

Government of Jammu and Kashmir.
Jal Shakti Department
Civil Secretariat, Jammu/Srinagar
* * * * *

Subject: - CCP (s) No. 505/2019 in SWP No.2296/2015 titled Manu Anand Vs M.Raju and Ors.

Government Order No. 2133-JK (JSD) of 2024.
Dated: 03-12-2024

Whereas, the father of the petitioner namely Shri Jiwan Parkash Anand was employed as Senior Assistant in Irrigation Department at Tube Well Irrigation Division, Jammu who died in harness on 11.09.1988;

Whereas, the petitioner at the time of death of his father was minor and his age was only 08 years old. After passing the matric in the year 1996, the petitioner submitted application for compassionate appointment in lieu of death of his father in 1998;

Whereas, the application submitted by the petitioner seeking compassionate appointment under SRO-43 dated 22.02.1994 was rejected by the Administrative Department on the grounds that the case is time barred and the concerned Executive Engineer rejected the same vide order No. 4-E of 2017-18 dated 17.05.2017;

Whereas, Shri. Manu Anand , filed a writ petition before the Hon'ble High Court bearing SWP No. 2296/2015 titled Manu Anand Vs State of Jammu and Kashmir & Ors wherein the petitioner sought the relief for quashment of order No.TWID/J763-64 dated 28.05.2015 issued by the respondent No. 5 denying the benefit of appointment of the petitioner on compassionate grounds as well as quashing the order issued by the respondent No. 2 under No. PW(IFCJ)28/2000 dated 22.05.2000;

Whereas, the Hon'ble Court while considering the writ petition on 09.03.2017 passed an order, the relevant portion, which is reproduced as under:-

"...Respondents/competent authority is directed to consider the claim of petitioner by way of a speaking order in light of SRO-122 of 1989 within a period of two months from the date certified copy of this order is supplied to them.

**With the above direction,
the writ petition is disposed of."**

Whereas, petitioner also filed contempt petition for implementation of the above referred judgment dated 09.03.2017 passed by the Hon'ble Court;

Whereas, the case was examined in the department and was also referred to the Department of Law Justice and Parliamentary Affairs for seeking advise , who while returning the case vide their U.O. dated 01.08.2018 advised as under:-

"Department is advised to consider the claim of the petitioner by way

of speaking order in terms of rule prevalent at the time of death of deceased which shall be a complete deference to the court directions dated 09.03.2017"

Whereas, at the time of death of the deceased the SRO-122 of 1983 was in force and the claim of the petitioner has been examined in light of the SRO-122 of 1983 it has been found that the petitioner, at the time of the death of his father, was only 08 years old and his claim for relaxation of age can't be considered for appointment on compassionate basis for the reason that rule 5(VIII)-II(a) of SRO-122 of 1983 provides that in most deserving cases, the concerned Head of the department may recommend to the competent authority for relaxation of his /her age bar not beyond 40 years in the case of upper age limit and by not more than 4 years in the case of lower age limit. From his own admission, the petitioner was 8 years old at the time of death of his father and the Department was not competent to relax more than 04 years, as such the claim of the petitioner does not merit any consideration under SRO-122 of 1983 for compassionate appointment;

Whereas, the matter was also referred to General Administration Department for seeking opinion in the matter as to whether the petitioner is entitled for compassionate appointment under SRO-122 of 1983, when it is admitted fact that at the time of the death of the petitioner's father, the petitioner was minor of 08 years old and he has applied for the appointment of a gap of more than 10 years;

Whereas, the General Administration Department returned the departmental file, with the following advice, vide their U.O. dated 27.01.2021:-

" The Department is informed that the requisite age for entry into Government Service is clearly prescribed in terms of sub- rule (b) of Rule- 17 of J&K CSR. Accordingly , the department is advised to consider the case of the petitioner in light of the referred rules at their own level."

Whereas, that Department pursuant to the advise of the General Administration Department examined the case in the Department and as per the reference of the rules given by the General Administration Department, and it has been found that in terms of Rule- 17 of Jammu & Kashmir Civil Services (Classification, Control and Appeal) Rules, 1956, the rule position provides as under:-

Qualification:- No person shall be eligible for appointment to any service by direct recruitment, unless-

(a) he is hereditary State subject to be known as a permanent resident:

[(b) his age is not less than 18 years and does not exceed 28 years], [in case of those who are not already in Government Service and 30 years in case of those who are in Government service] [on the first day of January] of the year in which the competitive examination is held or his nomination is made in respect of the vacancy to which the direct recruitment is made.

Whereas, based on the above said rule position a speaking order was issued vide order No: 161/E of 2022-23 dated 28-11-2022 by the Chief Engineer;

Whereas, the Hon'ble High Court on 05.03.2023 while considering the compliance report filed by the Chief Engineer passed the following directions in CCP (s) No. 505/2019:-

"Order dated 28.11.2022 passed by the respondents is not a speaking order and further is not in accordance with the directions passed by this Court.

Let fresh compliance report be filed by the respondents before the next date of hearing positively."

Whereas, in compliance with the Hon'ble High Court's directions dated 05.03.2023 in CCP (S) No. 505/2019, the petitioner's claim has been re-examined afresh upon careful consideration of the rules, the petitioner's case lacks merit due to the following reasons:-

- i. The petitioner was underage at the time of his father's death, and the permissible relaxation under SRO-122 does not cover such a significant age gap.
- ii. The claim is time-barred as per the provisions of SRO-122 of 1983.
- iii Rule 17 of the J&K CSR, 1956, does not permit appointment of minors or those who were not eligible for government service at the time of their parent's demise.

Whereas, the Hon'ble Supreme Court has decided the identical case on 30 September, 2022 titled Fertilizers and Chemicals Travancora Ltd and Ors Vs Anusree K.B. and has observed that:

"It also noted that after a period of around 14 years after his death, his daughter had submitted an application for appointment on compassionate ground

Referring to previous judgments of the top court, the bench said as per the law laid down, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of dependents of a person dying in harness and leaving his family in penury and without any means of livelihood.

In such cases, out of pure humanitarian consideration, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment, the court said.

"The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased," the bench said.

Allowing the appeal filed by Fertilizers and Chemicals Travancore Ltd and others against the verdict of the high court, the court said that if such an appointment is made now it shall be against the object and purpose for which the appointment on compassionate ground is provided.

Setting aside the high court judgment, it said both the single Bench as well as the division bench had committed an error in directing the appellants to reconsider her case for appointment on compassionate ground."

Now, therefore, in compliance with the Hon'ble High Court's directions dated 09.03.2017 passed in SWP No. 2296/2015 and 05.03.2023 in CCP(S) No. 505/2019, coupled with the advise of Department of Law, Justice & P.A and General Administrative Department, the claim of Shri Manu Anand for compassionate appointment is found devoid of merit and is accordingly rejected.

By order of the Government of Jammu and Kashmir.

Sd/-

(Shaleen Kabra) IAS
Financial Commissioner (ACS)
Jal Shakti Department.

No. WI-Tech/11/2023-TWI Jammu-CE,I&FC,J /7329741

Dated: 03.12.2024

Copy to the:-

1. Joint Secretary (J&K), Ministry of Home Affairs, Government of India, New Delhi.
2. Ld. Addl. Advocate General, J&K High Court, Jammu for information and filing of compliance before the Hon'ble Court.
3. Private Secretary to the Financial Commissioner (ACS) Jal Shakti Department for information of the Secretary.
4. Private Secretary to the Commissioner Secretary to Government General Administration Department for information of the Secretary.
5. Special Secretary to Government, Jal Shakti Department.
6. Petitioner.
7. Incharge website, Jal Shakti Department.
8. Monday Return file (w.2.s.c).
9. Government order file.


(Arifa Ashraf)

Under Secretary to Government,
Jal Shakti Department


3/12/24