
(2010) 10 GUJ CK 0028
In the Gujarat High Court
Case No : S.C.A. No. 17472 of 2003

Divisional Controller, G.S.R.T.C.

APPELLANT

Vs

General Secretary, Kheda Vibhag S.T. Karmachari Mandal

RESPONDENT

Date of Decision : 06-10-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2011) 2 LLJ 387

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : Ashish M. Dagli, for the Appellant; G.K. Rathod, for the Respondent

Judgement

M.R. Shah, J.—By way of this petition under Article 227 of the Constitution of India, the Petitioner-Gujarat State Road Transport Corporation has prayed for an appropriate writ, order and/or direction, quashing and setting aside the impugned judgment and award dated March 6, 1999 passed by Industrial Tribunal, Nadiad in Reference (ITN) No. 406/1998 (new number), by which, the Industrial Tribunal has allowed the said Reference directing the Petitioner to appoint the Respondent on compassionate ground looking to his educational qualification.

2. It is not in dispute that father of the Respondent-original workman died in the month of January, 1986. It is not in dispute that at the relevant time the Respondent was minor and who attained the age of majority on May 31, 1989. As per Settlement/Scheme for appointment on compassionate ground any heir of deceased employee, who is minor at the relevant time, he has to make an application for appointment on compassionate ground within a period of one year from the date of attaining the age of majority. It is admitted position that the Respondent has submitted an application on November 4, 1992, admittedly, beyond period of one year from the date of attaining the age of majority.

3. Considering the fact that in the year 1987 the Respondent was minor, has

submitted an application for appointment on compassionate ground on the post of peon and considering the object and purpose of compassionate appointment, technical view should not be taken, the Industrial Tribunal by impugned judgment and award directed the Petitioner to appoint the Respondent on compassionate ground. Being aggrieved by and dissatisfied with the impugned judgment and award passed by the Industrial Court, the Petitioner has preferred the present petition under Article 227 of the Constitution of India.

4. Mr. Ashish Dagli, learned Advocate appearing on behalf of the Petitioner has vehemently submitted that the impugned judgment and award passed by Industrial Tribunal directing the Petitioner to appoint the Respondent on compassionate ground is absolutely illegal and contrary to the Settlement/ Scheme for appointment on compassionate ground. It is submitted that even the Tribunal has also held that the application submitted by the Respondent was beyond time limit prescribed in the Scheme, still the Tribunal has directed the Petitioner to appoint the Respondent on compassionate ground, which is absolutely illegal. It is submitted that when the application was submitted beyond the time limit prescribed in the Scheme, the Tribunal ought not to have passed an order to appoint the Respondent on compassionate ground. Mr. Dagli, learned Advocate appearing on behalf of the Petitioner has relied upon decision of learned single Judge of this Court rendered in the case of Gujarat State Road Transport Corporation v. Legal heirs of Noormohmed Ibrahim Patel rendered in Special Civil Application No. 4688/2005 and it is submitted that relying upon the decision of the Hon''ble Supreme Court rendered in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, learned single Judge has held that the benefit of seeking compassionate appointment cannot be availed of at any point of time and the same has to be regulated as per the terms of the policy formulated by the employer. It is further held by learned single Judge that once the time limit for making an application for appointment on compassionate ground expired, it cannot be extended without there being any provision in the Scheme. By making above submissions and relying upon above decisions, it is requested to allow the present petition.

5. Mr. Rathod, learned Advocate appearing on behalf of the Respondent has submitted that considering the object and purpose of compassionate appointment, the Industrial Tribunal has not committed any error in allowing the Reference and directing the Petitioner to appoint the Respondent on compassionate ground. It is submitted that as such the Respondent had submitted the application in the year 1987 for appointment on compassionate ground on the post of peon, but at the relevant time he was minor. Therefore, the aforesaid aspect is required to be considered. Learned Advocate appearing on behalf of the Respondent has relied upon the decision of this Court rendered in the case of Gujarat State Road Transport Corporation v. Workmen of GSRTC (2005) 10 GHJ 598. By making above submissions and relying upon above decision, it is requested to dismiss the present petition.

6. Having heard the learned advocates appearing on behalf of the respective parties and considering the Settlement/Scheme, under which, appointment on compassionate ground is to be made in the Petitioner Corporation, it appears that an heir of the deceased employee, who is minor can submit an application for appointment on compassionate ground if he attains the age of majority within ten years from date of death of the employee and on attaining the age of majority, he has to submit the application within a period of one year thereafter. Therefore, two conditions are required to be satisfied in case of minor. He has to attain the majority within ten years from the date of death of the employee and he has to submit the application within one year from the date of attaining the age of majority. In the present case, admittedly the Respondent attained the age of majority on May 31, 1989 and, therefore, he was supposed to submit the application for compassionate ground within a period of one year thereafter i.e. on or before May 31, 1990. It is admitted position that the Respondent submitted the application on November 4, 1992 i.e. approximately after a period of two years and six months from the date of attaining the age of majority. This application for appointment on compassionate ground was beyond time limit period prescribed under the Scheme.

7. Identical question came to be considered by this Court in the case of Gujarat State Road Transport Corporation v. Legal heirs of Noormohmed Ibrahim Patel (supra) and it was found that the application was submitted by the heir of the employee after period of one year after attaining the age of majority, Labour Court has allowed the Reference and directed the Corporation to appoint the heir of deceased employee, which was challenged before this Court and considering the decision of the Hon'ble Supreme Court rendered in the case of Umeshkumar Nagpal v. State of Haryana and Ors. (supra) and considering two unreported decisions of this Court passed in Special Civil Application No. 5653/1998 dated December 8, 1998 as well as Special Civil Application No. 8693/1990 dated February 17, 2001, learned single Judge has observed that benefit of seeking compassionate appointment cannot be availed of at any point of time and the same has to be regulated as per the terms of the policy formulated by the employer and further observed that once the time limit for making an application for appointment on compassionate ground expired, it cannot be extended without there being any provision in the Scheme. Learned single Judge has allowed the said petition and quashed and set aside the judgment and award passed by Labour Court, by which, the Labour Court has directed the Corporation to give appointment on compassionate ground.

8. So far as decision of this Court rendered in the case of Gujarat State Road Transport Corporation v. Workmen of GSRTC (supra) relied upon by learned Advocate appearing on behalf of the Respondent is concerned, it is to be noted that in that case application for appointment on compassionate ground was submitted within prescribed time limit under the Settlement/Scheme. Under the circumstances, the aforesaid decision would not be of any assistance to the Respondent. In view of the aforesaid facts and circumstances of the case, the

Tribunal has materially erred in allowing the Reference and directing the Petitioner to appoint the Respondent on compassionate ground looking to his educational qualification.

9. In view of the above, the petition succeeds. The impugned judgment and award dated March 6, 1999 passed by Industrial Tribunal, Nadiad in Reference (ITN) No. 406/1998 (new number) is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No costs.