

(2011) 07 GUJ CK 0132

In the Gujarat High Court

Case No : Special Civil Application No. 7215 of 2011

General Manager (ADMN) and PIO O/O, C.G.M.T. and 1

APPELLANT

Vs

Vishal Singh B Jadeja and 1

RESPONDENT

Date of Decision : 18-07-2011

Acts Referred:

Citation : (2011) 07 GUJ CK 0132

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Roopal R. Patel, for the Appellant; P.H. Pathak, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—We have heard Ms. Roopal R. Patel, learned Counsel for the Petitioners and Mr. P. H. Pathak, learned Counsel appearing for Respondent No. 1.

2. This petition has been filed by the Petitioner challenging the order of the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad dated 23.03.2011 passed in O.A. No. 125 of 2009 by which the matter has been remanded back to the Petitioner authorities for reconsideration of the application of the Respondent No. 1 for appointment on compassionate grounds as per the policy prevailing when the father of the Respondent No. 1 died on 18.08.2005.

3. From perusal of the new Policy dated 27.06.2007, from paragraph 2, it is clear that appointment of compassionate grounds, new Policy Guidelines have been enforced and Weightage Point System has been introduced.

The claim of the Respondent No. 1 was rejected on 17.12.2007 under the new Policy by applying Weightage Point System. Therefore, the Tribunal remanded the matter back for reconsideration.

4. Learned Counsel for the Petitioner has urged that the Tribunal cannot take self-contradictory view. She has urged that in its earlier judgment dated 28.08.2009

passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad in O.A. No. 377 of 2008, the Tribunal has rejected the claim of compassionate appointment. In that case, the employee retired on medical grounds on 23.04.2005 prior to the enforcement of the new Policy or Guidelines.

5. We have gone through the order passed by the Tribunal in O.A. No. 377 of 2008. The Bench which passed the order on 28.08.2009 and the Bench which passed the impugned order are different. Further, the question whether old policy would apply or new policy would apply was not considered in the earlier judgment. Even on the same point, if a mistake has been committed by the Tribunal, it is always open to the Tribunal to correct its decision in subsequent judgments and it cannot be argued that once the mistake has been committed by the Tribunal delivering a judgment, the same shall be continued by the Tribunal. Therefore, we are not inclined to accept the submission of the Petitioner.

6. Learned Counsel for the Petitioner has further urged that in similar matter, where there were conflicting view of the Tribunal, division Bench of this Court in Special Civil Application No. 630 of 2010 has admitted the matter and stayed the operation of the order of the Tribunal.

A copy of the order passed in Special Civil Application No. 630 of 2010 dated 28.01.2010 is on record at Annexure P.

7. This interim order is of no help to the Petitioner as in a recent decision, the Apex Court in the case of State of Gujarat and Ors. v. Jagdish Savji Padaya and anr, Special Leave to Appeal (Civil)..../2010 (CC 15498/2010), decided on 19.10.2010, has held as under:

O R D E R

Delay condoned.

These petitions are directed against order dated 11.5.2010 passed by the Division Bench of the Gujarat High Court whereby the Letters Patent Appeals preferred by the Petitioners against the orders of the learned Single Judge directing consideration of the cases of the private Respondents for appointment on compassionate grounds as per the policy prevailing on the date of application were dismissed.

It is not in dispute that the applications/ representations made by the private Respondents for appointment on compassionate ground as per the extant policy were kept pending for years together and were rejected on the ground that in terms of circular dated 29.3.2007, the minimum revised qualification is SSC pass, which qualification the private Respondents did not possess.

The learned Single Judge allowed the writ petitions and directed consideration of the case of the Respondents for appointment on compassionate ground as per the policy prevalent on the date of application. The Division Bench dismissed the Letters Patent Appeal filed by the Petitioners and declared that the private

Respondents are entitled to have their cases considered in accordance with the extant policy and the decision contained in circular dated 29.3.2007 cannot be applied to their cases.

The Division Bench referred to the judgments of this Court in *Umesh Kumar Nagpal Vs. State of Haryana and Others*, *Abhishek Kumar v. State of Haryana* (2006) 12 SCC 44, *State Bank of India and Others Vs. Jaspal Kaur, V. Sivaramurthy v. State of Andhra Pradesh* (2008) 13 SCC 730 and *State Bank of India v. Raj Kumar* (2010) 1 CLR 1027 and held that in the absence of any explanation by the Petitioners as to why the applications of Respondents were not considered for years together, the directions given by the learned Single Judge do not call for interference.

We have heard Ms. Hemantika Wahi, learned Counsel for the Petitioners and are in complete agreement with the Division Bench that the concerned competent authority was required to decide the applications for compassionate appointment within a reasonable time and the fact that no decision was taken for years together cannot operate to the disadvantage of the dependents of the deceased employee.

With the above observations, the special leave petitions are dismissed. The Petitioners are allowed two months time from today to complete the exercise for consideration of the cases of the private Respondents for compassionate appointment and pass appropriate orders.

In order to curb further litigation in such matters, we direct the Government of Gujarat to issue instructions to all the competent authorities to dispose of the applications for compassionate appointment within a maximum period of 6 months.

8. In view of the aforesaid decision, the law has been settled by the Apex Court that if a person claims compassionate appointment, then the Policy for compassionate appointment which was prevailing at the time of death of the employee who died in harness has to be applied and not the subsequent Policy.

9. Furthermore, by the impugned order dated 23.03.2011, the Tribunal has merely directed the Petitioner authorities to consider the claim of the Respondent No. 1 for compassionate appointment afresh as per the Policy which was prevailing at the time of death of the father of the Respondent No. 1. We do not find any illegality in the impugned order of the Tribunal. This petition fails and is accordingly dismissed.