Sr. No. 85

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CJ Court

Case: WP(C) No. 3506/2026
CM No. 7815/2026

Date of Pronouncement : 03.11.2026

Uploaded on : 05 .11.2026

UT of J&K and others .....Appellant(s)/Petitioner(s)

Through :- Mr. Suneel Malhotra, GA

v/s

Ram Pyari .....Respondent(s)

Through :-

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER (ORAL)

1. The respondent is a lady and a widow too, who was permitted to join the services of the petitioners, as a Gardner, in the pay scale of Rs. 2500-3200 by the Director, Gardens, Parks and Floriculture, Jammu vide order No. GPF/Camp/110/99 dated 10.02.1999. The appointment continued, until it was abruptly terminated by the Government Order No. 626-GAD of 2001 dated 12.06.2001. The petitioner along with thirty other similarly situated persons challenged the termination, which was decided in their favour and the termination order was set aside on 16.12.2005, against which, the State went into an LPA and then an SLP, which were all dismissed finally on 10.05.2012. In the meanwhile, the respondent, who was a widow and was also being under consideration for compassionate appointment under SRO-

43, was given the same vide order No. 108 of 2010 dated 20.09.2010, on compassionate grounds following SRO-43.

2. The limited bone of contention is whether the petitioner, being a party in the earlier litigation when the termination order was set aside and upheld by this Court, the Division Bench as well as by Hon'ble the Apex Court on 10.05.2012, would reap benefits of earlier litigation or her compassionate appointment, which had taken place in the intervening period would prevail. The counsel for the petitioners submits that, once, she has accepted the compassionate appointment as per SRO-43 on 20.09.2010, by filing an affidavit that she would not seek any other appointment, she would be barred from claiming any benefits of the orders of earlier litigation. Counsel for the petitioners also submits that respondent has waived her rights for the previous benefits, which were arising out of the original orders of her being appointed as a Gardner on 10.02.1999.

3. After hearing counsel for the petitioners, this Court is of a firm opinion that the poor lady, Gardner, would not have any power to sustain herself but for the alternate appointment offered to her 2010 and even if she would have acquiesced some of her rights, the same cannot be read against her, as she had no bargaining power vis-à-vis State. In '*Bhola Nath v/s State of Jharkhand & Ors'*, reported at **2026 LiveLaw (SC) 95**, the Hon'ble Apex Court has held that State cannot be permitted to exploit its employees or to take advantage of their vulnerability, helplessness or unequal bargaining position.

4. When two simultaneous rights have been accrued to the respondent, arising out of the initial appointment, as a Gardner, in 1999 as well as appointment in terms of SRO-43 in 2010, then the benefit of the better one

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has to be given to the widow lady Gardner and, thus, the learned CAT has rightly arrived at a conclusion that the benefit of the earlier appointment, in terms of the position settled up to the Hon'ble Apex Court, has to be given.

5. Accordingly, this Court is firm in its opinion that once lawful rights are accruing, the lawful right, which is more beneficial to the employee, has to be given effect to, particularly, in the circumstances when she herself is a widow and is only on the post of Gardner. Hence, no cause of interference is made out.

6. The petition is, accordingly, **dismissed**, along with connected application.

(RAJNESH OSWAL)
JUDGE

(DR. PUSHPENDRA SINGH BHATI)
CHIEF JUSTICE

JAMMU
03.11.2026
Raj Kumar

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सत्यमेव जयते

Whether the order is speaking? : Yes/No

Whether the order is reportable? : Yes/No

Raj Kumar
2026.11.05 17:19
I attest to the accuracy and
integrity of this document