Sr. No. 7

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CJ Court

Case: WP (C) No. 3580/2026
CM No. 8005/2026
CAV No. 2786/2026

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

Through :- Ms. Monika Kohli, Sr. AAG with
Mr. Tabrez Haq, Assisting Counsel

v/s

Shamsheer Hussain .....Respondent(s)

Through :- Mr. Anuj Dewan Raina, Advocate

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER
25.11.2026

(ORAL)

With the appearance of learned counsel for the caveator, ***Caveat No. 2786/2026*** shall stand discharged.

WP (C) No. 3580/2026 :

1. Brief facts, noticed by this Court, are :-

(i) That the respondent's father, late Sh. Munir Hussain, was serving as Assistant Sub-Inspector and died in harness on 07.06.2013. The petitioner was minor, aged 16 years, 6 months and 21 days at that time and thus, could not apply for compassionate appointment, as per SRO 43 of 1994. The respondent, however, applied in 2015. The controversy could have been that there was a limitation for one year to make an

application under SRO 43 (supra), which would entitle the petitioners to reject the case of the respondent but SRO 43 (supra), itself, stood amended, vide order dated 20.06.2014, by which, the period of limitation in sub-rule (1) of proviso to sub-rule (3), where the limitation of one year prescribed was substituted by five years, thus, the time barred issue stood resolved.

(ii) That the second issue was that a subsequent SRO came in the year 2017, bearing SRO 376 of 2017 dated 11.09.2017, which prohibited compassionate appointment for the persons, who would have one of the dependents, serving in any of the government departments.

2. Ms. Monika Kohli, learned Sr. AAG submits that on the date of the application, the respondent was ineligible on account of the limitation law, while the death had happened on 07.06.2013, the application has been made in the year 2014, i.e., after the lapse of one year, thus, the SRO 177 of 2014 dated 20.06.2014 itself debarred the respondent from seeking any relief. Ms. Kohli, further, submits that, now, when the order of consideration has been passed, SRO 376 (supra) which is in vogue, prohibits compassionate appointment, where, there are family members/dependants, who are already in the government service.

3. Learned counsel for the respondent submits that both the impediments, which are submitted by the learned Sr. AAG, would not operate because, firstly, the time of death was 2013 and the time of application was 2015 and when the application of 2015 was made, there was already an amendment in the SRO 177

(supra), which entitled the respondent to move an application within a period of five years, which he did. He further submits that once his application was moved, the consideration had begun and, therefore, any future law could not retrospectively govern the consideration, particularly, when it is a benevolent legislation.

4. Ms. Kohli, however, submits that even if the CAT judgment is not interfered with by this Court, then also notional effect to the compassionate appointment with effect from 2016 has to go away.

5. Learned counsel for the respondent submits that it was due to inaction on the part of the Authorities and, thus, the notional effect has to remain on board. He, in support of his submissions, has referred to the Division Bench judgment of this Court in case titled ***"UT of J&K and others Vs. Ram Darshan"***, reported as 2025: JKLHC-JMU:2868-DB, paragraph (8) thereof, being relevant, reads as follows:-

> "8.Indisputably, when the case of the respondent for compassionate appointment was processed second time i.e. in the year 2015, there was no impediment to consider his case and appoint him as per the recommendations made by the Director General of Police. It seems that the case of the respondent was turned down on the ground that he had failed to apply within the prescribed time. The reason given for rejection was totally unsustainable for the reasons that the respondent had applied well in time but his case for compassionate appointment could not be considered because he was found minor. The petitioners did not realize that the delay in filing the application in the year 2015 was because of the reason that at the time of death of his father, he was a minor. Otherwise also, the application moved by the respondent second time in the year 2015 was only in continuation of the earlier application and, therefore, could not have been thrown out on the ground of limitation. That apart, the petitioners having recommended his case again shall be deemed to have waived a plea of limitation. So far as SRO 376 of 2017 is concerned, we are of the considered opinion that the same would not be applicable to the case of the respondent. We are saying so because on plain reading of SRO 376 of 2017, it clearly transpires that the pending/rejected cases on the date of issuance of SRO 376 of 2017 are required to be decided in accordance with SRO 43 of 1994, as it stood before the issuance of SRO 376 of 2017. Any other interpretation given to the

> explanation would render the entire SRO 376 of 2017 redundant and without any meaning."

6. This Court, after hearing learned counsel for the parties, finds that the respondent's father was serving the petitioners as Assistant Sub-Inspector and expired on 07.06.2013 when the respondent was minor. The SRO 43 of 1994 and its amendment vide SRO 177 dated 20.06.2014, permitted the limitation of "one year" to be substituted with "five years", relevant part whereof, is reproduced as below:-

> "(a) In the first proviso to sub rule (1) and the proviso to sub-rule (3), for the words **"one year",** the words **"five years"** shall be substituted."

7. Admittedly, the respondent had moved an application in the year 2015, which was within five years. Once the application is moved, the consideration began and, thus, debarring the respondent, on the ground that one of his family members, i.e., brother in this case was already in government service, would not be appropriate. Such restriction was subsequently imposed in 2017 vide SRO 376 (supra). The respondent will be governed by SRO 177, which was applicable at the time when consideration began on his application. Thus, while the limitation is overcome by the amendment made in SRO 177, the disability, caused due to SRO 376 of 2017 dated 11.09.2017, would not operate, when it come into effect in the year 2017 and could not have been given retrospective effect on the pending consideration.

8. In the light of the observations made above, no interference is called for with the judgment passed by the learned CAT. However, while concurring with the observations of the learned CAT, particularly, paragraph (11) of the impugned judgment, this Court finds that notional benefit to the compassionate

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appointment, in the present factual matrix would not be warranted. For facility of reference, para (11) of the impugned judgment is reproduced as under:-

> "11.Compassinate appointment is an exception carved out to relieve the immediate financial distress caused by the death-in-harness of a government servant. When the dependent is a minor, law and policy consistently recognise that the minor cannot apply until attaining majority, and authorities routinely keep the claim alive for consideration thereafter. Here, the petitioner attained majority, completed formalities, and within a reasonable time PHQ forwarded his case on 29.11.2016. Treating the claim as "time-barred" without accounting for minority is legally untenable and contrary to the very object of SRO 43 of 1994. The respondents themselves processed the case, obtained medical fitness and made a formal recommendation –conduct wholly inconsistent with the plea of time-bar. Finding: Issue A is answered in favour of the petitioner."

9. Thus, while disposing of the petition, in a limited intervention, sub-para (iv) of paragraph (16) of the CAT Judgment is quashed and the appointment, along with the pay and allowances, shall for all practical purposes be prospective in nature.

10. The petition is ***disposed of***, in above terms, along with connected applications.

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(WASIM SADIQ NARGAL) JUDGE **(DR. PUSHPENDRA SINGH BHATI) CHIEF JUSTICE**

JAMMU :
25.11.2026
Pawan Chopra, Secy

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No

Pawan Chopra
2026.11.26 14:26
I attest to the accuracy and
integrity of this document