

(2014) 02 GUJ CK 0101
In the Gujarat High Court

Case No : Special Civil Application No. 9874 of 2008

Dy. Executive Engineer

APPELLANT

Vs

Sukhdevsinh Narsangbhai Barad

RESPONDENT

Date of Decision : 21-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 141 FLR 714 : (2015) LabIC 593

Hon'ble Judges : N.V. Anjaria, J

Bench : Single Bench

Advocate : Trusha Mehta, Advocate for the Appellant; Kruti M. Shah, Advocate for the Respondent

Final Decision : Allowed

Judgement

N.V. Anjaria, J.—By filing the present petition, the Deputy Engineer, Road and Building Department challenged the judgment and award dated 15th December, 2007 passed by Labour Court No. 2, Bhavnagar in Reference (L.C.B.) Demand No. 01 of 2007. Under the said award the Labour Court directed the petitioner to provide appointment on compassionate basis to the applicant in place of his deceased father. The applicant raised industrial dispute through Union claiming that after death of his father Navrangbhai Bhikhabhai Barad, he was entitled to be given compassionate appointment on the post on which his father was serving. In the statement of claim (Exh. 5) it was the case of the applicant that his father died on 07th November, 2003, having put in more than 20 years of service under the first party employer. It was stated that he made an application immediately after the death of his father claiming compassionate appointment. The Reference before the Labour Court was contested by the first party employer, stating that the deceased employee was taken in service as Rojamdars, and that in view of General Administration Department's Circular dated 10th March, 2000, the Rojamdars were not covered under the Scheme for Compassionate Appointment. It was accordingly contended that applicant was not entitled to any

relief.

A copy of Circular dated 10th March, 2000 which was relied on by the first party employer before the Labour Court was made available to the Court by learned Assistant Government Pleader Ms. Trusha Mehta. She submitted that the said Circular did not apply to Rojamdars and there was no Scheme for the daily-waged employees so as to cover their cases for compassionate appointment. She relied on decision of this Court in Special Civil Application No. 11723 of 1994 dated 21st December, 1994 holding that kiths and kins of the employees who were Rojamdars were not entitled to compassionate appointment.

On the other hand, learned advocate Ms. Kruti Shah vehemently submitted that deceased-father of the applicant had about 20 year of service to his credit. He was given benefits under Government Resolution dated 17th October, 1988, and was placed in pay-scale from 2nd January, 1990. It was thereafter revised upon completion of requisite length of service. She submitted that he was also getting benefits like medical and pension available to the permanent employee. It was submitted that having been granted benefits under the said Resolution, the deceased father of the applicant was treated as a permanent employee. She submitted that, therefore, he was entitled to all the benefits available to permanent employees and thus the Scheme of Compassionate Appointment would also apply; the applicant upon death of the employee-father was entitled to be given appointment, it was submitted. Learned advocate for the respondent relied on oral judgment dated 18th March, 2011 of Division Bench of this Court in Letters Patent Appeal No. 958 of 2011 and other allied matters to submit that employees who were given benefit of 17th October, 1988 Resolution were required to be considered as permanent employees.

2. The policy for compassionate appointment contained in the Circular dated 10th March, 2000 which was considered by the Labour Court, in terms provided that the Scheme would not apply to the employees belonging to the categories of daily-wagers, casual workers, apprentices, ad-hoc appointees, contractual employees or those appointed on deputation. Undisputedly, the deceased employee was inducted into service as Rojamdars or daily-wager and looking to the length of service in the said capacity, he was given benefits of scale, etc. under the Resolution dated 17th October, 1988; he put-in certain years of continuous service as daily-rated. Resolution dated 17th October, 1988 is a represented policy framed by the Government. It confers upon the employees in the category of daily-wagers or casual labourers, certain service benefits in recognition of and on the basis of length of service. On the basis of the requisite number of years the daily-rated category employees complete, they are made available at different stages in their service span, the benefits of placement in scale, other allowance, etc.

3. For the only reason that such category of workman derive permanency benefits as above under the said Resolution, they cannot be treated belonging to class of regular employees recruited regularly. The Scheme of compassionate

appointment in the Circular dated 10th March, 2000 applied to the regular employees only and not to the class of the employees to which the deceased-father of the applicant belonged to. The status is not changed under the Resolution dated 17th October, 1988. It applies, because they are in daily-rated category and not regular employees. In any view, there is no provision in the said Resolution dated 17th October, 1988 for making applicable the benefit of compassionate appointment to the category employees governed under that Resolution. Therefore the contention that because the deceased-father of the applicant was covered under Resolution dated 17th October, 1988 and was accorded benefit under it, he was entitled to get compassionate appointment for his applicant-son cannot be accepted.

4. It is trite legal position that compassionate appointment could be made available only under and in accordance with the Scheme framed for providing such appointment. The case has to fall within four corners and the parameters and conditions provided for, for such appointment thereunder has to be satisfied and complied with. Dehors the Scheme, no such appointment could be given nor any right to the appointment to be appointed on compassionate appointment exist. In principle, giving of appointment on compassionate basis violates the norms of public employment and offends the Articles 14 and 16 of the Constitution. In *Umesh Kumar Nagpal Vs. State of Haryana and Others*, while dealing with the concept of compassionate appointment the Court has observed that the whole object of granting compassionate employment is 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 held by the deceased; that mere death of an employee in harness does not entitle his family to such source of livelihood; that 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 then a job is to be offered to the eligible member of the family.

5. In *State of U.P. and Others Vs. Pankaj Kumar Vishnoi*, the Apex Court recapitulated law on the subject of compassionate appointment, referring to its own previous decisions as under:

In *Steel Authority of India Ltd. Vs. Madhusudan Das and Others*, this Court reiterating the principle has stated thus:--

15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread winner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased-employee is an

exception to the said rule. It is a concession, not a right.

In *General Manager, State Bank of India and Others Vs. Anju Jain*, it has been clearly stated that:

31.... Appointment on compassionate ground is never considered to be a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per the settled law, when any appointment is to be made in Government or semi-Government or in public office, cases of all eligible candidates are to be considered alike. The State or its instrumentality making any appointment to public office, cannot ignore the mandate of Article 14 of the Constitution. At the same time, however, in certain circumstances, appointment on compassionate ground of dependants of the deceased-employee is considered inevitable so that the family of the deceased-employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread winner. It is an exception to the general rule of equality and not another independent and parallel source of employment.

(Emphasis in original)

In *Union of India (UOI) and Another Vs. Shashank Goswami and Another*, it has been observed that:

9.... the claim for appointment on compassionate grounds is based on the premise that the applicant was dependant on the deceased-employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right.

In *State Bank of India and Another Vs. Raj Kumar*, it has been ruled that:

8.... The dependants 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.

In *The Chief Commissioner, Central Excise and Customs, Lucknow and Others Vs. Prabhat Singh*, the Apex Court observed as under:

16. Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those

who seek a court's intervention. Courts and Tribunals must understand, that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent destitute and impoverish family. Discretion is therefore ruled out. So are, misplaced sympathy and compassion.

6. As was seen from the facts of the present case, the case of the applicant-present respondent was not falling within the Scheme of Compassionate Appointment. No benefit could have been claimed by him. Considered from any standpoint, the object of giving compassionate appointment is to help out the family of deceased employee to tide over the sudden crisis on the death of the bread-earner. The passage of time would work as a factor denuding the applicant of legitimacy of such claim. For the foregoing reasons and discussion above, the impugned judgment and award dated 15th December, 2007 passed by Labour Court No. 2, Bhavnagar in Reference (L.C.B.) Demand No. 01 of 2007 could not be sustained. Accordingly it is quashed and set aside.

Petition is allowed. Rule is made absolute.