



**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

**LPASW No. 145/2018**

**Reserved on : 14.08.2025**

**Pronounced on : 27.02.2026**

**Uploaded on : 27.02.2026**

1. State of Jammu & Kashmir through Commissioner/Secretary to Government Agriculture Production Department, Civil Secretariat, Srinagar/Jammu. .... Petitioner/Appellant(s)
2. Director, Agriculture Department, Kashmir.
3. Chief Agriculture Officer, Anantnag.

Through:- Mr. M. Younis, assisting counsel

V/s

1. Javaid Ahmad Ganai, S/o Mohammad Akram Ganai, R/o Village Sandoo Bul Bul, Nowgam Anantnag. ....Respondent(s)
2. Commissioner/Secretary to Govt. General Administration Department, Civil Secretariat, J&K, Jammu/Srinagar.
3. District Development Commissioner, Anantnag.

Through:- Mr. Z. A. Qureshi, Sr. Advocate with  
Mr. Anuraag Verma, Advocate

**CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**  
**HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE**

**JUDGMENT**

1. The present Letters Patent Appeal is directed against the judgment dated 10.07.2015 passed by the learned Single Judge in SWP No. 1951/2009, *Javaid Ahmad Ganai v. State of J&K & Ors.*, whereby the writ petition of Respondent No. 1 was allowed to the extent of declaring that he shall be *deemed* to have been appointed as storekeeper w.e.f. 13.09.2000, though without consequential monetary benefits.



2. The relevant facts for consideration in the present appeal are that the petitioner/respondent No. 1 herein was appointed by the Deputy Commissioner, Anantnag, as a storekeeper in the pay scale of Rs. 3050–4910 on compassionate grounds under SRO-43, vide Order No. 149-CA/Misc/2000 dated 13.09.2000. However, he was not permitted to join against the said post on the ground that the post of Store-Keeper is a promotional post. The respondent No. 1 at the instance of Deputy Commissioner, Anantnag was allowed to join against a Class-IV post in the pay scale of Rs. 2550–3200, and his case was recommended for consideration under the relevant rules.

3. The petitioner constrained by the fact that he was not allowed to join on the post on which he was appointed, approached this Court by filing writ petition SWP No. 405/2006 and the said writ petition was considered and decided by this Court vide judgment dated 11<sup>th</sup> October, 2007 by holding as under:

*“Accordingly and in given circumstances of the case as catalogued above the petition is disposed of by referring the whole issue to Commissioner/Secretary, General Administration Department who may enter upon the matter and pass appropriate orders on petitioner’s claim of being entitled to join against the post to which he appears to have been appointed in view of the above quoted communications under rules governing the subject. The consideration and the consequential order as such be passed within a period of six weeks from now with intimation to petitioner who shall be liberty to re-agitate the matter if cause survives.*”

4. The matter was subsequently, forwarded to the Administrative Department and later to the General Administration Department (GAD), which rejected the petitioner’s claim vide Government Order No. 589-GAD of 2008 dated 25.04.2008 by holding as under:



*“Whereas, appointments made by the Deputy Commissioner, Anantnag are bad in law and therefore cannot become precedence or similar treatment on the ending they were similarly placed, If a wrong has been committed, that cannot justify commission of another wrong.*

*Now, therefore, keeping in view the above facts and the rules regulating the appointment under SRO 43 of 1994 and after considering all factors, it is hereby ordered that the appointment of the petitioner against Class IV Post In the pay scale of Rs.2550-3200 shall and shall always be deemed to have been made from the date he is discharging his duties i.e. wef 13.09.2000, Director, Agriculture, Kashmir shall post him against a Class IV post. His claim for higher post is accordingly rejected as no merit has been found in the same.”*

5. The said order dated 25.04.2008 was challenged through SWP No. 1951/2009, which was decided by judgment dated 10.07.2015, by setting aside Government Order No. 589-GAD of 2008 dated 25.04.2008 and holding as under:

*“....Applying the said judgment to the facts of this case, the petitioner shall be deemed to be employed as Store Storekeeper from 13.09.2005. However, the petitioner having served in Class-IV post, he will not be entitled to the salary of the Storekeeper and for all other purposes he shall be treated as Store Keeper from 13.09.2005. The petitioner shall be allowed to serve as Store Keeper immediately from the date of receipt of the copy of this order by the respondents.”*

6. Aggrieved of the judgment dated 10.07.2015, the appellants have preferred this Letters Patent Appeal on the grounds that the learned Single Judge has not afforded an opportunity to the appellants to project their stand and they were not allowed to file reply/objections in order to controvert the stand taken by respondent No. 1. They further submit that the respondent No. 1 was not having the requisite qualification for the post other than Class-IV and this aspect has not been taken into consideration while passing the impugned judgment. The appointment of the respondent



as Storekeeper was beyond the competence of the Deputy Commissioner, Anantnag and also against the prescribed recruitment rules which requires five years' experience for the post. It is also submitted that the learned Single Judge has relied upon the case titled "Ram Sarup v. State of Haryana", AIR 1978 SC 1536, but the same is not applicable to the case of respondent No. 1 for the reason that respondent No. 1 is not working against the post of Store-Keeper since his initial appointment.

7. Heard learned counsel for the parties and perused the record.

8. The case of the respondent was considered under SRO 43 by the Deputy Commissioner, Anantnag, who issued an appointment order in favour of the respondent on the post of Storekeeper in the pay scale of Rs. 3050-4910, but he was not allowed to join on the post as it was a promotional post, but was asked to join on Class IV post in the pay scale of Rs. 250-3200.

9. Before advertng to the issue involved in the present appeal, the principles governing the consideration relating to claims for compassionate appointment have been settled by the Hon'ble Supreme Court in "**State of Uttar Pradesh and others v. Premlata, 2022(1) SCC 30**", which are set out as under: -

*8. While considering the issue involved in the present appeal, the law laid down by this court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision this court in Civil Appeal No.5122 of 2021 in the case of the Director of Treasuries in Karnataka & Anr. vs. V. Somashree, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this court in N.C. Santhosh vs. State of Karnataka and Ors. reported in (2020) 7 SCC 617, this Court has summarized the principle governing the grant of appointment on compassionate ground as under:*

- i. that the compassionate appointment is an exception to the general rule;*



- ii. *that no aspirant has a right to compassionate appointment;*
- iii. *the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;*
- iv. *appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy.*
- v. *the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment."*

10. *Thus as per the law laid down by this court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. 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.*

10. The issue involved in the present appeal is whether appointment to higher post on compassionate grounds can be claimed as a matter of right. In the present case, the respondent was appointed to a post to which he was not eligible in terms of the recruitment rules, nor any relaxation or delegation of authority was granted to the Deputy Commissioner for appointing the respondent. The Government vide order dated 25.04.2008 rejected the claim of the respondent to the higher post and ordered that the respondent shall be appointed against Class-IV Post In the pay scale of Rs.2550-3200 and the appointment was deemed to have been made from the date he discharged his duties i.e. with effect 13.09.2000.

11. The Jammu and Kashmir (Compassionate Appointment) Rules, 1994 (SRO 43) provides that an eligible family member of a deceased person may be appointed on compassionate grounds against a vacancy in the lowest rank of non-gazetted service or Class-IV post having qualification above matriculation. However, in terms of Rule 3(2), the Government has



the discretion to appoint a person to a higher post in the non-gazetted service, if he/she is a family member of a deceased Government employee or a civilian killed in the militancy related actions. For facility of reference, Rule 3 of SRO 43 of 1994 is set out below:

*“3-Appointment under these rules—(1) Notwithstanding anything contained in any rule or order for the time being in force regulating the procedure for recruitment in any service or post under the Government, an eligible family member of a person specified in rule 2 may be appointed against a vacancy in the lowest rank of non-gazetted service or Class-IV post having qualification as prescribed under the relevant Recruitment Rules.”*

*Provided that the applicant is eligible and qualified for such post or acquires such eligibility and qualification within a period of one year from the date of death of the deceased person specified in rule 2:*

*(2) Nothing in sub-rule (1) shall delegate from the powers of the Government in General Administration Department to appoint at its discretion a candidate to a higher post in the non-gazetted service if he/she is a family member of a deceased Government employee or a civilian killed in the militancy related action.*

12. An exception to the general rule is carved out in sub-rule (2) of Rule 3. It provides for power upon the Government in the General Administration Department, at its discretion, to appoint a family member of a deceased person to a higher post in the non-gazetted service, to which he is found eligible and qualified under the relevant rules. This power, however, is discretionary in nature. Thus, appointment to a higher post cannot be claimed as a matter of right but is strictly governed by the rules.

13. The learned Writ Court, vide its judgment dated 10.07.2015, while considering the challenge to the Government Order dated 25.04.2008, has held that the petitioner had gained five years' experience as on 12.09.2005, as per the recruitment rules which provide for promotion to the post of Storekeeper from Class-IV category amongst persons having five years' experience. On this analogy, the learned Single Judge held that there could



not be any impediment to grant the post of Storekeeper to the petitioner/respondent herein thereafter as this aspect has not been considered in the order dated 25.04.2008 and accordingly, set aside the consideration order and directed the petitioner to be treated as Storekeeper from 13.09.2000.

14. We are unable to agree with the view taken by the learned Single Judge on the ground that compassionate appointment cannot be claimed on a higher post as a matter of right. This apart, the petitioner having accepted the appointment to the class-IV post could not have subsequently made any claim towards the post of storekeeper. It is well settled that once a person accepts an appointment on compassionate basis, he is estopped from seeking appointment on any other equivalent or higher post. The principle of estoppel and acquiescence is applied to the case. It has been held in case titled “*State Of Rajasthan vs Umrao Singh decided on September 29, 1994*”, the Hon’ble Supreme Court has held as under:

*“8. Admittedly the respondent’s father died in harness while working as Sub-Inspector, C.I.D. (Special Branch) on 16.3.1988. The respondent filed an application on 8.4.1988 for his appointment on compassionate ground as Sub-Inspector or L.D.C. according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of L.D.C. by order dated 14.12.1989. He accepted the appointment as L.D.C. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of ‘endless compassion’. Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.”*

15. The learned counsel for the respondent has also submitted some other persons have also been appointed in the higher post by giving



compassionate treatment but the same treatment is denied to him. The action of the respondents/appellant herein is against the rules, cannot form a precedent. In *“Chandigarh Administration vs Jagjit Singh”* reported as *“1995 SCC (1) 745”*, the Hon’ble Supreme Court in Paragraph 8 has held as under:

“8. *We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition...*”

16. We are of the considered view that the learned Single Judge failed to consider the fact that the post of Storekeeper was a promotional post and the appointment to the same would be governed by eligibility conditions. The respondent would be entitled to the same only on completing five years service in Class-IV and subject to his seniority position. The respondent, thus, cannot claim parity with other candidates who may have been appointed against the policy apart from the fact that he had waived his



right to seek appointment to a higher post, to which, he was otherwise also not entitled under rules. This apart, the judgment of Ram Sarup's case is also not applicable to the facts of the case.

17. In view of the aforesaid facts and circumstances, the present appeal is allowed and the impugned judgment dated 10.07.2015 is set aside. The respondent is entitled to promotion to the post of Storekeeper strictly in accordance with the recruitment rules.

(SHAHZAD AZEEM)  
Judge

(SINDHU SHARMA)  
Judge

**SRINAGAR**

27.02.2026

Ram Murti

