

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP (C) No. 1413/2025

1. UT of J & K th. Commissioner Secretary, ...Applicant(s)/Petitioners(s)
GAD Civil Secretariat, Jammu/Srinagar
2. UT of J&K th. Commissioner/Secretary,
Social Welfare Department, Civil
Secretariat, Jammu/Srinagar
3. Director General, Social Welfare
Department, Jammu

Through :- Mr. Ravinder Gupta, AAG

v/s

Mayser Iqbal, Age 30 years, S/o. Lt. Zaffar Respondent(s)
Hussain, R/o Village Behrote, Tehsil
Thanamandi, Rajouri.

Through :-

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

ORDER
04.08.2025

1. This petition by the Union Territory of Jammu & Kashmir and others, filed under Article 226 of Constitution of India, is directed against an order/judgment dated 19.11.2024 passed by the Central Administrative Tribunal, Jammu (“**the Tribunal**”) in OA No. 1323/2022 titled *Mayser Iqbal Vs. UT of J&K & Ors.*, whereby the Tribunal, while allowing the OA, directed the petitioners herein to appoint the respondent on compassionate grounds in terms of SRO 43 of 1994.
2. The impugned judgment is challenged by the petitioners primarily on two grounds:
- (i) That the deceased-employee was regularized in government service by an authority not competent to do so and

therefore, cannot be treated as government servant for the purposes of SRO 43 of 1994.

(ii) That no mandamus can be issued to appoint a person in the government services.

3. Before we avert to, the grounds of challenge urged by Mr. Ravinder Gupta, learned AAG, appearing for the petitioners, we deem it appropriate to give brief factual background leading to the filing of this petition.
4. The father of respondent, namely, Zaffer Hussain, who was serving as Orderly in the Tehsil Social Welfare Office, Rajouri died in harness on 24.10.2019. The respondent applied to the petitioners for compassionate appointment in terms of SRO 43 of 1994. The respondent was a graduate and having a diploma in Computer Applications. His case was processed in the office of District Social Welfare Office, Rajouri and was submitted to the competent authority after completing all the requisite formalities. The petitioners, however, rejected the case of respondent for compassionate appointment.
5. Feeling aggrieved, the respondent approached the Tribunal by way of OA No. 428/2022, which was disposed of vide order dated 05.05.2022 with a direction to the petitioners to consider the case of the respondent for compassionate appointment in terms of SRO 43 of 1994. In compliance with the aforesaid order, Director Social Welfare, Jammu vide his order No. 176-DSWJ of 2022, dated 13.06.2022, considered and rejected the case of the respondent being devoid of merits. This consideration was challenged by the respondents in OA No. 620/2022

before the Tribunal, which was disposed of vide order dated 04.07.2022, once again directing the petitioners herein to consider the prayer of the respondent and to pass a reasoned order. This is how Order No. 89JK (SWD) of 2023 dated 05.04.2023 came to be passed by the Government. It is this order, which is called in question by the respondent in OA No. 1323/2023. As already stated, the OA has been allowed and a direction has been issued to the petitioners to appoint the respondent on compassionate grounds in terms of SRO 43 of 1994. It is in this background, the instant petition has been filed by the petitioners to throw challenge to the order impugned dated 19.11.2024, passed on OA No. 1323/2022.

6. Having heard learned counsel for the petitioners and perused the record, we find that the facts are not much in dispute in the instant case. The deceased-government employee, the father of the respondent, was engaged as Orderly in Tehsil Social Welfare Office, Rajouri on 08.10.1988 and was subsequently regularized by the District Social Welfare Officer, Rajouri vide office order dated 15.03.1989. While he was continuing in service of the petitioners, as a regularly appointed Orderly, the deceased died in harness on 24.10.2019. It is true that the District Social Welfare Officer may not be the authority competent to regularize the services of a temporary or *ad-hoc* employee, yet this Court cannot lose sight of the fact that the deceased, after having been regularized with effect from 15.03.1989, has remained in continuous service of the petitioners till his death in the year 2019.

7. Otherwise also, even if we were to accept the arguments of Mr. Ravinder Gupta, learned AAG that the regularization of the deceased employee was not by a competent authority, yet we find that the deceased having continued for more than two decades has otherwise acquired right of regularization under the provisions of the J&K Civil Services (Special Provisions) Act, 2010. That apart, it is not the case of the petitioners that during the life time of the deceased, any action was initiated to withdraw the so-called unauthorized order passed by the District Social Welfare Officer, whereby his services were regularized.
8. So far as the argument of Mr. Ravinder Gupta, learned AAG that the mandamus cannot be issued to appoint a person in Government services is concerned, the same may have a substance. However, the mandamus to consider the case for compassionate appointment in the light of the observations made in the judgment amounts to calling upon the petitioners to appoint the respondent. However, with a view to setting the record straight, the direction in the impugned order to appoint the respondent in terms of SRO-43 of 1994 can be modified to provide a direction to consider the case of the petitioners for appointment in the light of observations made above.
9. For the foregoing reasons, we do not find any merit in this petition. The same is, accordingly, disposed of with a slight modification that instead of writ of mandamus, a direction shall be deemed to have been issued by the Tribunal to the petitioners to consider the appointment of the respondent on compassionate grounds under SRO 43 of 1994 in the light of the observations made in the judgment passed by the Tribunal

as also the observations which we have made hereinabove in this judgment.

10. Disposed of.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
04.08.2025
Vishal Sharma

