

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 168/2025

CM No. 1572/2025

Reserved on: 20.05.2025

Pronounced on: 03.07.2025

Mumtaza Akhter

...Appellant/Petitioner(s)

Through: Mr. Nissar Ahmad Bhat, Advocate

Vs.Sher-i-Kashmir International; Convention
Centre (SKICC)

...Respondent(s)

Through: Mr. Mohsin Qadri, Sr. AAG with Ms. Nadia Abdullah, assisting counsel for R-1
Mr. Avtar Singh Sodhi, Advocate for R-2
Mr. Sheikh Mushtaq, Advocate

CORAM:**HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE****JUDGEMENT**

1. Petitioner is aggrieved of Order No.84-SKICC of 2024 dated 17.10.2024, whereby sanction has been accorded to the temporary appointment of respondent No.3, Ms. Zeenath Rashid D/o Late Abdul Rashid Wani R/o Gogoo Chek Budgam, as Office Assistant/Typist, in the pay scale of Rs.5200-20200, revised to level-2 (19900-63200 GP 1900), in SKICC under SRO 43 of 1994 and seeks quashing thereof.
2. Briefly stated, the facts leading to filing of instant petition are that the petitioner was initially appointed as Daily Wager on 01.04.1994 and regularized retrospectively w.e.f. 01.04.2001 vide order dated 06.12.2013. The petitioner, in terms of order dated 30.12.2017, was confirmed and posted as Dak Runner and was figuring at S. No.1 as

being the senior most among all the regularized Helpers. She for last 31 years remained stagnant and was not promoted as she was not regularized in time, as such, requested for considering her for next promotion and also for time bound promotion. It is averred in the petition that the petitioner being borne on the strength of SKICC and after rendering more than 31 years of unblemished service is presently working as Dak Runner falling under Category 11, Class-1 and is to be promoted as Jamadar (Category 10 Class 1) after 05 years and after 06 years as Dispatch Clerk/Record Keeper (Category 9 Class 1) and thereafter as Office Assistant (Category 8 (a) Class 1) as the petitioner is due to be promoted as Office Assistant having completed 05 years in 2006 and more than 06 years in 2012 and being senior most figuring at S. No.1 is due to be promoted 12 years back to the post of Office Assistant, but was not promoted and was kept awaited more particularly after 2013 when she was regularized w.e.f. 2001.

3. It is also averred in the petition that petitioner was surprised to see the impugned order in terms whereof respondent No.3 came to be appointed as Office Assistant under J&K Compassionate Appointment Rules 1994 (for short "*Rules of 1994*") in place of her father, who was working as Helper and was regularized w.e.f. 2007 and was figuring at S. No.30. The post of Office Assistant is the promotional post of the petitioner and appointment of respondent No.3 against the said post amounts to taking away the promotional post avenue of the petitioner when respondent No.3 could not be appointed against the said post as according to Rule 4 of J&K Rehabilitation Assistance Scheme, 2022 (for short "*Scheme of 2022*")

the person came be appointed against the Multi-Tasking Staff, or equivalent or against the lowest Non-Gazetted Cadre Post besides under Rule 18, the Rules of 1994 have been repealed w.e.f. 6th September 2022, but in the present case, respondent No.3 has been wrongly appointed under the Rules of 1994 against a higher post, thereby infringing upon the promotional rights of the petitioner.

4. Respondents 1 & 2 in their objections have stated that the petitioner has relied upon S.O. 429 of 2022 – Scheme of 2022, to challenge the appointment of respondent No.3, while conveniently ignoring the proviso attached to the said scheme, which clearly states that cases pending at the time of enforcement of the Scheme of 2022 or cases where the death of the deceased employee occurred prior to its commencement shall be governed by the Rules of 1994. The father of respondent No.3 has passed away on 11.09.2018, making his case squarely covered under the Rules of 1994. It is also stated in the objections that petitioner has failed to establish how the appointment of respondent No.3 infringes upon any of her rights. The petitioner is presently holding the post of Dak Runner and under the applicable Recruitment Rules, her next promotional avenue is to the post of Jamadar, not to the post of Officer Assistant, against which respondent No.3 has been appointed. It is stated that the appointment of respondent No.3 has been made in strict adherence to the Rules of 1994, which were applicable at the time of consideration. Therefore, the petitioner has no locus standi to file the instant writ petition, as she has neither been personally affected by the impugned order nor has any of her fundamental rights been violated.

5. Respondent No. 3 in his objections has stated that petitioner's case is solely based on S.O. 429, called as Jammu and Kashmir rehabilitation Assistance Scheme, 2022, in that the petitioner claims that in terms of the Scheme of 2022, the appointment on compassionate basis can be made only against the post of multi-tasking staff or against the lowest non-gazetted Cadre post because the Rules of 1994 stands repealed w.e.f. 2022. This plea of petitioner, according to respondent no.3, is misplaced and based on misrepresentation of facts inasmuch as the Scheme of 2022 has a repealed provision as well. In terms of the proviso attached thereto, the cases which were pending on the commencement of the Scheme of 2022, or the cases where the death of a person specified in Rule 2 of the Rules of 1994, occurred prior to commencement of the Scheme of 2022, all such cases shall be dealt in accordance with the provisions of the Rules of 1994. It is also stated that father of respondent No.3 has died on 11.09.2018, therefore, the Scheme of 2022 has no application to the case of the respondent No.3. The petitioner has no right of promotion or right of consideration for promotion against the post on which the private respondent has been appointed. The petitioner is simply a "Dak Runner" and yet to be considered for higher post which is "Jamadar" then "Dispatch Clerk" and then, if at all, she is found eligible, she could be considered for promotion against the post in question, against which the private respondent has been appointed. The admitted position clearly reflects that the petitioner has no locus to assail the order of appointment of respondent No.3.

6. Heard learned counsel for the parties and perused the material on record.
7. It is argued by learned counsel for the petitioner that the appointment order of respondent No.3 does not disclose the date of death of her father. It is also argued by him that the Rules of 1994 are neither applicable to the case of petitioner nor respondent No.3 could be appointed directly to the promotional post.

However, it is argued by learned counsel for the respondent No.3 that the Rules of 1994 are applicable to the case of respondent No.3 and there is no restriction with regard to compassionate appointment directly to the promotional post. It is also argued by him that the appointment of respondent No.3 does not affect the petitioner's promotional right as the petitioner is a Dak Runner and after getting three promotions, she could be considered for promotion against the post of Office Assistant to which respondent No.3 has been appointed.

8. Father of respondent no.3 died on 11.09.2018. Obviously, therefore, the case of respondent no.3 might have been processed immediately thereafter. Then SRO 43 of 1994, viz. Rules of 1994 were in vogue and, therefore, had to be applied to the case of respondent no.3 inasmuch as there was no occasion to say that the Scheme of 2022 had to be applied, which was not possible. The Scheme of 2022 has come into force from 6th day of September 2022. Therefore, the plea of petitioner that the Scheme of 2022 was to be applied to the case of respondent no.3 for appointment on compassionate grounds is absurd and rejected, as such.

9. Petitioner has thrown challenge to appointment of respondent no.3 to the post of Office Assistant by making exclusive reference and reliance to the Scheme of 2022. When petitioner moved/filed writ petition, it placed on record copy of Scheme of 2022 as Annexure VII; the last page of the Scheme of 2022 annexed with writ petition is at page no.65, which contains only the following words:

“18. Repeal and Savings:

The Jammu and Kashmir (Compassionate Appointment) Rules, 1994, as amended from time to time, are hereby repealed:”

10. The important part of Clause 18 of the Scheme of 2022 has not been annexed with writ petition as it is “*Proviso to Clause 18*” and, therefore it would be apt to reproduce Clause 18 in full hereunder:

“18. Repeal and Savings:

The Jammu and Kashmir (Compassionate Appointment) Rules, 1994, as amended from time to time, are hereby repealed:

Provided that such repeal shall not—

- a. affect the action taken, orders issued or appointments made under the rules so repealed; or
- b. affect the revival of such cases, as have been decided under the said rules, but fall within the ambit of this Scheme; or
- c. affect the cases whether pending on the commencement of this Scheme or the cases where death of the person specified in Rule 2 of the Jammu and Kashmir (Compassionate Appointments) Rules, 1994, as occurred prior to the commencement of this Scheme and all such cases shall be dealt with in accordance with the provisions of these rules viz. Jammu and Kashmir (Compassionate Appointments) Rules, 1994, as amended from time to time.”

11. Proviso to Clause 18 of the Scheme of 2022 provides that repeal shall not affect the action taken, orders issued or appointment made under the rules so repealed, viz. SRO 43/Rules of 1994. It also provides that the Scheme of 2022 shall not affect revival of such cases as have been decided under the Rules of 1994 but fall within the ambit of Scheme of 2022. It also in clear cut terms provides that the Scheme of

2022 shall not affect the cases whether pending on the commencement of the Scheme of 2022 or the cases where death of the person specified in Rule 2 of the Rules of 1994, as occurred prior to commencement of the Scheme of 2022, and all such cases are to be dealt with in accordance with the provisions of the Rules of 1994.

12. As is evident from plain reading of Proviso to Clause 18 of the Scheme of 2022, if there had been any compassionate appointment case pending which was to be considered and decided under and in terms of Rules of 1994, at the time when the Scheme of 2022 came into force, such a case was still to be considered in terms of earlier Rules, viz. Rules of 1994, and not in terms of the Scheme of 2022. As already noticed and held that case of respondent no.3 falls under the purview of the Rules of 1994 and not the Scheme of 2022.
13. The matter does not clinch here. An attempt, ostensibly deliberate and intentional one, has been made by petitioner while filing writ petition because he has not enclosed with his writ petition the last page of the Scheme of 2022, which comprises of "*Proviso to Clause 18*" as quoted above. The reason for not annexing last page of the Scheme of 2022 with writ petition, ostensibly, was/is that petitioner would be able to show and say that the Rules of 1994 have been repealed in terms of the Scheme of 2022 and, therefore, the case of respondent no.3 falls under the Scheme of 2022 and respondent no.3 could not have been appointed to the post in question under and in terms of the Scheme of 2022.

This fact is also evident from the contents of the writ petition as it is petitioner's firm stand that case of respondent no.3 is squarely

covered by Scheme of 2022. It is in the backdrop of above fact situation that petitioner has been able to obtain Order dated 05.02.2025, by virtue of which, order no.84-SKICC of 2024 dated 17.10.2024 has been stayed.

14. Respondents 1&2 have filed Objections on 07.03.2025 after furnishing advance copy to counsel for petitioner on 06.03.2025. Insofar as respondent no.3 is concerned, she has filed objections on 05.03.2025 after furnishing advance copy thereof to counsel for petitioner on 04.03.2025.
15. Learned counsel for respondent no.3 has even filed an application for vacation of order dated 05.02.2025 on the ground that petitioner has suppressed and concealed the material facts by not annexing the Proviso to Clause 18 of the Scheme of 2022. There is substance in the application. All that has been stated and submitted by respondent no.3 in her application cannot be ignored or overlooked.
16. After going through the objections of respondents, the petitioner immediately made an effort to show that non-enclosing of last page of the Scheme of 2022 was due to oversight. However, such an excuse is not condonable.
17. It may be mentioned here that there is difference between Rules of 1994 (SRO 43 of 1994) and the Scheme of 2022. For ready reference SRO 43 of 1994 (Rules of 1994) is reproduced as under:

“GOVERNMENT OF JAMMU AND KASHMIR
GENERAL ADMINISTRATION DEPARTMENT.

Notification
Jammu, the 22nd February, 1994

SRO-43. —In exercise of the powers conferred by section 124 of the Constitution of Jammu and Kashmir, the Governor is pleased to make the following rules, namely :-

1. Short title and commencement. — (1) These rules may be called the Jammu and Kashmir (Compassionate Appointment) Rules, 1994.

(2) These rules shall be deemed to have come into force from the 24th day of September, 1991.

2. Application of rules: - These rules shall apply to the compassionate appointment of a person who is a family member of: -

- (i) a Government employee who dies in harness other than due to militancy related action;
- (ii) a Government employee who dies as a result of militancy related action or due to enemy action on the line of Actual Control/International Border within the State of Jammu and Kashmir and is not involved in militancy related activities;
- (iii) a civilian who dies as a result of militancy related action or due to enemy action on the line of Actual Control/International Border within the State of Jammu and Kashmir not involved in militancy related activities and total income of the family from all sources does not exceed Rs.5000/-per month as assessed by the Revenue Officer not below the rank of an Assistant Commissioner;
- (iv) A member of the Armed Forces not above the rank of Junior Commissioned Officer or a member of Paramilitary Forces of equivalent rank who is a permanent resident of State and is killed while discharging the duties in connection with law and order in the State of Jammu and Kashmir or as a result of enemy action on the Line of Actual Control/International Border.

Explanation: — For purposes of these rules.

- (a) 'Armed Force' means Navy, Military, Air Force;
- (b) 'Para Military Force' means a force constituted under any law for the time being in force made by the Competent Legislature;
- (c) 'Permanent Resident' means the permanent resident of the State of Jammu and Kashmir as defined section 6 of the Constitution of Jammu and Kashmir;
- (d) 'Family Member' means spouse, son, daughter, adopted son, adopted daughter, sister or brother dependent on the deceased.

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:

Provided further that no application for compassionate appointment under these rules shall be entertained after the expiry of one year from the date of death of the deceased person.”

- (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.

- (3) Notwithstanding the provisions of the rules contained herein for compassionate appointment, the family members of the civilians killed in militancy related action as specified in clause (iii) of rule 2 shall be entitled to a cash compensation in lieu of appointment in government service of an amount specified by the government which shall be payable in their favour in a manner to be notified by the government.

Provided that if any one among the family members of the deceased civilian fulfills the eligibility criteria prescribed under the aforesaid Rules for appointment into the government service or acquires such eligibility within one year from the date of death of the deceased person, then they shall have the option either to choose the government service or the cash compensation.

4- Appointment cases of death in harness:- Appointment under these rules in respect of a family member of a Government employee who dies in harness due a cause other than militancy related action shall be made by Head of the Department concerned: provided that:-

- i) Where no post is available in the office or subordinate offices of the Head of the Department, the proposal for appointment shall be submitted to the Administrative Department concerned and where there is no post available in the Administrative Department concerned also, the case shall be referred to the General Administration Department for appointment of the candidate in any other Department; or
- ii) Where any such appointment is to be made in relaxation of rules, such cases shall be submitted to the General Administration Department in coordination.

5. Appointment in other cases: —(1) Appointment under these rules in respect of a member of the family of a Government employee or a civilian who has died as a result of militancy related action or in respect of a family member of the officer or armed force or Para-military force, shall be made by the Deputy Commissioner concerned in accordance with the procedure hereinafter prescribed.

(2) A family member of a civilian who dies as a result of militancy related action may apply for appointment against any suitable vacancy to the Deputy Commissioner of the District in which he or she resides. Deputy Commissioner after making such enquires as may be necessary and on recommendations of the District Level Coordination-Cum-Screening Committee, may issue appointment orders for his or her adjustment against a vacancy in the District concerned in any Department under the Government in accordance with provisions of rule 3 hereinabove:

“Provided that in the case of a SPO engaged by the Police Department who dies as a result of militancy related action, a family member may apply for appointment against a vacancy to the Director General of Police who, after conducting such enquires as may be required, may issue an appointment order for his/her adjustment in the Police Department in accordance with the provisions of rule 3.”

2(a) A family member of Government employee who dies as a result of militancy related action may apply for appointment against any post to

which he or she is entitled under these rules to the Deputy Commissioner of the District in which he or she resides. Deputy Commissioner shall after making such enquires as may be necessary, and, on clearance by the District Level Coordination-Cum-Screening Committee, forward the case of the applicant to the Head of the Government Department administering the services or cadre to which the deceased employee belonged. The Head of the Government Department may make the appointment in accordance with provisions of rule 3 and rule 4 of these rules. All pending cases shall be dealt with accordingly.”

(3) A family member of a deceased member of armed force or paramilitary force who is eligible for appointment under these rules may apply against for appointment against a suitable vacancy to the Deputy Commissioner concerned through the Commanding Officer of the Unit in which the deceased member of the armed force or Para-military force was last serving. The Deputy Commissioner after making such enquiries as may be necessary and on the recommendations of the District Level Coordination-cum-Screening Committee, may issue appointment orders for his or her adjustment against a vacancy in the District concerned in any Department under the Government in accordance with provisions of rule 3 hereinabove.

6. Grant of scholarship —The Government may on the recommendations of the Competent Authority grant suitable scholarship up to the tune of Rs. 100/- per month to the family member of a deceased employee till such time as they pass matriculation examination. Such scholarship shall be sanctioned by the Government in the Education Department.

7. Power to relax—The Government may relax the lower or upper age limits or education/technical qualification, as the case may be, in deserving cases. All such cases shall be processed through General Administration Department in coordination.

8- Interpretation:-If any question about the interpretation of these rules, the decision of the Government in General Administration Department shall be final.

9- Repeal and saving.—The Jammu and Kashmir Appointment on Compassionate Grounds Rules, 1991 are hereby repealed:-

Provided that such repeal shall not:-

- (a)** affect the action taken, orders issued or appointments made under the rules so repealed; or
- (b)** affect the revival of such cases as have been decided under the said rules but fall within the ambit of these rules ; or
- (c)** affect the cases whether pending on the commencement of these rules or the cases where death of the person specified in rule 2 occurred due to militancy related action prior to the commencement of these rules and all such cases shall be dealt with in accordance with the provision of these rules.

By order of the Governor.

(Sd/)
Secretary to Government
General Administration Department”

18. Insofar as the Scheme of 2022, viz. J&K Rehabilitation Assistance Scheme, 2022 (S.O. 429 of 2022) is concerned, the same is also reproduced as under:

“GOVERNMENT OF JAMMU AND KASHMIR
GENERAL ADMINISTRATION DEPARTMENT
Civil Secretariat, J&K.

Notification
Srinagar, the 6th September, 2022

S.O. 429.- In exercise of the powers conferred by Article 309 of the Constitution of, the Lieutenant Governor is pleased to make the following Scheme, namely:-

1. Short title and commencement: (I) This Scheme may be called the Jammu and Kashmir Rehabilitation Assistance Scheme, 2022.
(II) The Scheme shall be deemed to have come into force from the 6th day of September, 2022.
2. Application of Scheme:- The Scheme shall apply to the dependent family member of Government Employee who:-
 - i. Dies in harness.
 - ii. Retires on invalid pension.
 - iii. Dies as a result of militancy related action or due to enemy action on the Line of Control/International Border within Jammu and Kashmir and is not involved in militancy related activities;

Note I: "Dependent Family Member" means:

- a. spouse; or
- b. son/daughter (including adopted son/daughter as permissible under law).
- c. Brother or sister in the case of an unmarried Government servant who was wholly dependent on the Government servant.

Note II: "Government servant" for the purpose of these instructions means a Government servant appointed on regular basis and not one working on daily wage or casual or apprentice or ad-hoc or contract or re-employment basis.

3. Authority Competent to make appointments/ grant monetary compensation.
 - a. Administrative Secretary, General Administrative Department shall be competent authority to make Compassionate Appointments and grant monetary compensation under this Scheme.
 - b. The Lieutenant Governor through Chief Secretary in Coordination, as per the Procedure for Transaction Of Government Business in the Union Territory of Jammu and Kashmir shall be the competent authority for making compassionate appointments in the case (s) where relaxation (s) is/are involved.
4. POSTS TO WHICH SUCH APPOINTMENTS CAN BE MADE:
Multi Tasking Staff or equivalent or lowest non-Gazetted cadre posts in the Department.
5. ELIGIBILITY:
 - A. For Compassionate Appointments:
 - t). Applicant should be the dependent family member of the deceased Government employee;
 - b. Applicant should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.
 - c. Applicant, who is a Graduate or having higher qualification, can also be considered for appointment against a lowest non-gazetted post/Multi Tasking Staff post notwithstanding the bar on higher qualification prescribed in the extant Rules.
 - d. Applicant shall be assessed with regard to the Relative Merit Points Assessment Scheme (RMPAS) on 100 point scale and will be required to

meet the standards laid down for compassionate appointment with regard to RMPAS:

Provided that if the applicant fulfils the eligibility criteria prescribed in this Scheme for compassionate appointment into the Government service and is considered for compassionate appointment under this Scheme, he or she will have option to refuse the appointment and in case the applicant chooses to do so, he or she will be entitled to a monetary compensation of Rs 5 lakh in lieu of appointment on compassionate grounds in the Government service,

B. For Monetary Compensation:

- a) Applicant should be the dependent family member of the deceased Government employee;
- b) Applicant shall be assessed with regard to the Relative Merit Points Assessment Scheme on a 100 point scale and the dependant, who does not meet the Standards laid down for compassionate appointment to the Government service with reference to RMPAS shall be considered for grant of monetary compensation.
- c) The dependants of the deceased employees shall be paid monetary compensation of Rs 5 lakhs. The liability to pay compensation on the part of the Government would arise from the date of the order passed by the authority competent to sanction the monetary compensation.

C. Support for Self Employment:

The Government may also support the application of the dependents, if he/she so requests, under various self employment/Government sponsored employment generating schemes to the banks for obtaining credit as per the laid down norms for setting up a manufacturing unit or a trading venture.

6. EXEMPTIONS:

A. Compassionate appointments are exempted from Recruitment procedure i.e. recruitment on the basis of recommendations of the Service Selection Board or any other recruiting agency.

B. Relaxations:

- a, Upper age and educational qualification prescribed in the relevant Recruitment Rules may be relaxed wherever found to be necessary. The lower age limit shall, however, in no case be relaxed below 18 years of age. The powers of relaxation of upper age shall vest with the Lieutenant Governor through Chief Secretary in coordination,

Note: Age eligibility shall be determined with reference to the date of application and not the date of appointment.

7. DETERMINATION/AVAILABILITY OF VACANCIES:

- a. Appointment on compassionate grounds shall be made only on regular basis and that too only, if regular vacancies meant for that purpose are available.
- b. Compassionate appointments shall be made in a centralized manner in General Administration Department. The applicants will submit their applications along with the prescribed documents electronically on a designated portal administered by General Administration Department and the latter will electronically process the applications with regard to the provisions laid down in this Scheme and up to a maximum of 5% of vacancies in a financial year falling under direct recruitment quota in Multi Tasking Staff and lowest Non Gazetted cadre across all the departments. General Administration Department shall every year hold back upto 5% of vacancies in the aforesaid categories across all the departments to be filled by direct recruitment through J&K Services Selection Board or otherwise, so as to fill such vacancies by -appointment on compassionate grounds.
- c. The vacancies against which compassionate appointments can be considered under this Scheme shall be computed every year as on first January of the year in which compassionate appointments are to be

made. The list of the vacancies along with their designations available for compassionate appointments during the year shall be put out in the public domain. The total vacancies so computed for a given year shall be earmarked for appointments to be made on compassionate grounds quarter-wise on pro rata basis. A merit list of the eligible applicants shall be prepared and put out in the public domain annually having regard to the criteria laid down in the RPMAS and the applicants having higher merit shall be considered for compassionate appointments in a given quarter against the posts earmarked for the said quarter. There may arise a situation where eligible applicants may exceed the posts available in a given quarter. In that situation, the list of the eligible applicants shall be carried forward to the next quarter and the applicants considered against the posts available in that quarter. The process will continue on a roll over basis from quarter to quarter in a year and the applicant shall be eligible to be considered for compassionate appointment up to and including the fifth year from the date of application submitted by the applicant after which he or she will be delisted. The unfilled vacancies in a year shall be carried forward to the next year and shall be available for appointment on compassionate grounds under this Scheme. 5% of the total vacancies identified for compassionate appointments in a particular year shall be available for consideration in relaxation of rules with the approval of Chief Minister/Lieutenant Governor through Chief Secretary in Coordination.

d. A person selected for appointment on compassionate grounds shall be adjusted in the recruitment roster against the appropriate category i.e., SC/ST/ OBC/General, depending upon the category to which he/she belongs. For example, if he belongs to SC category, he will be adjusted against the SC reservation point, if he is ST/OBC, he will be adjusted against ST/OBC point and if he belongs to General category, he will be adjusted against the vacancy meant for General category.

e. The ceiling of 5% of direct recruitment vacancies for making compassionate appointment shall not be exceeded by utilizing any other vacancy except in the case of Government servants who may die as a result of militancy related action or due to enemy action on the Line of Control/international Border within Jammu and Kashmir and is not involved in militancy related activities, where the General Administration Department shall be competent to utilize a vacancy over and above the prescribed percentage.

f. The compassionate appointment can also be made against technical 'posts' at Multi "Tasking Staff and lowest Non-Gazetted cadre subject to fulfilment of eligibility/qualification as prescribed in the recruitment rules,

8. TIME LIMIT FOR CONSIDERING APPLICATIONS FOR COMPASSIONATE APPOINTMENT/MONETARY COMPENSATION:

Subject to availability or vacancy in case of compassionate appointment, an application for compassionate appointment/monetary compensation shall be considered and disposed of under the Scheme as far as possible within a year of the receipt of the application/request and decision taken on merit in each case.

9. APPLICATION FOR COMPASSIONATE APPOINTMENT/MONETARY COMPENSATION:

The applicant shall submit the application for compassionate appointment/monetary compensation online under the Jammu and Kashmir Rehabilitation Assistance Scheme, 2022 on the designated portal. The departments shall not consider requests for compassionate appointment or grant of monetary compensation of/to the dependants of the deceased who may die in harness or as a result of militancy related action or due to enemy action on the Line of Control/

international Border within Jammu and Kashmir and is not involved in militancy related activities or retires on invalid pension, if the same is not made within one year of the death/retirement on invalid pension or the Government servant.

10. WHERE THERE IS AN EARNING MEMBER IN THE FAMILY:

- a. In deserving cases even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment/monetary compensation. Before approving such appointment/compensation, the Competent Authority shall satisfy itself that grant of compassionate appointment/monetary compensation is justified having regard to number of dependents, assets and liabilities left by the Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he shall not be a source of support to other members of the family and take decision accordingly
- b. In cases where any member of the family of the deceased Government servant is already in employment and is not supporting the other members of the family of the Government servant, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the Government servant so that the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family. In order to quantify the element of compassion in such cases in a more structured and rational manner the parameters containing point weightage system (RMPAS) shall be adopted, which shall facilitate in deciding the cases in a transparent, unbiased and objective manner in future.

11. MISSING GOVERNMENT SERVANT

Cases of missing Government servants shall also be covered under the Jammu and Kashmir Rehabilitation Assistance Scheme, 2022 subject to the following conditions: -

- a. A request to grant the benefit of compassionate appointment/monetary compensation shall not be considered after a lapse of one year from the date from which the missing Government servant is pronounced/declared dead under the Rules, provided that:
 - i. an FIR in this effect has been lodged with the Police, ii. the missing person is not traceable, and iii. the competent authority feels that the case is genuine;

This benefit will not be applicable to the case of a Government servant:-

- i. Who had less than two years to retire on the date from which he has been missing; or ii. who is suspected to have committed fraud, or suspected to have joined any terrorist organization or suspected to have gone aboard.
- b. Compassionate appointment in the case of a missing Government servant also would not be a matter of right as in the case of others and it will be subject to fulfilment of all the conditions, including the availability of vacancy, laid down for such appointment under the scheme;
- c. While considering such a request, the results of the Police investigation shall also be taken into account; and
- d. A decision on any such request for compassionate appointment/monetary compensation shall be taken only at the level of the General Administration Department,

12. PROCEDURE:

- i. General Administration Department shall appoint a Welfare Officer in each Administrative Department. The Welfare Officer of such Department where an employee has died or retired on invalid pension shall meet the members of

the family of the Government servant in question immediately after his death to advise and assist them in getting appointment on compassionate grounds/monetary compensation. The applicant shall be called in person at the very first stage and advised in person about the requirements and formalities to be completed by him.

- ii. The Welfare Officer in each Department may be deputed to meet the family members of the deceased Government Servant and apprise them of the terminal benefits available to the family. This may be at the earliest possible, preferably, within 30 days of death.
- iii. In case it is observed by the Welfare Officer that the condition of the family of the deceased Government Servant is indigent, the family shall be apprised of the J&K Rehabilitation Assistance Scheme, 2022.
- iv. In such cases, the Welfare Officer shall assist the family member of the deceased Government servant in applying for appointment/monetary compensation on compassionate grounds. All assistance shall be extended to enable such a family member to fill the Application Form online for compassionate appointment/monetary compensation. The applicant shall be advised in person about the requirements and formalities to be completed by him. The applicant shall also be given detailed information of the posts to which they can apply.
- v. Keeping in view the administrative requirement in processing applications for compassionate appointment/monetary compensation, the form as in Annexure-II may be used for ascertaining necessary information which consists of three parts as under.

S. No.	Part	Title
1.	A	Form for seeking Compassionate appointment / monetary compensation by dependents of Government servants deceased while in service or retired on medical rounds.
2.	B	To be filled by the Office in which employment is proposed.
3.	C	Relative Merit Points Assessment on a 100-point scale for compassionate appointment/monetary compensation.

- vi. The applicant shall duly fill up the prescribed proforma online and the same shall be used to ascertain necessary information and for further processing of the case of compassionate appointment/monetary compensation.
- vii. After successful online submission of the application, an applicant shall receive an acknowledgement in the shape of a Unique Registration Number. The applicant may also be informed through email or other digital modes of communication of their Unique Registration Number.
- viii. The concerned section in General Administration Department shall satisfy itself regarding the correctness of the details entered and submitted online in the prescribed Application form, family income/properties certified by Tehsildar concerned in the form annexed as Annexure-III and other details computed for processing the Application. During scrutiny, if any additional details or information having a bearing on the case, emerge, the same shall be added as supplementary Note to Application.

- ix. The applications for compassionate appointment/monetary compensation shall be considered by the Committee consisting of three officers - one chairman and two members — in the General Administration department. The Committee shall be headed by, an officer of the rank of Special Secretary/Director/Additional Secretary in the Department. The Welfare Officer in General Administration Department may also be made one of the members/ chairman of the Committee depending on his rank. Recommendation of the Committee shall be placed before the Competent Authority for a decision, x, The Committee shall meet in the first week of the succeeding quarter to consider applications for compassionate appointments received in the previous quarter. In case a large number of applications are received in a quarter, the Committee shall be at liberty to meet as frequently as it may be necessary to consider the applications.
- x. Prior to every meeting of the Committee, the applicants whose applications are being considered, Shall be informed, through emails or other forms Of communication (including digital modes of communication), of the number of vacancies in each grade for which they are being considered as also the date the Committee is due to meet to consider their applications. However, the Applicant(s) would not be required to have any personal interaction, either with the Department or the Committee and that the applicants may not be asked to be present during the meeting of the Committee.
- xii. Transparency and objectivity are the foremost aspects of scheme for compassionate appointment. A holistic assessment of the financial condition of the family has to be made taking into consideration factors like presence of earning member(s), size of family, age of children and the financial needs of family.
- xiii. Every valid application Shall be assessed strictly on the basis of the Point Based Merit System enclosed as Annexure-I.
- xiv. While applying point based merit scheme (RMPAS) as mentioned above (Annexure-I), if situation arises that some candidates secure equal marks in merit and the Committee is unable to decide the merit of such candidates, in such cases the tie-breaking factor can be income available per dependent i.e. total of first three financial parameters prescribed in Annexure-I (Pension annualized total terminal benefits and annual income of earning members and income from property) divided by total number of dependents. The lesser the per dependent available income, the higher the rank amongst the applicants whose scores had a tie.
- xv. In case of tie even after applying the factor of per dependent available income, then the left-over service of Government servant can be considered. This is suggested as it may be implied that longer the left-over service of the deceased, the more is the impact on the family. Applicants related to Government servant with higher left-over service would be considered over the one with lesser left-over service;
- xvi. The Committee shall make a recommendation for appointment/ monetary compensation on compassionate ground as per the total points obtained by each applicant, under the applicable Point Based Merit System (RMPAS).
- xvii. The result of each round of selection in a given quarter shall be uploaded on designated portal. The points awarded against each parameter along with total merit points earned, may also be provided to the applicants through email or Other forms of communication.

- xviii. The minutes of each meeting of the Committee including the merit points earned by each Applicant shall also be placed, within a period of three weeks from the date of meeting of the Committee, in public domain on the website of the Department/(Organization for information of all concerned.
- xix. Recommendation of the Committee shall be placed before the competent authority for a decision. If the competent authority disagrees with the Committee's recommendation, the case may be referred to the next higher authority for a decision.
- xx. Point based merit scheme imparts the necessary objectivity, homogeneity and transparency to the scheme for appointment/monetary compensation on compassionate grounds. Henceforth, it shall be followed strictly for assessing comparative merit of the applicants for compassionate appointment/monetary compensation.
13. **UNDERTAKING FOR MAINTENANCE OF THE FAMILY OF THE DECEASED EMPLOYEE:**
- A person appointed on compassionate grounds under the Scheme shall give an undertaking in writing (as in Clause VI of Part A of Annexure-II) that he/she will maintain properly the other family members who were dependent on the Government servant in question and in case it is proved subsequently (at any time) that the family members are being neglected or are not being maintained properly by him/her, his/her appointment may be terminated forthwith. Taking care of this situation, it shall be incorporated as one of the additional conditions in the appointment order applicable only in the case of appointment on compassionate grounds.
14. **REQUEST FOR CHANGE IN POST/PERSON:**
- When a person has been appointed on compassionate grounds to a particular post, the set of circumstances, which led to such appointment, shall be deemed to have ceased to exist. Therefore,
- he/she shall strive in his/her career like his/her colleagues for future advancement and any request for appointment to any higher post on considerations of compassion shall invariably be rejected.
 - an appointment made on compassionate grounds cannot be transferred to any other person and any request for the same on considerations of compassion shall invariably be rejected.
15. **SENIORITY:**
- A person appointed on compassionate ground in a particular year may be placed at the bottom of all the candidates recruited/appointed through direct recruitment, promotion etc. in that year, irrespective of the date of joining of the candidate on compassionate ground.
16. **TERMINATION OF SERVICE:**
- The compassionate appointments can be terminated on the ground of non-compliance of any condition stated in the appointment order after providing an opportunity to the compassionate appointee by way of issuing of a show cause notice asking him/her to explain why his/her services cannot be terminated for non-compliance of the condition(s) in the offer of appointment and it is not necessary to follow the procedure prescribed in the Disciplinary Rules/ Temporary Service Rules for this purpose.
- In order to check its misuse, the power of termination of services for non-compliance of the condition(s) in the compassionate appointment shall vest with the General Administration Department.
17. **Interpretation:**

If any question arises about the interpretation of this Scheme, the decision of the Government in General Administration Department shall be final.

18, Repeal and Savings:

The Jammu and Kashmir (Compassionate Appointment) Rules, 1994, as amended from time to time, are hereby repealed:-

Provided that such repeal shall not:

- a. affect the action taken, orders issued or appointments made under the rules so repealed; or
- b. affect the revival of such cases, as have been decided under the said rules, but fall within the ambit of this Scheme; or
- c. affect the cases whether pending on the commencement of this Scheme or the cases where death of the person specified in Rule 2 of the Jammu and Kashmir (Compassionate Appointments) Rules, 1994, as occurred prior to the commencement of this Scheme and all such cases shall be dealt with in accordance with the provisions of these rules viz. Jammu and Kashmir (Compassionate Appointments) Rules, 1994, as amended from time to time.

By Order Of the Lieutenant Governor.”

19. Perusal of both would show that there is a vast difference between the provisions of the Rules of 1994 and the Scheme of 2022, inasmuch as there is contrast mechanism given in the Scheme of 2022 for considering and making compassionate appointment as compared to the Rules of 1994, that is why petitioner has made her all out efforts in writ petition on the provisions of the Scheme of 2022 to contend that compassionate appointment of respondent no.3 has been made under and in terms of the Scheme of 2022, notwithstanding the fact that the Proviso to Clause 18 of the Scheme of 2022, which had not been placed on record by petitioner with his writ petition, makes in clear cut terms obvious and demonstratable that the cases, if any pending, falling under Rules of 1994 can be considered and decided under the said Rules of 1994 and not under the Scheme of 2022. For making such concealment, petitioner is liable to be put to task by directing her to pay costs.
20. Insofar as reliefs sought for by petitioner in writ petition are concerned, she is not entitled to any relief inasmuch as the

compassionate appointment of respondent no.3 has been made in terms of SRO 43 of 1994 (Rules of 1994) and same does not call for any interference. As a consequence of which, writ petition is without any merit and is accordingly **dismissed** with costs of Rs.50,000/- to be deposited by petitioner in Advocates Welfare Fund.

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR

03.07.2025

Manzoor

Whether approved for reporting? No

