

(2022) 11 GUJ CK 0121

In the Gujarat High Court

Case No : R/Special Civil Application No. 14183 Of 2022

Anilbhai Vishrambhai Baraiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 25-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2022) 11 GUJ CK 0121

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Mrudul M Barot, Aditya S Pathak

Final Decision : Dismissed

Judgement

A.S. Supehia, J

1. The present writ petition is filed, inter alia, seeking the following direction:

"21(B) Your Lordships may be pleased to issue a writ of mandamus or any other appropriate writ in the nature of mandamus or any other writ, order or appropriate directions, directing the respondents to give compassionate appointment, in view of the applications dated 10.03.2022 given by the present the present petitioner in the interest of justice;"

2. The petitioner is seeking compassionate appointment as per his application dated 10.03.2022. The facts suggest that the father of the petitioner passed away on 06.08.2004 on duty. He was serving as a Police Constable. The petitioner, after becoming major, filed an application on 20.06.2009 i.e. after a period of 5 years from the date of death of his father seeking compassionate appointment. The mother of the petitioner thereafter, filed an application dated 18.09.2012 on behalf of the petitioner i.e. after a period of 2 years of the earlier application. The petitioner again sent an application, after a period of 10 years i.e. on 10.03.2022 requesting the respondent No.2 to grant compassionate appointment and to decide his application.

3. Learned advocate appearing for the petitioner has submitted that the family members of the petitioner have no objection, if the compassionate appointment is granted to the petitioner. He has submitted that the petitioner is also qualified for the compassionate appointment. Further, it is submitted that the Government has thereafter, introduced a scheme of lump-sum compensation vide Government Resolution dated 05.07.2011 and accordingly, the petitioner filed an application in the year 2022.

4. As the facts hereinabove suggest that the petitioner is seeking compassionate appointment, for which he has made an application in the year 2009 that too, after a period of 5 years of death of his father i.e. on 06.08.2004. The petitioner went into slumber and has woken up after a period of 18 years claiming the compassionate appointment.

5. The petitioner also made an application on 10.03.2022 seeking compassionate appointment. The communication dated 10.03.2022 written by the petitioner reveals that a proposal of compassionate appointment was already returned by the Superintendent of Police, Bhavanagar on 15.02.2006, which is not produced on record and the fact is also suppressed in the writ petition. The petitioner has also not challenged the rejection of his proposal before any legal forum.

6. At this stage, it would apposite to refer to the observations made by the Apex Court in the case of State of Maharashtra Vs. Madhuri Maruti Vodhate, 2022 SCC Online SC 1327, in which, the Apex Court has held thus : -

"5. 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 the case of Director of Treasuries in Karnataka and Anr. Vs. V. Somyashree, 2021 SCC Online SC 704, 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, (2020) 7 SCC 617, this Court has summarised 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.

6. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

6.1 In the case of State of Himachal Pradesh and Anr. Vs. Shashi Kumar reported in (2019) 3 SCC 653, this Court had an occasion to consider the object and purpose of appointment on compassionate ground and considered the decision of this Court in the case of Govind Prakash Verma Vs. LIC, reported in (2005) 10 SCC 289, in paras 21 and 26, it is observed and held as under:-

"21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138], SCC pp. 139-40, para 2)

"2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. 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 dependents 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 a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be

offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in nonmanual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in *Govind Prakash Verma v. LIC*, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case."

7. 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.

7.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, to appoint the respondent now on compassionate ground shall be contrary to the object and purpose of appointment on compassionate ground. The respondent cannot be said to be dependent on the deceased employee, i.e., her mother. Even otherwise, she shall not be entitled to appointment on compassionate ground after a number of years from the death of the deceased employee."

The Apex Court has held that the compassionate appointment cannot be granted after number of years from the death of deceased employee and no aspirant has right to claim for compassionate appointment. It is further directed by the Apex Court that the appointment on compassionate ground can be made only on fulfilling the norms laid down by the State policy and on satisfaction of the eligibility criteria, as per the policy.

7. In the present case, as noticed hereinabove, neither the mother of the petitioner nor the petitioner have challenged the rejection of the case of compassionate appointment when it was initially rejected in the year 2006 and hence, the writ petition claiming such benefits cannot be entertained after so many years.

8. The writ petition is summarily rejected.