
(2015) 04 GUJ CK 0100
In the Gujarat High Court
Case No : S.C.A. No. 6606 of 2009

Dipesh Rasiklal Parmar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 07-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 LLJ 583

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Bhargavi G. Thakar for Pinakin M. Raval, for the Appellant;
Swapneshwar Goutam, Assistant Government Pleader, Advocates for the
Respondent

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—By preferring this petition under Article 226 of the Constitution of India, the petitioner has prayed for the issuance of a Writ of Mandamus or any other appropriate Writ or direction, quashing and setting aside the impugned order dated 28.09.2007, passed by respondent No. 3, whereby the benefits of the Government Resolutions dated 10.03.2000 and 07.09.2002, have not been extended to the petitioner. The brief factual background in which the petition is filed is as below:

The father of the petitioner was serving as Cook at Guru Govindsingh Hospital, Jamnagar. He died while in harness on 09.02.2002. The petitioner made an application for appointment on compassionate grounds on 10.04.2002, along with necessary documents. The said application came to be rejected by the Additional Director, Medical Education and Research, Gandhinagar, by an order dated 21.10.2002, which is not on the record of the petition. The rejection was communicated to the petitioner by respondent No. 3 by a communication dated 08.01.2003. The ground for rejection was that the petitioner did not fulfill the requirement of Condition No. 9 of the Government Resolution dated 10.03.2000,

which stipulates that in case any member of the family of the deceased is earning, only the widow or widower, as the case may be, would be eligible to apply for the lowest rung of Class III or Class IV post for compassionate appointment. According to the petitioner, his two elder brothers, who were working as labourers, were staying separately from the petitioner, therefore, the said condition would not be applicable to him. The petitioner again made a representation in the year 2003 to respondent No. 3 for the grant of compassionate appointment. This representation also came to be rejected by respondent No. 4, by a communication dated 16.08.2005, on the ground that the petitioner did not possess the necessary educational qualification of having passed the SSC examination, as per the Government Resolution dated 16.03.2005. This rejection was communicated to the petitioner vide communication dated 02.02.2006 by respondent No. 3. Thereafter, the petitioner approached this Court by filing a petition, being Special Civil Application No. 15483 of 2007, wherein this Court passed the following order:

"6. In view of the aforesaid observations made by Apex Court and considering the fact that father of the petitioner died on 9.2.2002 and application was made on 10.4.2002, therefore, respondent shall have to consider the case of the petitioner according to policy which was prevailing at the relevant time and not to consider the case of petitioner as per notification dated 16.3.2005. Therefore, the respondents are directed to reconsider the case of petitioner for compassionate appointment according to policy prevailing at the relevant time without considering the notification dated 16.3.2005 and pass appropriate reasoned order in accordance with law within a period of three months from the date of receiving the copy of this order and communicate the decision immediately to the petitioner."

2. The respondents reconsidered the matter as per the order of this Court and passed the impugned order dated 28.09.2007, stating that as the petitioner did not fall within the purview of the Government Resolution dated 10.03.2000, as amended by the Government Resolution dated 07.09.2002, his case could not be considered for the grant of compassionate appointment. Aggrieved thereby, the petitioner has approached this Court.

3. Ms. Bhargavi G. Thakar, learned advocate for Mr. Pinakin M. Raval, learned advocate for the petitioner, has submitted that the earlier rejection of the application of the petitioner communicated vide letter dated 08.01.2003, on the ground that Condition No. 9 of Government Resolution dated 10.03.2000, has not been fulfilled in the case of the petitioner, is incorrect and without application of mind as the mother of the petitioner had predeceased his father, therefore, she could not possibly have made an application for the grant of compassionate appointment. Moreover, the two elder brothers of the petitioner, who were earning, were not in Government service and were living separately from the petitioner. Hence, the rejection of the application of the petitioner on the ground of non fulfillment of Condition No. 9 of the Government Resolution dated

10.03.2000 deserves to be quashed and set aside.

4. It is next submitted that the second rejection of the application of the petitioner dated 16.03.2005, communicated to the petitioner vide communication dated 02.02.2006, on the ground that the petitioner has not passed the SSC examination, cannot be sustained as the policy applicable on the date of the death of the petitioner's father was that contained in the Government Resolution dated 10.03.2000, which states that the educational qualification required for Class IV post is having passed Class 4 to 9. If this educational qualification is considered, the petitioner would be eligible as he has studied upto the 8th Standard.

5. Learned advocate for the petitioner further submits that this Court, vide order dated 19.06.2007, passed in Special Civil Application No. 1543 8 of 2007, directed the respondents to reconsider the case of the petitioner for the grant of compassionate appointment according to the policy prevailing at the relevant period of time, without considering the subsequent policy. The respondents have not considered the matter as per the Government Resolution dated 10.03.2000, but have considered the matter as per the Government Resolution dated 16.08.2005, which provides for higher educational qualifications than the petitioner possesses. Hence, as the impugned order dated 28.09.2007 has been passed without considering the factual and legal aspects of the matter, the petition deserves to be allowed.

6. The petition has been strongly opposed by Mr. Swapneshwar Goutam, learned Assistant Government Pleader. He has submitted that the father of the petitioner passed away on 09.02.2002 and the application for compassionate appointment was made by the petitioner on 10.04.2002. It was found while examining the case of the petitioner that as per Condition No. 9 of the Government Resolution dated 10.03.2000, which was prevalent at the relevant point of time, the benefit of compassionate appointment can be granted only to the spouse, in cases where other dependent family members of the deceased are working. In the present case, the petitioner has himself admitted on affidavit that his brothers were earning members. The mother of the petitioner, that is the wife of the deceased, had not applied for compassionate appointment. Hence, the petitioner was not eligible to be granted compassionate appointment as two members of the family were earning.

7. It is further submitted that the second application made by the petitioner in the year 2003 was rejected on 16.08.2005 as the petitioner did not possess the necessary educational qualification of SSC pass as per the Government Resolution dated 16.03.2005, which was applicable at the time when the application was made. The respondents have again reconsidered the case of the petitioner as per the policy dated 10.03.2000, prevailing at the time of the death of the father of the petitioner, as per the order of the Court and found that as the brothers of the petitioner were earning, the petitioner would not be entitled to compassionate appointment. It is submitted that the factum of the death of the

mother of the petitioner was not brought to the notice of the respondents when the petitioner made the application for the first time. When the second application was made, the educational qualifications of the petitioner had to be assessed as per the prevailing policy on that date, which required that the petitioner ought to have passed the SSC examination.

8. It is further submitted that now the policy dated 10.03.2000, and all other subsequent policies, have ceased to exist as they have been replaced by a new policy contained in the Government Resolution dated 05.07.2011, which has done away with the concept of compassionate appointment. The new policy contemplates the payment of lumpsum financial aid to the dependents of a deceased employee instead, subject to fulfillment of the terms and conditions contained therein. It is further submitted that as per the said policy, applications that have been rejected under the old policy cannot receive the benefits of the new policy as his applications have already been rejected under the old policy.

9. Learned Assistant Government Pleader has placed reliance upon a judgment of this Court in Vishal Keshubhai Chudasama Vs. State of Gujarat and Others, (2014) 2 GLR 1243 by submitting that when a new policy has come in place, then the case of the petitioner can only be considered as per the said policy and not under the old policy, as prayed for by the petitioner.

10. On the above grounds, it is prayed that the petition be rejected.

11. This Court has heard learned counsel for the respective parties, averments made in the petition and other documents on record.

12. The initial application of the petitioner dated 10.04.2002 was rejected and the rejection communicated to the petitioner on 08.01.2003 by respondent No. 3. The reason for the said rejection was that only the mother of the petitioner, that is, the widow of the deceased, could have made the application in view of the fact that two elder brothers of the petitioner were earning. Learned advocate for the petitioner has submitted that the mother of the petitioner predeceased his father, therefore, she could not possible have made an application. This aspect is not mentioned by the petitioner in the initial application dated 10.04.2002. On the contrary, the petitioner had annexed an affidavit stating that his two elder brothers were earning their living as labourers. The petitioner has not produced a copy of the death certificate of his mother, therefore, there is no way to ascertain on which date, the mother of the petitioner passed away. In this view of the matter, the respondents can hardly be blamed for passing the order dated 08.01.2003 based upon Condition No. 9 of the Government Resolution dated 10.03.2000. A perusal of the said condition goes to show that in cases where any family member of the deceased employee is earning, only the widow or widower, as the case may be, is eligible to apply for the grant of compassionate appointment in the lower rung of Class III or Class IV post. It is not disputed that the two brothers of the petitioner were earning their living as labourers. It has been contended on behalf of the petitioner that his brothers

were not in Government service and were not living with the family. The words used in Condition No. 9 of the Government Resolution dated 10.03.2000 are "earning member". It nowhere states that the family member should be in Government service. Similarly, the said condition does not lay down anything regarding whether the earning member is staying with the family or separately. In any case, there is no material on record to indicate that the brothers of the petitioner were not staying with the family except for the ipse dixit of the petitioner.

13. After the rejection of the initial application, the petitioner made another representation somewhere in the year 2003 which was again rejected by an order communicated to the petitioner on 16.08.2005 on the ground that the petitioner had not passed the SSC examination. It may be noted that the educational qualification, as stipulated in the Government Resolution dated 10.03.2000, which is having passed Standards 4 to 9 for a Class IV post underwent a change by a Notification dated 16.03.2005, whereby the education qualification stipulated for Class IV post is SSC pass.

14. This Court, vide order dated 19.06.2007 passed in Special Civil Application No. 15483 of 2007, directed the respondents to reconsider the case of the petitioner as per the policy prevailing at the relevant point of time and not as per the policy contained in the Government Resolution dated 16.03.2005. After doing so, the respondents have passed the impugned order rejecting the case of the petitioner.

15. It may be noted that the law regarding grant of compassionate appointment has undergone a change in recent years. As of today, the policy dated 10.03.2000 is no longer in existence as it has been superseded by a Government Resolution dated 05.07.2011. As per the new policy, no appointments on compassionate grounds are contemplated to be made. Instead, the dependents of the deceased employee can be granted lumpsum financial aid, if eligible under the new policy. The prayer of the petitioner before this Court is not for the grant of lumpsum financial aid as per the new policy, but for the grant of appointment on compassionate grounds as per the policy contained in Government Resolution dated 10.03.2000. Whether this can be done in the present scenario, or not, considering that the policy of granting compassionate appointments has been totally done away with, is the question to be considered by this Court. Before addressing this issue, certain judgments of the Supreme Court may be referred to which would squarely cover the present case.

16. In *State Bank of India and Another Vs. Raj Kumar*, (2010) 11 SCC 661 : (2011) 1 SCC(L&S) 150, the Supreme Court has held as below:

"8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the

selection process. The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

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12. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable.

13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts."

(emphasis supplied)

17. In another recent judgment in the case of MGB Gramin Bank Vs. Chakrawarti Singh, (2013) 9 AD 253 : AIR 2013 SC 3365 : (2013) 139 FLR 469 : (2013) LabIC 3824 : (2013) 10 SCALE 223 : (2013) 4 SCT 541 : (2013) 114 SLJ 328 : (2013) AIRSCW 4801 , the Supreme Court, after considering several of its earlier judgments on the issue of compassionate appointment, has held as below:

"13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India and Another (supra), this Court held that in such a situation, the case under the new Scheme has to be considered."

18. The above two judgments of the Supreme Court have been relied upon in a judgment rendered by this Court in Vishal Keshubhai Chudasama v. State of Gujarat and Others (supra), by taking a view that on the coming into force of the new scheme, the case of the petitioner cannot be considered under the old scheme that no longer exists.

19. In view of the above principles of law enunciated by the Supreme Court, this Court is of the considered view that the specific prayer to extend the benefits of the Government Resolutions dated 10.03.2000 and 07.09.2002 to the petitioner cannot be accepted as the said Government Resolutions and the policy of the State Government contained in them are no longer in force.

20. There is another aspect to the matter which deserves mention. It has been held by the Supreme Court in State Bank of India and Another v. Raj Kumar (supra) and MGB Gramin Bank v. Chakrawarti Singh (supra), that compassionate appointment is not a right that the applicant can claim. Merely by making an application, no vested right for grant of compassionate appointment accrues. In fact, compassionate appointment is an exception to the general rule, for recruitment to public services should be made on the basis of merit by providing equal opportunity to all.

21. In any case, the policy for granting compassionate appointment has been abolished by the State of Gujarat, therefore, there is no question of applying a policy that is no longer in existence, to the petitioner. It may be kept in mind that this Court directed reconsideration of the case of the petitioner on the basis of the old policy by an order dated 19.06.2007. At that point of time, the new policy contained in the Government Resolution dated 05.07.2011, abolishing the concept of compassionate appointment and replacing it with grant of lumpsum compensation, was not in existence. Therefore, in view of the judgments of the Supreme Court referred to earlier, this Court is unable to accept the plea of the petitioner to direct the respondents to consider his case as per the old policy for compassionate appointment, which is no longer in existence.

22. It may further be noted that the very purpose of granting compassionate appointment is to help the family of the deceased employee to tide over the financial crises that may have arisen due to the death of the breadwinner. If the family of the deceased employee has been able to manage without grant of compassionate appointment for a considerable period of time and have been able to tide over the crisis that occurred due to the death of the family concerned, the immediate necessity of granting compassionate appointment no longer exists with the passage of time. In the present case, there is no dispute regarding the fact that the father of the petitioner passed away on 09.02.2002. Though sufficient time has elapsed after the filing of the petition, even then, it cannot be said that any vested right accrues to the petitioner for grant of compassionate appointment as of today, especially when the brothers of the petitioner are earning their living. In the view of this Court, no legal, vested or indefeasible right of the petitioner has been infringed by the respondents by rejecting his

case for grant of compassionate appointment. For reasons stated hereinabove, the petition lacks merit and deserves to be rejected. It is, accordingly rejected. Rule is discharged. There shall be no orders as to costs.