

# Krishan Pal Anand vs Power Grid Corporation Ltd. And Others on 31 March, 2022

**Author: Sanjeev Kumar**

**Bench: Sanjeev Kumar**

Sr. No. 1

HIGH COURT OF JAMMU AND KASHMIR AND LADAKH  
AT JAMMU

SWP No. 2701/2015  
IA No. 1/2015

Reserved on: 22.03.2022  
Pronounced on: 31.03.2022

Krishan Pal Anand

....Petitioner(s)

Through :- Mr. R. K. S. Thakur, Advocate

V/s

Power Grid Corporation Ltd. and Others

....Respondent(s)

Through :- Ms. Garima Gupta, Advocate Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR,  
JUDGE Judgement

1. The petitioner in this petition has sought a direction to the respondents to treat his appointment as Junior Assistant on permanent basis with effect from 12.06.2000 with all consequential benefits.
2. Short grievance projected by the petitioner is that his father Late Sh. Gopal Chand Anand, who was serving as Senior Surveyor in the respondent-Corporation, died on duty due to accident on 12.12.1999. The petitioner being son of the deceased employee of respondent No. 1 and otherwise eligible to hold the post of Junior Assistant, submitted an application to the respondents for his appointment on compassionate grounds.
3. The competent authority vide its communication dated 06.06.2000 approved the temporary appointment of the petitioner as Junior Assistant in the then pay scale of Rs. 2250-3315 (W-3 level)

for a period of one year. Consequent upon the approval granted by the competent authority, the Deputy Manager (HR) vide order dated 12.06.2000 offered temporary appointment to the petitioner on the post of Junior Assistant (W-3). The temporary appointment of the petitioner was extended from time to time. The petitioner continued in temporary employment of the respondent-Corporation till 27.04.2010 when respondent Corporation offered the petitioner permanent appointment of Junior Assistant.

4. Upon acceptance of the offer, a formal order of appointment of the petitioner as Junior Assistant (W-3) in the pay scale of Rs. 5000-9590 (pre-revised) on substantive basis was issued and the petitioner was put on probation for a period of one year. On completion of probation period, the petitioner was confirmed. The petitioner is aggrieved of his appointment as Junior Assistant given with effect from 27.04.2010 and submits that he is entitled to regular appointment as Junior Assistant (W-3) with effect from the date of his initial appointment i.e. 12.06.2000. Having failed to persuade the respondents to redress his grievance, the petitioner has filed the instant petition.

5. The respondent-Corporation, represented by Ms. Garima, Advocate, has filed the objections and contested the claim of the petitioner. The writ petition is opposed inter alia on the ground that the same is hit by delay and laches. It is contended that the petitioner was offered temporary appointment as Junior Assistant on 12-06.2000, which he readily accepted and it is only after 15 years of the issuance of the aforesaid order, the petitioner has come to this Court with the plea that he ought to have been given permanent employment as Junior Assistant with effect from 12-06.2000. It is the stand of the respondent-Corporation that, with a view to fulfil the commitment made to the workmen under Clause 0.5.4 of the Memorandum of Understanding dated 21.08.1995, the petitioner was accommodated by providing him temporary employment despite the fact that the regular vacancy of the Junior Assistant was not available at the relevant point of time.

6. Heard learned counsel for the parties and perused the material on record.

7. The compassionate appointment in the respondent-Corporation is governed by the Memorandum of Understanding signed between the corporation and its workers' Union. Rule 0.5.4 promises to provide employment to one dependent of each workman who is permanently disabled or dies as a result of accident while on duty. For facility of reference, clause 0.5.4 of the Memorandum of Understanding is reproduced hereunder:-

0.5.4 Employment to one dependent of each workman who is permanently disabled or dies as a result of accident while on duty, will continue to be provided as at present. Dependent for this purpose will mean spouse of the employee, his/her son or daughter of legally adopted son/daughter.

8. From reading of clause 0.5.4 of the Memorandum of Understanding, it transpires that though there is no statutory scheme for providing employment, yet there is an understanding between the Corporation and its workers' union that the Corporation will provide employment to a dependent of the workman who is permanently disabled or dies as a result of accident while on duty. It is not in dispute that late father of the petitioner, who was a permanent employee in the corporation, died as

a result of accident while on duty and, therefore, one of the dependents of the deceased employee was entitled to employment. The Memorandum of Understanding does not define the expression "employment". In the absence of any specific definition, it is difficult for this Court to accede to the contention of the learned counsel for the petitioner that employment would only mean a permanent employment. Rather the employment would mean providing some job to the dependent in the corporation which can take care of his day to day needs and saves the family of the deceased employee, who was their sole breadwinner, from destitution and starvation.

9. The compassionate employment is provided to the dependents of the deceased employee to tide over the crisis which the family plunges into due to sudden and untimely demise of their sole breadwinner. Keeping in view the object of the compassionate appointment scheme, what is necessary is to provide sustenance to the family of the deceased.

10. In the instant case, the respondents, who were committed to provide employment to a dependent of the deceased employee, offered the petitioner, son of the deceased employee, appointment as Junior Assistant on temporary basis initially for a period of one year. This, claims the respondent-corporation, was done due to non-availability of a permanent post of Junior Assistant.

11. Learned counsel for the petitioner has disputed this assertion of the respondents but there is nothing on record to disbelieve the statement made by the respondents on affidavit. The petitioner was though appointed as Junior Assistant in temporary capacity but was paid the full wages attached to the post and, therefore, the object sought to be achieved by the compassionate appointment was well achieved. That apart, the petitioner voluntarily accepted the temporary appointment and waited for the permanent post to become available. For ten long years, the petitioner did not object to his temporary appointment which was ultimately followed by his permanent appointment as Junior Assistant on 27.04.2010. The petitioner even did not resent his permanent appointment which was made prospectively with effect from 27.04.2010 and filed the instant petition after five years.

12. The petitioner has not been able to explain the delay of 15 years in raising his grievance before this Court or even before the respondents. Even if we forget about the ten years' time since the temporary appointment of petitioner and believe him that he could not dare to take the respondent-corporation to Court being a temporary employee, yet nothing prevented him from challenging the order of his substantive appointment as Junior Assistant made in the year 2010. It, thus, clearly transpires that petitioner not only accepted his appointment as was offered to him but he acquiesced in his appointment and, therefore, cannot be allowed to turn around and challenge the impugned order that too after a lapse of considerable time.

13. The plea of learned counsel for the petitioner that since this petition was admitted on 29.09.2015, as such, the plea of delay and laches is not available to the respondents does not reflect correct position of law. Mr. RKS Thakur has relied upon a judgment of Division Bench of this Court in the case of Shashi Gupta v. Indu Kaul & Ors 2019 (2) JKJ [Hc] 418, wherein it has been held that the objection of delay and laches cannot survive post admission of the writ petition. The Hon'ble Division Bench has quoted Para 8 of the judgment rendered in the case of Mohd. Baqir v. State of J

& K & Ors, 2005 (II) SLJ 495, which for facility of reference is reproduced hereunder:-

8. This petition stands admitted, as discussed above, and at the time of admission, the respondents have not taken the plea that petition is caught by delay and latches. It was for the respondents to take the plea and reserve the right. They are precluded from raising such plea at this stage. My this view is fortified by the judgment of Division Bench of this Court delivered in LPA No. 138 and 168 of 1999 titled Bashir Ahmad vs. State of J & K, decided on 03.08.2004. It is profitable to reproduce relevant portion of Para-3 of the said judgment herein:-

3. ".....It is also the proposition of law the delay and latches should be considered before admission of the writ petition. The petition has not been admitted subject to delay and latches, which were not pressed at the time of its admission. Therefore, the writ petition under such circumstances cannot be dismissed on account of delay and latches."

14. I have considered the judgments relied upon by the learned counsel for the petitioner and I am of the considered view that law laid down in the aforesaid judgments is not attracted to the facts and circumstances of the present case. In the instant case, the writ petition was admitted on the first date without notice to the respondents. Reference to order dated 29.09.2015 passed in this petition would show that the writ petition was admitted on the very first date and, therefore, the respondents had no opportunity or occasion to raise the plea of delay and latches. It is only in a case where the writ petition is admitted after hearing the respondents that respondents may be precluded from raising the plea of delay and latches if the same had not been raised at the time of admission. The legal position on this point needs to be appreciated in this manner.

15.As is well settled, the compassionate appointment is not as a matter of right and is usually governed either by statutory rules or executive instructions. Object of providing the compassionate appointment is only to provide succour to family of the deceased employee which is made to face undue hardship due to the sudden and untimely death of their breadwinner.

16.Having regard to the object of the scheme making provision for compassionate appointment, I am of the considered view that the respondents performed their duty by immediately providing employment to the petitioner by appointing him as Junior Assistant in the corporation. It is true that the petitioner had to render temporary services for a period of ten years and it was only in the year 2010, the respondents offered the petitioner permanent appointment. The petitioner accepted both the temporary appointment given to him in the year 2000 and the permanent appointment given to him in the year 2010 without any protest and demure. The petitioner, however, made up his mind to file this petition seeking his permanent appointment as Junior Assistant retrospectively with effect from 12.06.2000 with all consequently benefits after five year of his permanent appointment. The petitioner is, thus, estopped by his conduct as well as long delay to approach this Court.

17.For all these reasons, I find no merit in this petition and the same is, accordingly, dismissed.

(Sanjeev Kumar) Judge Jammu:

31.03.2022 Sahil T Whether the order is speaking? Yes Whether the order is reportable? Yes