
(1994) 12 GUJ CK 0010
In the Gujarat High Court
Case No : S.C.A. No. 10843 of 1994

G.S.R.T. Corporation

APPELLANT

Vs

Dineshbhai Manibhai Panchal

RESPONDENT

Date of Decision : 02-12-1994

Acts Referred:

Citation : (1994) 12 GUJ CK 0010

Hon'ble Judges : Susanta Chatterjee, J

Bench : Single Bench

Judgement

1. The present petition, at the instance of Gujarat Road Transport Corporation (hereinafter referred to as the Corporation), challenges the impugned Award dated May 17, 1994 passed by the Industrial Tribunal, Ahmedabad in Reference (IT) No. 368/92, Annexure A to this petition, which, inter alia, indicates that the Reference is partly accepted and the Corporation has been ordered that the son of deceased employee Manilal Nanjibhai Panchal be offered service in either grade III or grade IV category according to his educational qualification within 30 days of the publication of the Award. It further directs that towards the salary for the days lost, the Corporation shall pay Rs. 5000/- as special compensation having delayed in the implementation of the settlement Ex. 8 to the claimant. The petitioner is directed to bear its expenses itself and the workman of the reference is directed to be paid Rs. 350/- towards the costs of the Reference. Being aggrieved by the said award the petitioner-Corporation has approached this Court by way of this petition on the ground that the impugned order is illegal, unjust and contrary to the provisions of circulars and General Standing Orders of the Gujarat State Road Transport Corporation and the said provisions have not been properly appreciated and/or have been misinterpreted by the Tribunal. It has been submitted that the order of the Tribunal is contrary to and inconsistent with the materials on record, provisions of law and settled principles of law is enunciated by several High Courts and the Apex Court of the Country.

2. Mr. Munsha, learned Advocate appearing for the petitioner-Corporation has

strongly argued that the Tribunal has erred in law and in facts passing the order only sympathetic ground de hors the rules, regulations and the terms of the settlement. It has not appreciated the liberalised policy of the Corporation and the most important aspect of the financial condition of the family of the deceased employee has not been taken into consideration by the Tribunal in effecting the adjudication as to offer of appointment on compassionate grounds due to demise of the employee in harness. He has taken this Court through the impugned award in between the lines. He has developed his arguments that the petitioner-Corporation has formulated its policy to provide the employment to the dependents of the deceased employee who has died in harness and there are certain eligibility criteria to obtain such compassionate appointment. The settlement and/or clauses thereof should not have been read in piecemeal and the entire policy from the very beginning and the liberalisation arrived at from time to time should have been considered in their proper perspective to appreciate the need of the family of the deceased employee vis-a-vis other all aspects for giving appointment on compassionate grounds by the employer also. In this regard he has submitted, inter alia, that the observations made by the Tribunal in deciding the instant case are full of blatant error inasmuch as the overall observations will cause opening of flood gates of cases to others to the utter embarrassment and difficulties of the employer concerned. He has tried to highlight that the most important aspect of offering the employment on compassionate grounds is the financial condition or economic positions of the family of the deceased employee. He has drawn attention of the Court to certain portions of the impugned Award as if the Tribunal has ignored this aspect and decided the case in a cavalier fashion to suit the purpose of the workman as a result of which there is grave injustice caused to the petitioner-Corporation for which interference of this Court is necessary.

3. Mr. Munsha has drawn the attention of this Court to the several decisions of the Supreme Court in this regard of recent time, viz. decisions in the cases of Auditor General of India and others Vs. G. Ananta Rajeswara Rao, ; Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, ; Umeshkumar Nagpal v. State of Haryana and Others (1995 I LLJ 798) ; State of Haryana Vs. Naresh Kumar Bali, . Besides, Unreported decision of the Division Bench of this Court in Special Civil Application Nos. 7441/91 and allied matters, decided on June 22, 1993 (Coram : R. A. Mehta & S. M. Soni, JJ.) followed by another decision in Special Civil Application No. 4276 of 1994 decided on August 4, 1994 (Coram S. M. Soni, J.) have been referred to and relied upon. By relying upon and referring to the aforesaid decisions, Mr. Munsha learned Advocate has laid much emphasis upon the fact that this Court sitting in overall jurisdiction of superintendence may not affirm the award of the Tribunal with closed eyes so as to be misrepresented subsequently in other cases for such appointment on compassionate grounds.

4. Mr. Rathod, learned Advocate appearing for the respondent has strongly opposed the petition and submitted that the impugned order is neither contrary

nor inconsistent with the provision of law as attracted so far as the consideration of offer of employment on compassionate ground is concerned. He has referred to and relied upto the decisions in the cases of Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, ; Smt. Phoolwati Vs. Union of India and Others, ; Pravinchandra Jeram Sindhal v. Gujarat State Corporation and Another 1993 (2) GLH 816; Auditor General of India and Others v. G. Ananta Rajeswar Rao, (supra) and Umeshkumar Nagpal v. State of Haryana, (supra).

5. By referring to and relying upon the aforesaid decisions, Mr. Rathod, learned Advocate for the respondent submitted that certain facts are admitted facts in the case for the respondent to seek an employment on compassionate grounds. The Tribunal may have observed about any abstract proposition of law but decided the dispute and/or reference on certain facts which cannot be assailed of by the petitioner and if those facts are appreciated in proper and right perspective, there is nothing left for this Court to interfere with the order of the Tribunal. He has submitted that there are certain Settlements besides a policy adopted by the petitioner-Corporation to provide employment to the dependent of a retired employee and/or an employee who died in harness. In the instant case the employee Manilal Nanjibhai Panchal died while in service, leaving behind him his widow, three sons and a daughter. According to him, the two sons had separated from the deceased employee during the life of their father, i.e. the deceased employee. At the time of demise the family of the deceased consisted of his widow, unemployed son and a daughter. Before the Tribunal the dependent unemployed son of the deceased employee had deposed that he was living with his widowed mother and his sister and that his brothers had separated from the family long back and it was - stated that both the said brothers had been jointly contributing Rs. 200/- per month. Besides such income there is no other provision and source and under these circumstances consideration of appointment on compassionate grounds was a must. He has demonstrated before this Court by pointing out materials on record that the evidence of the respondent remained unchallenged and there is no suggestion even at the time of cross-examination of the respondent that the respondent had other income or that the family of the deceased employee had other sources for survival.

6. This Court has patiently considered the submissions made on behalf of the respective parties. With great anxiety this Court has considered the material on record in depth and details. In order to avoid any unnessecary controversy this Court finds certain admitted facts which would be very pertinent to observe. The employee concerned, viz. Manilal Nanjibhai Panchal died on March 28, 1987. As per the evidence adduced, two sons of Manilal Panchal had been living separately even during the life time of said Manilal Panchal. The meagre contribution by the brothers to the family, comprising of widow of Manilal Panchal, unemployed son and the daughter, having no other source of income is also not in dispute. The evidence adduced by the respondent herein goes unchallenged. There is no cross-examination about the availability of funds and against the pitiable financial condition of the family left by the deceased.

7. Under this background there is an obligation for appointment on compassionate grounds. The settlement as referred to by the petitioner-Corporation refers to paragraph 3 wherein it is provided. -

"One member of the family of the retired employee of the Corporation will be permitted to apply directly in S. T., subject to the condition that there is no other earning member in the family"

Similarly, in para 4 of the Settlement it has been provided as under :

"Similarly, if an employee of the Corporation dies or becomes permanently disabled while in service and there is no other earning member in the family, one member of his/her family can directly apply for a suitable Post in S.T., when names for such vacancy are called for from the Employment Exchange"

Admittedly, there is policy of the Corporation to provide employment on compassionate grounds. The policy has been liberalised from time to time.

8. In the case of Auditor General of India v. G. Ananta Rajeshwar Rao (supra) the scope for employment on compassionate grounds has been considered in proper perspective. It has been held therein that appointment on compassionate grounds to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of Government employee is valid. It is not on the ground of decent simpliciter, but exceptional circumstance for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the Memorandum limiting it to relieve the members of the deceased employee who died in harness from economic distress.

9. In the case of Life Insurance Corporation of India v. Asha Ramchandra Ambekar; (Supra) it has been observed by the Supreme Court that in view of the provision in clause 2(iii) of the 1979 Instructions and Clause 4 of the Circular dated January 20, 1987 against granting compassionate appointment in a case when any member of the family was employed, the Life Insurance Corporation refused compassionate appointment to respondent. 2. However, the High Court directed the Corporation to give him such appointment. Allowing the appeal of the Corporation, the Supreme Court observed that the High Courts and the administrative Tribunals cannot confer benediction impelled by the sympathetic consideration. The Courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, should never be done. In the very case itself, there are regulations and instructions governing the matter. The Court below had not even examined whether a case falls within the scope of relevant statutory provisions. The Corporation being a statutory Corporation was bound by the Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They could not be put aside and compassionate appointment be ordered. In that case, one Ramchandra Ambekar was employed as higher grade Assistant in the Sanda Branch under the Nasik Divisional Officer of the Corporation. He expired suddenly on September 11,

1987. Upon his demise, his widow submitted an application seeking employment on compassionate grounds with the Corporation. On December 12, 1987, the Corporation rejected the above said request on the ground that she had exceeded the upper age limit of 45 years. Therefore, her request could not be complied with. There was second request seeking employment on compassionate grounds, which was rejected. Thereupon writ petition was filed in the High Court and the High Court directed the Life Insurance Corporation to give the appointment on compassionate grounds. Against the said decision of the High Court the matter was carried before the Supreme Court wherein the aforesaid observations came to be made by the Supreme Court. 10. In *State of Haryana v. Naresh Kumar Bali*, (supra), it has been held by the Supreme Court that, with regard to appointment on compassionate ground the law is set out in *Life Insurance Corporation of India v. Asha Ramchandra Ambekar & Anr.* (supra) and the same principle would clearly apply in the said case. It has been observed that what the High Court failed to note was that the post of an Inspector was a promotional post. The issuing of a direction to appoint the respondent within three months when direct recruitment is not available, was unsupportable. It has been observed that the High Court would have merely directed consideration of the claim of the respondent in accordance with the rules. It cannot direct appointment. Such a direction does not fall within the scope of mandamus. Judicial review, it has been repeatedly emphasised, is directed against the decision-making process and not against the decision itself, and it is no part of Court's duty to exercise the power of the authorities itself.

10. In the case of *Umeshkumar Nagpal v. State of Haryana and Others* (supra), it has been observed by the Supreme Court 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 for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government of 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 that a Job is to be offered to the eligible member of the family. The posts in Clauses III and IV are the lowest posts in non-manual categories and hence they only can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it to get out of the emergency. It has been held that offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Clauses III and IV is legally impermissible.

11. The aforesaid cases have been referred to by the learned Advocate appearing for the petitioner-Corporation. The principles enunciated therein are not at all in doubt or dispute. However, in view of the facts of the present case the observations made in the aforesaid decisions are not squarely applicable to the present case.

12. Learned Advocate for the respondent heavily relied on the decision of the Supreme Court in the case of (Smt.) Sushma Gosain and Others v. Union of India and Others, (supra) wherein it has been observed that it can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediate to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant. In that case before the Supreme Court, the husband of the applicant working as a store keeper in the Department of Director General Border Road, died in October 1982. The applicant in November 1982 sought appointment as a Lower Division Clerk on compassionate grounds. She passed trade test and the interview conducted by the Director General Border Road, but she was not appointed and she was being told that her case was under consideration. The application was rejected in 1985 when the ban on appointment of ladies was imposed. Writ petition was filed in the High Court which came to be rejected by the High Court. The order of the High Court was challenged before the Supreme Court. It was observed by the Supreme Court that the High Court made the order in mechanical way and the order lacks the sense of justice. The appeal was allowed by reversing the order of the High Court and directions were given to appoint Sushma Gosain in the post to which she was already qualified in an appropriate place within three weeks from the date of the order. The said decision was followed by the Supreme Court in its subsequent decisions in the case of Smt. Phoolwati v. Union of India & Ors. (supra), wherein by following the same principle, the Union of India to take immediate steps for employing the second son of the appellant therein in a suitable post commensurate with his educational qualification within a period of one month from the date of the said order.

13. Specific attention of this Court has been drawn to the decision of this Court in the case of Pravinchandra Jeram Sindhal v. Gujarat State Road Transport Corporation (supra) wherein the learned single Judge of this Court taking into consideration the facts of the case held that the stand taken by the respondent-Corporation in not giving appointment to the petitioner on compassionate grounds under the clever disguise of some rules is something contrary to the very basic humanistic policy/philosophy of providing employment to the needy and starving members of the family which has lost the only bread-winner. It is hardly required to be highlighted that the underlying philosophy of providing employment on compassionate grounds is just to mitigate the hardships arisen out of the sudden demise of the only bread-winner of the concerned family. The decision of the Supreme Court in the case of Smt. Sushma Gosain and Ors. (supra) was referred to and relied upon. The other decisions of this Court in Special Civil Application No. 7324/90 rendered on September 3, 1991 (Coram : N. J. Pandya, J.) and in Special Civil Application No. 2591/91 rendered on

February 5, 1991 (Coram : S. D. Shah, J.) were also referred to and relied upon.

14. By looking at the principles of law and the ratio arrived at in the aforesaid reported decisions it is not in doubt that in appropriate cases where there is hardship and the rules do not prohibit there may be appointment on compassionate grounds. The aforesaid decisions referred to and relied upon by the petitioner and the respondent, only lead to the conclusion that each case has to be considered on its own merits. Any observation by the Tribunal contrary to the proposition of law and/or contrary to the observations made by the Apex Court of the Country and High Courts, does not change the position of law. The decision of the Tribunal so far as its conclusion is concerned, may be considered, but if there is no other reason contrary to law, it is not certainly binding and it becomes re-coning force.

15. Regard being had to the materials on record and the circumstances of the case, it transpires that after the demise of Manilal Nanjibhai Panchal the family of the deceased is under duress and the financial condition of the family is pitiable and that there should hardly be any delay in considering the appointment of the applicant on compassionate grounds. The facts are simple and clear and the conclusion arrived at by the Tribunal is most justiciable. It is also fairly conceded by Mr. Rathod, learned Advocate appearing for the respondent that there cannot be any retrospective employment nor the question of any compensation arises from 1988 as observed by the Tribunal. Having anxiously gone through the decision of the Tribunal, this Court approves the decision of the Tribunal so far as the giving of the employment within 30 days of the publication of the Award of the Tribunal is concerned. But the question of payment of any compensation or for any retrospective date for reckoning the services from 1988 does not arise.

16. In the result, this petition fails to the extent that the order of the Industrial Tribunal so far as directs that employment be offered to Dinesh Manilal Panchal in either Grade III or Grade IV according to his educational qualification in the ST Corporation within 30 days of the publication of the Award is not disturbed and is confirmed. However, so far as the direction for payment of Rs. 5,000/- as special compensation having delayed in implementing the settlement to the claimant is concerned, the same is not sustainable and that direction is quashed. Considering the facts and circumstances of this case, there will be a special costs of Rs. 3,500/- payable by the petitioner-Corporation to the claimant for this petition. The order of costs made by the Tribunal in the Reference is maintained. Rule is discharged subject to aforesaid observations.

17. Petition partly allowed to the extent indicated aforesaid.