in the year 2013;

Whereas, the petitioner came to be appointed as Class-IV in terms of SRO-43 of 1994 dated 22.02.1994 vide Order No: 2199-DSEK of 2013 dated 18.11.2013;

Whereas, the representation of the petitioner for re-consideration against the lowest Grade Class 3rd post in the Department was forwarded by the Assistant Commissioner (Revenue) Shopain to the Director School Education, Kashmir vide No: DMS/Veri/15/949 dated 29.07.2015;

Whereas, the petitioner, without waiting for the out come of the representation, approached the Hon'ble High Court with a writ petition (SWP No: 1877/2015) and the said writ petition came to be disposed of with the direction to the Director School Education, Kashmir to take final decision within four weeks on the communication which has been addressed to him on 29th July 2015 by the Assistant Commissioner, Revenue, Shopian;

Whereas, the case of the petitioner has been examined in the Department in compliance of the Hon'ble High Court's order dated: 28.08.2015, it is found that after accepting the post offered to the petitioner and performing his duties in the Department, the right to be considered for the appointment on compassionate grounds is consummated and there is no basis for further consideration on compassionate grounds. The petitioner's family has tided over the financial distress caused due to the death of the father of the petitioner;

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Whereas, the Apex Court has also observed that compassionate appointment cannot be claimed as a matter of right, as it is not a vested right. It has also said that every appointment to public office must be made by strictly adhering to the mandatory requirements of Article 14 and 16 of the constitution;

Whereas, the Hon'ble Supreme Court, while dealing with such cases has held in the case titled Umesh Kumar Nagpal V/S State of Haryana reported in 1994 (4) SCC 138 as under:-

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. 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.

Whereas, the Hon'ble Supreme Court further observed in number of cases including State of Rajasthan V/S Umrao Singh (1994) 6SCC 540, Jagdish Prasad V/S State of Bihar 1996 I SCC 301, MMTC Ltd. V/S Promoda Devi (1997) 11 SCC 390, S. Mohan V/S Government of Tamil Nadu (1998) p SCC 485, Director of Education (Secretary) V/S Pushpinder Kumar (1998) 5 SCC 192, Sanjay Kumar V/S State of Bihar (2000) 7 SCC 192, Haryana SEB V/S Krishna Devi (2002) 10 SCC 246 and State of J&K V/S Sajjad Ahmed Mir (2006) 5 SCC 766 and has held that compassionate appointment is not a vested right which can be exercised at any point of time and compassionate appointments are being offered to mitigate the immediate need of family and further observed that once the right of compassionate appointment has consummated any further or second consideration for a higher post on the ground of compassionate would not arise.

In view of the above, the claim of petitioner for appointment against the lowest Grade Class 3rd post is devoid of merit and hence rejected.

By Order of the Government of Jammu and Kashmir.


Sd/-
(Shaleen Kabra)
Commissioner/Secretary to Government
School Education Department

No: Edu/legal/K/43/2016

Dated: -06-2016

Copy to the:-

1. Director School Education, Kashmir for information and necessary action.
2. Ld. Additional Advocate General, J&K High Court, Kashmir for information and necessary action.
3. Pvt. Secretary to Commissioner/Secretary to Government, School Education Department for information of Commissioner/Secretary.
4. Incharge Website
5. Sh. Irfan Javaid Zargar S/O Late Javaid Hassan Zargar R/O Memendar, Shopian, Kashmir.
6. Govt. Order file (w.3.s.c)
7. Stock file.


(Naseema Nazir)
Under Secretary to Government
School Education Department

