

(2016) 08 GUJ CK 0094

In the Gujarat High Court

Case No : Special Civil Application No. 15477 of 2005

Daxaben Umeshbhai Tadvi

APPELLANT

Vs

Municipal Commissioner

RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 LLJ 224

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

Bench : Single Bench

Advocate : DS AFF, Not Filed (R) and Mr. Pranav G. Desai, Advocate, for the Respondent No. 1; Mr. Ramnandan Singh, Advocate, for the Petitioner No. 1

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, widow of a deceased employee of the Vadodara Municipal Corporation, has prayed for the following reliefs;

"(A) Your Lordships may be pleased to admit and allow this petition.

(B) Your Lordships may be pleased to issue writ of mandamus against the respondent authority and may be pleased to pass direction/order against the respondent authority to consider the case of the present petitioner for giving compassionate appointment on account of death of her husband, who died on duty period and be pleased to hold that the impugned order passed by the respondent corporation on 11.10.2004 is illegal and unlawful.

(C) Your Lordships may be pleased to pass any other order, direction, which may be deemed fit in the facts and circumstances of this case."

2. It appears from the materials on record that the late husband of the writ applicant was working with the Corporation as a daily wager. The husband passed away on 23rd June, 2004. On the demise of the husband, the writ

applicant preferred an application dated 27th August, 2004, requesting the Corporation to provide her with the compassionate appointment. Such request was declined on the ground that the husband was a temporary employee, i.e., a daily wager and the scheme framed by the Corporation for the compassionate appointment was not applicable to the dependents of the daily wagers or the temporary employees.

3. An affidavit-in-reply has been filed on behalf of the Corporation, inter alia, stating as under;

"6. With reference to para-2 of the petition, I say that the averments and facts stated in the said para are not wholly true. I deny that action of the respondent Corporation is illegal and unlawful as alleged or otherwise. I say that the deceased was working with the Corporation on the post of daily wager driver. I say that for the compassionate appointment Government of Gujarat has circulated the guidelines by resolution dated 10.3.2000 in which para 2(2) indicates that the daily wagers, casual workers, apprentice, adhoc and contract employees are not eligible for compassionate appointment. A copy of the said resolution is enclosed herewith as Annexure-I hereto.

9. With reference to para 5 of the petition, I say that the person has to complete 240 days in one year and the person has to complete 720 days in three years and the deceased has not completed 240 days in one year and 720 days in three years. Therefore, I deny the contentions made in this para.

12. With reference to para 8 & 9 of the petition, I say that the petitioner has made an application dated 27.8.2004 for compassionate appointment to the Respondent Corporation, but it was rejected on the ground of resolution of the State Government dated 10.3.2000.

14. With reference to ground 10(1) of the petition I say that the aim of the legislature is providing compassionate appointment to dependent employee in order to provide immediate relief to the family members and I say that there is no compulsion on the part of the employer under the resolution of the State Government dated 10.3.2000 unless all the preconditions of the said resolutions are fulfilled. I say that compassionate appointment can not be granted and it is also stipulated in the scheme that this scheme is purely benevolence in nature, formulated by State Government and one can not ask appointment under the scheme as a matter of right. I say that this is clearly mentioned in the resolution dated 10.3.2000 and it is also stipulated that this scheme does not give any constitutional right to the dependent for compassionate appointment."

4. Mr. Ramnandan Singh, the learned counsel appearing for the writ applicant, invited my attention to the averments made in paragraphs-8,9,10 and 11 of the affidavit-in-rejoinder, which reads as under;

"8. With respect to Para No.6, I say and submit that the co-employees, who were working with the husband of the petitioner, have already been regularized,

because all of them have completed more than 720 days of services. Therefore, in case of the husband of the present petitioner also, who had completed more than 720 days in three years, the petitioner has already supplied the details of number of days of services rendered, which clearly shows that the petitioner has completed more than 720 days in 3 years and 240 days in 1 year. So far as the resolution of the State Government dated 10/03/2003 is concerned, I say and submit that the petitioner's husband was deemed permanent employee on completion of 720 days of services in 3 years and 240 days in 1 year and therefore, he would not be falling in the category of daily wagers or casual workers. Hence, it would not apply in the case of the present petitioner. therefore, he would not be falling in the category of daily wagers or casual workers. Hence, it would not apply in the case of the present petitioner.

9. With respect to Para No.7, 8, 9, 10 and 11, I say and submit that I reiterate the contents in Para No.3, 4, 5, 6 & 7 of the petition and I say and submit that the petitioner was deemed permanent employee and could not be categorized as daily wager/driver. The number of days services rendered has already been supplied along with this petition. Hence, this part could not be denied that he has rendered more than 720 days of services in 3 years i.e. in the year 1999-2000, 2000 2001 and 2001-2002, as such; he has completed 314 days in the year 2000 and 314 days in the year 2001 and 313 days in the year 2002. Thus, in 3 consecutive years, he had completed 240 days in every year and in all, he had completed 914 days in 3 years. Thus, he fulfilled all the criteria for deemed permanent employee. The copy of salary slips are self-explanatory that the husband of the petitioner had completed 720 days in consecutive 3 years and similarly, every year, he had completed 240 days. The copies of the salary slips are collectively annexed as ANNEXURE "E" hereto. The other co-employees, who were appointed together with the husband of the petitioner and who had completed 720 days on 31/12/2002, they have been made permanent and order to that effect has been passed. The copy of the appointment letter is annexed as ANNEXURE "F" hereto. So far as the petitioner's husband is concerned, he had also completed 720 days within 3 years and therefore, the petitioner's case stands on similar footing, hence, there cannot be discrimination between similarly situated employee, as such, the petitioner's case deserve kind consideration. The copy of the letter dated 02.02.2006 is annexed as ANNEXURE-"G" hereto.

10. With respect to Para No.12, I say and submit that the respondent authorities have wrongly interpreted the resolution and failed to take note of their own resolution dated 28/08/1986, which clearly holds that an employee completing 720 days in three years in deemed permanent employee. The copy of the said resolution is annexed as ANNEXURE "H" hereto.

11. With respect to Para No.13 and 14, I say and submit that the employee had died while he was rendering his services with the respondent corporation. It is not the case that he died off duty, but he died on duty and therefore, the case of

the petitioner deserves special consideration. Secondly, that the petitioner's husband was quite young and after death of her husband, she has become widow in very young age, as such, child is also minor. Hence, in view of the fact that the husband of the petitioner was deemed permanent employee. the resolution dated 10/03/"2000 could not be made applicable in the present case and the petition deserves to be allowed."

5. According to the learned counsel, the deceased had already completed 720 days of service in three years between 1999 and 2002. In such circumstances, he could have been treated as having been regularised in service. According to him, this aspect has been overlooked by the Corporation.

6. This writ application is disposed of with a direction to the Corporation to take into consideration the averments made in paras-8,9,10 and 11 of the affidavit-in-rejoinder and reconsider the issue. Let such decision be taken within a period of two months from the date of the receipt of the writ of the order.

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

Direct service is permitted.