
(2005) 07 GUJ CK 0024

In the Gujarat High Court

Case No : Special Civil Application No. 14999 of 2004

Gujarat State Road Transport Corporation

APPELLANT

Vs

Workmen of GSRTC

RESPONDENT

Date of Decision : 20-07-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2005) 07 GUJ CK 0024

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

Bench : Single Bench

Advocate : Sejal K. Mandavia, for the Appellant; G.K. Rathod, for the Respondent

Judgement

M.R. Shah, J.—In this petition under Articles 226 and 227 of the Constitution of India, the petitioner Gujarat State Road Transport Corporation has challenged the legality and validity of the judgment and Award passed by the Industrial Tribunal, Bhavnagar dtd.29/4/2001 in Reference (IT) No.115 of 2001 by which the Industrial Tribunal has allowed the said reference directing the petitioner Corporation to appoint widow of deceased employee Ajitsingh Dolubha Zala namely Geetaba Ajitsingh Zala on compassionate ground.

2. It appears from the record that deceased workman Ajitsingh Dolubha Zala was serving with the petitioner Corporation as a Watchman and while on duty, he died on 9/9/2000. Therefore on the basis of settlement and GSO No. 361 of 1973 with regard to appointment on compassionate ground, widow of deceased workman namely Geetaba Ajitsingh Dolubha Zala applied on 6/10/2000 to appoint her on compassionate ground. But as she was not appointed, she has raised an industrial dispute which was referred to the Industrial Tribunal, Bhavnagar being Reference (IT) No.115 of 2001. Before the Industrial Tribunal, Settlement entered into between the petitioner Corporation and the representative of the Union and one GSO No.361 of 1973 were relied upon. The main defence of the petitioner Corporation was that the deceased had not died

while on duty and therefore, the widow is not entitled to be appointed on compassionate ground as per GSO No.361 of 1973. Relying upon the order passed by the Commissioner under the Workmen Compensation Act and the finding that the workman has died while he was on duty, the aforesaid defence raised by the petitioner Corporation was not accepted by the Tribunal. It was also contended on behalf of the petitioner Corporation that as and when there will be vacant post, appointment on compassionate ground is to be made and straightway the widow has no right to get appointment. After considering the settlement entered into between the petitioner Corporation and the representative Union and GSO No.361 of 1973, the Industrial Tribunal, Hengar, by judgment and Award dtd.29/4/2004 allowed the said reference directing the petitioner to appoint Getaway Ajitsingh Zola widow of deceased workman Ajitsingh Dolubha Zala, considering her educational qualification and directed the petitioner to pay an amount of Rs.5000/- towards the cost for delay in appointing the widow on compassionate ground. Being aggrieved and dissatisfied with the aforesaid judgment and Award passed by the Industrial Tribunal, Bhavnagar, the petitioner Corporation has preferred the present petition under Articles 226 and 227 of the Constitution of India.

3. Ms.Sejal K. Mandavia, learned advocate appearing for the petitioner has vehemently submitted that the directions issued by the Industrial Tribunal, Bhavnagar directing to straightway appoint the widow on compassionate ground is absolutely illegal. She has submitted that at the most the Tribunal may direct the Corporation to consider the case of the widow for appointment on compassionate ground. It is further submitted that as and when vacancy arises, appointment on compassionate ground is to be made and for that purpose, the petitioner Corporation is preparing Seniority List / Waiting List and as and when the turn of the widow of the deceased employee comes, her case would be considered for compassionate appointment. She has further submitted that as such there is ban by the State Government in filling up the post and therefore also it is not possible to appoint the widow on compassionate ground, as directed by the Tribunal. She has also relied upon the judgments of the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, and in the case of State of Manipur v. Md.Rajaodin, reported in 2003 3 CLR 963. Relying upon the judgment of the Hon'ble Supreme Court in the case of Umeshkumar Nagpal (Supra) it is submitted that mere death of an employee does not entitle his family to compassionate appointment and the authority is to consider as to whether the family of the deceased employee is unable to meet financial crises resulting from the death of the workman and the object is not to give a member of such family a post much less a post for the post held by the deceased employee. Relying upon the judgment of the Supreme Court in the case of State of Manipur (Supra) it is submitted that when an application is filed after long lapse of time, the heir of the deceased has no right much less a legal right to ask for appointment on compassionate ground. Under the circumstances, it is requested to allow the present petition.

4. On the other hand, Mr.M.H. Rathod, learned advocate appearing for the respondent has opposed this petition. He has submitted that not to appoint the heir of the deceased workman immediately is contrary to the object of granting appointment on compassionate ground. It is further contended that the purpose of providing appointment on compassionate ground to the heir of the deceased is to meet with the hardship due to the death of the bread earner in the family and as held by the Hon''ble Supreme Court in the case of Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, in all claims for appointment on compassion ground, there should not be any delay. Therefore, it is submitted that when it is found that the widow is entitled to be appointed on compassionate ground, considering the settlement entered into between the petitioner Corporation and the representative Union and GSO No.361 of 1973, the appointment cannot be denied on the ground that the petitioner Corporation is maintaining Seniority List / Waiting List and as and when the post falls vacant, the widow be appointed as per the Seniority List / Waiting List and/or as there is ban by the State Government with regard to appointment. Mr.Rathod has also relied upon the judgment of this Court in the case of GSRTC v. Dineshbhai Manibhai Panchal, reported in 1995(2) GLH 854, in which, considering various decisions of the Hon''ble Supreme Court, the learned Single Judge of this Court has dismissed the Special Civil Application in which the judgment and Award passed by the Industrial Tribunal with regard to appointment on compassionate ground was challenged. Mr.Rathod has also relied upon the judgment of this Court in the case of Pravanchandra Jeram Sindhal v. GSRTC, reported in 1993 (2) GLH 816. He has, therefore, requested to dismiss the present petition.

5. Heard the learned advocates appearing on behalf of the parties.

6. It is not in dispute that the deceased workman was serving as a Watchman with the petitioner Corporation. It is disputed by the petitioner Corporation before the Tribunal that the deceased workman had not died while on duty. However, considering the order passed by the Commissioner under the Workmen Compensation Act and the finding to the effect that the workman had died while on duty, the Tribunal has not accepted the above contention raised on behalf of the petitioner Corporation. There is settlement entered into between the petitioner Corporation and the representative Union and on that basis GSO No.361 of 1973 is also issued by the petitioner Corporation. The tribunal by its judgment and Award has reproduced the relevant clause of the said settlement more particularly Clause-30. On going through the same, the case of the widow of the deceased workman was required to be considered for the appointment on compassionate ground. The workman has died on 9/9/2000 and widow of the deceased made an application for appointing her on compassionate ground on 6/10/2000 i.e., immediately within a period of one month. The main submission on behalf of the petitioner that there is no vacant post and the petitioner is preparing Seniority List / Waiting List and as per the Seniority List / Waiting List, as and when vacancy arises, the petitioner is giving appointment on compassionate ground and another ground that there is ban by the State

Government with regard to fresh appointment. It is required to be noted that so far as the Ban by the State Government is concerned, the said contention was neither pleaded before the Tribunal nor in the present petition. However, the above submission is made orally. Now, the purpose of providing the appointment on compassionate ground is to mitigate the hardship due to death of bread earner in the family and to redeem the family in distress. As held by the Hon'ble Supreme Court in the case of Smt.Sushma Gosai and Ors.(Supra), in all cases for appointment on compassionate ground, there should not be any delay in appointment and the purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread earner in the family. It is also held by the Hon'ble Supreme Court in the aforesaid decision that it is improper to keep such cases for years and if there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant. Considering the aforesaid decisions of the Hon'ble Supreme Court, the learned Single Judge of this Court also in the case reported in 1995(2) GLH 854 has confirmed the judgment and award passed by the Industrial Tribunal by which the Industrial Tribunal has directed the heir of the deceased to be appointed on compassionate ground in the Corporation. Therefore, considering the object and the purpose to make appointment on compassionate ground, to deny the appointment immediately and to give appointment as per the waiting list and as and when the post falls vacant, is contrary to the object of granting appointment on compassionate ground. If the heir of the deceased is entitled to get appointment on compassionate ground as per the settlement and GSO No.361 of 1973, the petitioner Corporation must appoint the heir of the deceased immediately considering the educational qualification of the heir of the deceased and other criteria. Under the circumstances, the contention on behalf of the petitioner not to appoint the heir of the deceased workman on the ground of non-availability of vacant post and/or to appoint as per the Waiting List / Seniority List and/or till the ban is lifted by the State Government, cannot be accepted. It is required to be noted that the appointment on compassionate ground is a special appointment for a specific purpose and object which is stated hereinabove and therefore, irrespective of any ban, the appointment on compassionate ground is to be made subject to eligibility criteria and settlement and the scheme. Under the circumstances, there is no illegality committed by the Industrial Tribunal.

7. However, Ms.Mandavia is justified in making a grievance that the Tribunal straightway cannot direct the petitioner Corporation to give appointment to appoint the heir of the deceased workman on compassionate ground and at the most the Tribunal can direct the petitioner Corporation to consider the case as per the settlement and the scheme. Under the circumstances, the direction issued by the Tribunal to straightway appoint the widow of the deceased workman on compassionate ground cannot be sustained and to that extent only, the judgment and Award is required to be modified.

8. For the reasons stated hereinabove, the petition partly succeeds. The

impugned judgment and Award passed by the Industrial Tribunal, Bhavnagar dtd.29/4/2001 in Reference (IT) No.115 of 2001 is modified to the extent that the petitioner Corporation is hereby directed to consider the case of the Geetaba Ajitsingh Zala, widow of deceased employee namely Ajitsinh Dolubha Zala for compassionate appointment as per the settlement entered into between the petitioner Corporation, the representative Union and GSO No.361 of 1973, as early as possible, preferably within a period of two months from the date of this order, and if it is found that she is entitled to be appointed, the appointment will be made irrespective of the ban by the State Government and/or any vacant post and/or any waiting list. Such exercise to be done within a period of three months from the date of receipt of this order. Rule is made absolute to the aforesaid extent only, with no order as to costs. D.S. Permitted.