

(2016) 08 GUJ CK 0093

In the Gujarat High Court

Case No : Special Civil Application No. 13579 of 2006

Akash Shakarabhai Sengal

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 LLJ 194

Hon'ble Judges : Mr. J.B. Pardiwala, J.

Bench : Single Bench

Advocate : Mr. Praikh, Asst. Government Pleader, for the Respondent No. 1 to 3; Girish Patel Assoc, Advocate, for the Petitioner No. 1; Rule Served By DS, for the Respondent No. 2 and 3

Final Decision : Disposed Off

Judgement

Mr. J.B. Pardiwala, J.(Oral) - By this writ application under Article 226 of the Constitution of India, the writ applicant has prayed for the following reliefs;

"(A) declaring the decision of the respondent authorities to reject the petitioner's application for compassionate appointment as absolutely unconstitutional, illegal and violative of Articles 14, 16 and 21 of the Constitution of India and the rules of compassionate appointment of 2000, illegal, null and void and quashing the same;

(B) directing the respondent to give appointment to the petitioner with all the benefits attached to the post with effect from the date on which decision was taken to offer appointment with all incidental benefits and

(C) passing any other appropriate order.

23. The petitioner, therefore, prays that during the pendency and till the final disposal of this petition, Your Lordships may be pleased to grant interim relief:-

(i) directing the respondents to give ad hoc appointment to the petitioner with all

the benefits and

(ii) passing any other appropriate order."

2. It appears from the materials on record that the father of the writ applicant was serving as a Packer cum Coolie in the office of the respondent No.2. The father passed away on 1st December, 2000 while in service. On the demise of the father, the writ applicant, being the son, preferred an application dated 16th February, 2001, seeking the compassionate appointment. At the relevant point of time, the policy of the State Government dated 10th March, 2000 as regards the compassionate appointment was in force. According to the said policy, the application should have been filed within three months from the date of the demise of the employee. In the case in hand, indisputably, the application was not filed within three months. It appears that there was a delay of about five months in preferring the application. In such circumstances, the application was rejected. It also appears that vide communication dated 30th June, 2005 of the State Government addressed to the Deputy Secretary, Sub-ordinate Services, the delay in filing such application was condoned. By the time such decision was taken, a new policy came into force in the year 2004. The new policy laid down the minimum qualification of 10th standard pass. The writ applicant had studied only upto the 9th standard. In such circumstances, it was decided that no appointment could be given as the writ applicant was not fulfilling the educational qualification.

3. The principal argument of the learned counsel appearing for the writ applicant is that the new policy of the year 2004 could not have been taken into consideration because the father passed away in the year 2000, and the policy prevailing at the relevant point of time would govern the case of the writ applicant. This submission of the learned counsel, in my view, is fortified by a recent pronouncement of the Supreme Court in the case of *Canara Bank & Anr. v. M. Mahesh Kumar*, 2015 (7) SCC 412. The observations made in paragraphs- 17, 18, 19, 20, 21, 22, 23 and 24 are relevant. Those are elicited as under;

"17. Applying these principles to the case in hand, as discussed earlier, respondent's father died on 10.10.1998 while he was serving as a clerk in the appellant-bank and the respondent applied timely for compassionate appointment as per the scheme "Dying in Harness Scheme" dated 8.05.1993 which was in force at that time. The appellant-bank rejected the respondent's claim on 30.06.1999 recording that there are no indigent circumstances for providing employment to the respondent. Again on 7.11.2001, the appellant-bank sought for particulars in connection with the issue of respondent's employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when the Circular No.154/1993 dated 8.05.1993 was in force. Thus, as per the judgment referred in *Jaspal Kaur's* case, the claim cannot be decided as per 2005 Scheme providing for ex-gratia payment. The Circular dated 14.2.2005 being an administrative or executive order cannot have retrospective effect so as to take

away the right accrued to the respondent as per circular of 1993.

18. It is also pertinent to note that 2005 Scheme providing only for ex-gratia payment in lieu of compassionate appointment stands superseded by the Scheme of 2014 which has revived the scheme providing for compassionate appointment. As on date, now the scheme in force is to provide compassionate appointment. Under these circumstances, the appellant bank is not justified in contending that the application for compassionate appointment of the respondent cannot be considered in view of passage of time.

19. Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.

20. In *Balbir Kaur & Anr. v. Steel Authority of India Ltd. & Ors.*, (2000) 6 SCC 493, while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:-

"13. ?But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump-sum amount being made available to the family - this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation."

21. Referring to *Steel Authority of India Ltd.*'s case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground.

22. Considering the scope of the Scheme "Dying in Harness Scheme 1993" then

in force and the facts and circumstances of the case, the High Court rightly directed the appellant-bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. We do not find any reason warranting interference.

23. So far as the cases in Civil Appeal No.266/2008 and Civil Appeal No.267/2008 are concerned, they are similar and those respondents are similarly placed and the appeals preferred by the bank are liable to be dismissed. The appellant-bank is directed to consider the case of the respondents in Civil Appeal Nos. 266/2008 and 267/2008.

24. In the result, all the appeals preferred by the appellant-bank are dismissed and the appellant bank is directed to consider the case of the respondents for compassionate appointment as per the Scheme which was in vogue at the time of death of the concerned employee. In the facts and circumstances of the case, we make no order as to costs."

4. In view of the above, the respondents are directed to reconsider the case of the writ applicant keeping in mind the decision of the Supreme Court referred to above. Let such decision be taken within a period of three months from the date of the receipt of the writ of the order and the same shall be communicated to the writ applicant in writing.

5. With the above, this writ application is disposed of. Rule is made absolute to the aforesaid extent.

Direct service is permitted.