Sr. No. 66

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CJ Court

Case: WP(C) No. 3703/2026
CM No. 8248/2026

Union of India and others .....Appellant(s)/Petitioner(s)

Through :- Mr. Vishal Sharma, DSGI with
Mr. Karan Sharma, CGSC

v/s

Krishan Lal .....Respondent(s)

Through :- Mr. Vidya Sagar, Advocate

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

ORDER(ORAL)
23.11.2026

1. The facts as, noticed by this Court, are that this is a case of compassionate appointment where the respondent, aged 44 years, is working as a Peon in the office of Garrison Engineer (MES) North, Akhnoor (J&K) Group 'C' Jammu. The respondent's father died in harness on 02.03.1996, and immediately, thereafter, the respondent applied for compassionate appointment on 04.10.1996. The respondent's application was immediately put up for consideration and the consideration continued in terms of the 'Scheme for Compassionate Appointment under Central Government' issued by the Ministry of Personnel, Public Grievances & Pensions Department of Personnel and Training. While such consideration was being made, the Recruitment Rules of 1971 changed to 2002 Rules, which prescribed the minimum qualification as 10th pass for the post of Peon. The consideration, which began in 1996 culminated into appointment on 31.12.2012, where the respondent was appointed as a Peon in the compassionate quota with the condition that he would pass his Class 10th within a period of 5 years from the date of appointment. The respondent, however, did not

complete such stipulation and remained 8th pass, where he stood at the time of his application. The stipulation of 5 years was extended to enable the respondent to continue in the appointment.

2. Counsel for the petitioners, Mr. Vishal Sharma, learned DSGI submits that the petitioners are bound by the Rules and once the Rules were amended, then the necessary qualification for the post, in question, had to be acquired. He submitted that in the 1971 Rules, the qualification required was not 10th pass, whereas the Rules, which came into existence in 2002, were the Rules which were required to be applicable and, thus, there was no option for the petitioners but to give him a conditional appointment on the condition, which he is yet to fulfill. Mr. Sharma further reiterates that since the necessary and mandatory statutory condition, as per the Recruitment Rules, has not been complied with, therefore, the appointment has to come to an end.

3. Counsel for the respondent, however, submits that the consideration began when the respondent actually applied and that was on 04.10.1996. The counsel further submits that once the consideration had begun in accordance with the Rules of 1971, then it was not open for the petitioners to have applied the amended rules of 2002, which required the minimum qualification of 10th pass. The counsel for the respondent, further, submits that since there cannot be a retrospective application of the Rules of 2002, therefore, at the time of consideration, when the consideration actually began, since there was no necessary requirement of qualification of 10th pass, then it was the duty of the petitioners to have continued the respondent's appointment, which has already continued for more than approximately 15 years.

4. In the rejoinder, Mr. Vishal Sharma, DSGI has referred to the judgment of the Hon'ble Apex Court in "***N.C. Santhosh Vs. State of Karnataka and others",* **reported in 2020 (7) SCC 617 (Civil Appeal Nos. 9280-9281 of 2014 decided on 04.03.2020),** the relevant paragraph (20) of which reads as follows:

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> "Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee."

5. After hearing learned counsel for the parties, perusing record of the case and the impugned judgment, this Court finds that the compassionate appointment was applied for by the respondent on 04.10.1996.

6. This Court, on consideration, finds that the judgment referred to by Mr. Sharma actually goes in favour of the respondent. The death of the father of the respondent happened on 02.03.1996 and the respondent immediately moved an application, within the stipulated time period, on 04.10.1996.

7. In the opinion of this Court, the consideration started immediately as the application was made, which culminated into an appointment on 31.12.2012. The proposition of 2002 Recruitment Rules coming into force for the purpose of minimum educational qualification, cannot be accepted because the same has to be the Rules, in vogue, at the time when the consideration began, i.e., when the application was made, has to be applied in the present case as laid down by the Hon'ble Apex Court.

8. The 1971 Rules prescribed 8th class as minimum qualification, whereas 2002 Rules prescribed 10th class as minimum qualification. This Court is of the firm opinion that since the Rule to be applied has to commensurate with the time of consideration, therefore, the consideration, itself, begins not at the time of death, i.e., on 02.03.1996, but on the time when the applicant applied and the consideration began, i.e., on 04.10.1996.

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9. Going with the judgment and mandate of the precedent law in N.C.Santhosh (Supra), this Court finds that the CAT judgment does not suffer from any infirmity. The Rules of 1971 stipulated 8th class as minimum qualification at that time for the post of Peon. The rules of 2002 cannot be retrospectively applied while the consideration was going on. Merely because the delayed appointment of compassionate was made by the petitioners does not call for any interference in the matter, which is being agitated, on behalf of the petitioners. The delay in consideration, however, would not disentitle the respondent and, thus, the condition stipulated in the appointment order is bad in the eye of law, as it has to be in accordance with the precedent law in N.C.Santhosh (Supra) and also the Rules of 1971.

10. Hence, for the aforesaid reasons, no indulgence in the matter is called for. The petition is, accordingly, ***dismissed***.

11. It is noted by this Court that the object of compassionate appointment was to create a secured environment for the family living in difficult financial conditions as the breadwinner has died in harness so that the family can tide over the sudden financial crisis caused by the loss of its breadwinner. The object stood mitigated in this case when the delayed appointment was granted and now after 15 years if such appointment is taken back, it will further create a complexity for the family, which cannot be permitted.

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

JAMMU :
23.11.2026
Pawan Chopra, Secy.

Pawan Chopra
2026.11.25 15:55
I attest to the accuracy and
integrity of this document