



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

Subject:-T.A. No. 61/1951/2020 titled Atiya Tabassum Vs UT of J&K and others.

Government Order No: 2135-711 (Edu) of 2022

Dated: 31-10-2022

Whereas, the applicant's mother namely Shahida Parveen was serving as Senior Teacher in the School Education Department at GMS Nagri Zone Doda reportedly died in harness on 21.04.2010, and the applicant (petitioner) Ms. Atiya Tabassum daughter of the deceased has applied for compassionate appointment under SRO-43. The age of the applicant on the date of death of her mother was +20 years with qualification 10+2 in Arts and thus eligible for appointment under SRO-43 of 1994 as Class-IV;

Whereas, vide Order No. DSEJ/GEN/SRO-43/12358-59 dated 08.11.2010, the applicant (petitioner) Ms. Atiya Tabassum has been appointed as Class-IV (Lib. Bearer) in the District Cadre Doda by the Director School Education, Jammu in view of her qualification at that time;

Whereas, the applicant (petitioner) has not accepted/joined the above said appointment as Class-IV (Lib. Bearer), however thereafter the applicant (petitioner) requested/approached for her appointment against the post of Teacher in view of qualification acquired later on i.e after the issuance of appointment order dated 08.11.2010;

Whereas, the applicant (petitioner) has again approached the department for considering her request for her compassionate appointment as Teacher/Laboratory Assistant in view of her present academic qualification being a post graduate with B.Ed, M.A and also the said applicant (petitioner) filed legal notice;

Whereas, the details of the qualification of the applicant acquired from time to time are as under:

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|------------|---|------------|
| Matric | Bi-Annual Session- 2006 | - |
| 10+2 | Annual 2008 (Arts Stream) | 16.05.2008 |
| B.A | Annual Session-2011 | 31.07.2011 |
| B.Ed. | Annual Session- 2012 | 21.03.2013 |
| M.A | Held in May 2014 Semester IV (Session 2012) | 18.11.2014 |
| 10+2 again | Annual-2014 (Science Stream) | 28.07.2015 |

Whereas, the case was examined in the Department and it was found that there was clash in the academic qualification in Science and Arts Stream in Class 12th & B.Ed as how a applicant first clear in Arts and then in Science Stream;

Whereas, the above said clarification was sought from J&K Board of School Education vide communication dated 21.04.2017 and 02.04.2018, seeking clarification as to whether, it is possible for a student to qualify two examinations in one academic session;

Whereas, the J&K Board of School Education has vide communication No. F(Acad-C-2 course)B/17 dated 23.05.2017 and No. F-1(Acad-c,T.C)B/18 dated 09.04.2018, has intimated that the regulation Chapter VII Admission of students to Recognized Institutions Section 07 read as "no student shall be admitted to more than one course at a time in the recognition institutions. Besides, the Chapter X-A, (Examinations General) Section 14 reads "the candidates are allowed to change the stream from Science/Commerce to Arts and not vice versa". However, if the candidate wants to change his entire stream of subjects who is under reappear/failure category is allowed to do so provided he seeks cancellation of his earlier result excepting English in which the candidate can retain his earlier award;

Whereas, the School Education Department has also referred the case of petitioner to the General Administration Department vide U.O dated 06.09.2018 for advise in the matter, who in turn vide U.O. No. GAD(Legal)F-501 /2018/1510/A Dated 28.09.2018 advised the School Education Department as under:-

"Returned. The department is informed that the applicant has been well compensated by way of appointing her against the post of Laboratory Bearer by Director School Education, Jammu by taking into consideration her qualification at the time of death of her mother and rules in vogue at the point of time. Now, seeking her appointment against the post of Teacher is devoid of any merit, it is, as such, advised to reject the claim of the petitioner by



Issuing speaking order".

Whereas, in the meantime the applicant (petitioner) forwarded a copy of order dated 06.09.2021 passed by the Central Administrative Tribunal (CAT) Jammu Bench, Jammu in case T.A No. 61/1951/2020 titled Atiya Tabassum Vs UT of J&K & Ors wherein it was ordered as under:

"Learned counsel for the applicant submits that the mother of the applicant who was serving as Senior Teacher in School Education Department died in harness on 21.04.2010. The applicant being a Post Graduate applied for appointment on compassionate grounds. The applicant was appointed as Laboratory Bearer vide Order dated 08.11.2010, however, the applicant being unhappy with her appointment as Laboratory Bearer submitted a representation to appoint her as Teacher. When nothing fruitful was done by the respondents, the applicant served a legal notice to the respondents on 10.06.2015. Despite service of the notice, no action has been taken by the respondents to appoint her as Teacher on compassionate grounds. Hence, this O.A seeking a direction to the respondents to appoint the applicant under SRO-43 dated 22.02.1994 as per her qualification.

We have heard Mr. A H Bhat, learned counsel for the applicant and Mr. Amit Gupta, learned A.A.G for the respondents and perused the records.

Looking to the facts and circumstances of the case, we direct the respondents to consider the case of the applicant as per rules and regulations and pass a reasoned and speaking order within a period of four weeks from the date of receipt of a certified copy of this order.

It is made clear that we have not entered into the merits of the case.

No order as to costs."

Whereas, the case of the applicant (petitioner) was examined in the Department and found that Compassionate appointment is in the nature of exception to the general rule. Candidate who seeks appointment on compassionate grounds cannot stake claim to the post of his choice. Seeker of appointment has no legally enforceable right to claim an appointment to a particular post. More so, Supreme Court in the case of Umesh Kumar Nagpal V/S State of Haryana reported in 1994 (4) SCC 138 has held that if the dependent of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater his status but to see the family through the economic calamity;

Whereas, the Hon'ble Supreme Court in the case titled State of Rajasthan Vs Umrao Singh (1994) 6SCC 540, has also held that



appointment offered to a particular post, on compassionate grounds, the appointee cannot thereafter claim to appoint on higher post on the basis of higher qualification or any other grounds whatsoever, is not sustainable as the object of such appointment is to relieve the family of deceased from the financial distress;

Whereas, the Apex Court has also held that compassionate appointment cannot be claimed as a matter of right, as it is not a vested right. It has also held 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 Judgments on Compassionate appointment as in a very recent judgment of titled UOI vs Amrita Sinha, 2021 the Hon'ble Supreme Court has observed that compassionate appointment is not a matter of right, it is provided to enable family to tide over an immediate crisis;

Whereas, in terms of compassionate appointment rules and her eligibility (age and qualification at the time of death of the deceased), the class-IV post was offered to the applicant (petitioner) by the department, however, the applicant (petitioner) has denied to accept the appointment as Class-IV. At this stage, the claim of the applicant (petitioner) for higher post cannot be accepted in light of the compassionate appointment rules;

Whereas, Ms. Atiya Tabassum applicant (petitioner) has been appointed as Class-IV (Lib. Bearer) in the District Cadre Doda by the Director School Education, Jammu in view of her qualification at that time, 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 been given support by Government under the rules to tide over the financial distress caused due to the death of her mother in the true spirit of the appointment;

Now, therefore, in compliance to the Hon'ble Central Administrative Tribunal's order dated 06.09.2021 passed in T.A No. 61/1951/2020 titled Atiya Tabassum Vs UT of J&K & Ors and advise of the General Administration Department, the claim of the applicant (petitioner) has been considered in the Department and found being devoid of merit is hereby rejected.

By Order of the Government of Jammu and Kashmir.



K.T.O



(Alok Kumar) IRS

Principal Secretary to Government
School Education Department

Dated: 31-10-2022

No. Edu-SROJ/58/2021-01
Copy to the:-

1. Joint Secretary, (J&K), Ministry of Home Affairs, Government of India.
2. Director School Education, Jammu for information and necessary action.
3. Chief Education Officer, Doda for inf. and necessary action.
4. Pvt. Secy. to Principal Secy. to Government, School Education Department.
5. I/C Website.
6. Petitioners in O.A No. 61/1951/2020
7. Govt. Order file (w.3.s.c).



(Javid Ahmed)

Additional Secretary to Government
School Education Department