

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 2394/2025
CAV No. 1374/2025

1. UT of J&K through
Commissioner/Secretary to Govt.,
Health & Medical Education
Department, Civil Secretariat,
Srinagar/Jammu-180001
2. Commissioner/Secretary to Govt.
GAD, Civil Secretariat,
Srinagar/Jammu-180001.
3. Director, Health Services, Jammu-
180001.

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

Through: Mr. Raman Sharma, AAG

vs

Nissar Ahmed, Age 37 years
S/o Late Abdul Qayoom
R/o Village Chilly Bala, Tehsil Gandoh,
District Doda.

..... Respondent(s)

Through: Mr. N. D. Qazi, Advocate

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

ORDER (ORAL)
01.09.2025

Sanjeev Kumar 'J'

CAV No. 1374/2025

1. Heard learned counsel for the caveator.
2. With the appearance of learned counsel of caveator, the caveat stands discharged.

WP(C) No. 2394/2025

1. This petition, filed by UT of Jammu and Kashmir and two others under Article 226 of the Constitution of India, is directed against an

order/judgment dated 25.02.2025 passed by the Central Administrative Tribunal, Jammu Bench [**“the Tribunal”**] in TA No. 8618/2020 titled *Nissar Ahmed Vs. State of J&K & Ors.* whereby the Tribunal, while allowing the petition of the respondent, has held him entitled to be appointed as Health Educator in Health Department on the analogy of Aditya Sharma and Abdul Majeed, who were similarly situated and were appointed as Health Educator in Health Department. The respondent has also been conferred the benefit of appointment with effect from the date of issuance of his order as Class-IV along with all the consequential benefits.

2. The impugned judgment is challenged by the petitioners primarily on the ground that the Tribunal has not appreciated that, the respondent, having claimed and accepted his appointment as Class-IV on 14.02.2007, could not have approached the Court after eight years i.e. in the year 2015, raising his grievance for the first time through the medium of SWP No. 1443/2015. It is contended that the respondent was estopped by his conduct and acquiescence. He was thus not entitled to ask for a higher post after a lapse of more than eight years. The impugned judgment is also challenged on the ground that the post of Health Educator, against which there is a direction by the Tribunal to appoint the respondent, is not a lowest post in the Non-Gazetted cadre of the Department.
3. *Per contra*, Mr. N. D. Qazi, learned counsel for the respondent would argue that though there was delay in coming to the Court yet in view

of the fact that in the year 2018 itself, a person who was similarly situated with him, namely Mr. Aditya Sharma, was appointed as Health Educator, the delay cannot come in his way to claim the right of equality guaranteed to him under Article 14 of the Constitution of India.

4. Having heard learned counsel for the parties and perused the material available on record, we are of the considered opinion that the Tribunal has failed to consider the issue of delay and acquiescence, specifically raised by the petitioners in their objections before the Tribunal.
5. Admittedly, the father of the respondent, who was working as Senior Pharmacist in the Health Department died in harness on 22.06.2006. The respondent, possessing the qualification of graduation, applied for compassionate appointment under SRO 43 of 1994 on 19.10.2006. Initially, he requested the petitioners to appoint him as Junior Health Inspector, however, on realising that he did not possess the eligibility qualification prescribed for the post of Junior Health Inspector, the respondent made a fresh application on 26.12.2006, requesting the petitioners to consider him for the post of Class-IV.
6. The case of the respondent was processed, which, ultimately, culminated into issuance of order of appointment of respondent as Class-IV. This was done by the Director, Health Services, Jammu vide his order dated 14.02.2007. Not only the respondent accepted his appointment against the available post of Class-IV without any

protest, but he also faithfully joined the duties. The respondent also did not raise any grievance after his confirmation upon completion of probation period. It was only in the year 2015 that the respondent filed SWP No. 1443/2015 before this Court claiming his appointment against the post of Health Educator. It needs to be noticed that prior to filing of petition in the year 2015, the respondent had never raised his grievance before the petitioners by making any representation or otherwise.

7. Be that as it may, the SWP No. 1443/2015 was disposed of at the motion hearing stage without permitting the petitioners to contest the same with a direction to consider the claim of the respondent for the post of Health Educator in accordance with the rules. In compliance with the directions passed in SWP No. 1443/2015, the claim of the respondent for his appointment in the lowest rank of the Non-Gazetted service was considered by the Director, Health Services, Jammu, who, vide his order dated 24.11.2017 rejected the claim on the ground that the post claimed by the respondent in his writ petition i.e. post of Extension Educator or Health Educator was not the lowest in rank of Non-Gazetted service.
8. Feeling aggrieved and dissatisfied by the consideration order dated 24.11.2017, the petitioner filed SWP No. 516/2018 before this Court, which upon transfer to the Tribunal, came to be registered as TA No. 8618/2020. The writ petition/TA was contested by the petitioners *inter alia* on the ground that the petition was not maintainable at the

instance of respondent, who had voluntarily accepted his appointment as Class-IV and acquiesced therein for a pretty long time.

9. As is evident from the impugned order, the Tribunal skirted this issue and decided it on the analogy of some similarly situated persons, who, as per the Tribunal, stood appointed against the higher post.
10. It is a trite law that once a person accepts an appointment on compassionate basis, he is estopped from seeking an appointment on any other equivalent or higher post. The principle of estoppel and acquiescence is clearly attracted, even in the case of compassionate appointment.
11. The Hon'ble Supreme Court in *State of Rajasthan Vs. Umaro Singh*, (1994) 6 SCC 560 has dealt with the issue and has held that once the right to compassionate appointment has been consummated, no further or second consideration for a higher post on the ground of compassionate basis arises. In view of the legal position consistently laid down by the Hon'ble Supreme Court and also by various High Courts as also by this High Court, we are of the opinion that in the instant case, the respondent having accepted the appointment as Class-IV and having acquiesced therein, could not have turned around and seek his compassionate appointment against a higher post after more than eight years of its acceptance. The doctrine of acquiescence is an equitable doctrine and means silent assent, concurrence or acceptance. It is different from delay and laches. The

limitation and laches destroy remedy and not the right. Laches like acquiescence is also based on equitable considerations which delay and laches import simply the passivity. The remedy to enforce right is lost by inaction. On the other hand acquiescence implies active assent and is based on the rule of estoppel in pais. It comes into play when a party by his conduct like silence, tacit consent or concurrence waives of his right. In such situation, a party is estopped from complaining violation of his right. (See *State Bank of India Vs. M.J. James* 2021 SCC OnLine SC 1061)

12. We could understand that he was in distress when the appointment of Class-IV was offered to him and therefore, could not have gathered courage to raise his voice, but nothing stopped him after he was appointed and even completed his two years of probation. The respondent remained quiet for six years even after confirmation of his probation. Under these circumstances, we have no option, but to overturn the impugned judgment passed by the Tribunal and hold that the respondent, having accepted and acquiesced in his appointment of Class-IV in the year 2006, cannot be permitted to agitate the matter after a lapse of more than eight years to claim a higher post on compassionate basis.
13. Needless to say, the objective of compassionate appointment is to provide immediate relief to the family which has been put under financial constraints due to untimely death of its breadwinner by offering an appointment to one of the deceased employee's

dependents. The compassionate appointment, by its nature, is an exception to the normal process of recruitment where all eligible candidates have right to compete and get selected. Once the right to seek compassionate appointment has been consummated, no further consideration for higher or better appointment is called for.

14. For all these reasons, we find merit in this petition and the same is **allowed**. Judgment impugned passed by the Tribunal is set aside.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Jammu
01.09.2025
Vishal Sharma

