(2003) 03 GUJ CK 0049

In the Gujarat High Court

Case No : Special Civil Application No''s. 6751 and 8675 of 2002

Jayesh J. Puwar APPELLANT

Vs

General Manager RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:
Constitution of India, 1950 — Article 12

Citation : (2003) 03 GUJ CK 0049

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : A.M. Raval and C.H. Vora, for the Appellant; Mukesh R. Shah, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr.M.R.Shah appearing for respondents waive service of rule. With the consent of parties matters are taken up for final hearing.

2. Since the facts are interconnected and common issues are involved in the matters, they are being dealt with by this common judgment.

3. So far as petitioner of SCA No.6751/02 is concerned, the petitioner''s father J.C.Puwar was initially working in the Telephone Dept which has been now transferred to Bharat Sanchar Nigam Ltd which is also a Govt.of India Organisation and the petitioner herein Jayesh J.Puwar moved an application for appointment on compassionate grounds on account of death of his father on 12.5.98 when he was on duty prior to reaching the age of superannuation. The matter was considered by the respondent and the request for appointment on compassionate grounds has been denied on the ground that the income of the family pension is Rs.4865/-pm and the other terminal benefits paid to the family of the deceased is of Rs.5,06,112/- and therefore considering the financial status and size of the family it was found by the authority that the family is not living in indigent condition and therefore the request for appointment on compassionate

grounds was denied.

4. So far as the petitioner of SCA No.8675/02 is concerned the deceased Ibrahimsha Muradsha Diwan, father of the petitioner was serving as JOS in Karjan Telephone Exchange , Telecommunications of the Govt of India and he died during his service tenure on 3.6.98. Thereafter, the management is transferred to BSNL which is a Govt.of India organisation. The son of deceased Ibrahimsha Muradsha Diwan who is petitioner herein applied for appointment on compassionate grounds and the application was considered and ultimately the application was denied by the Committee and the reasons are mentioned at para 6 of the affidavit in reply stating that the pension income of the family of the deceased is of Rs.3508/-p.m. and it has been further stated that the family has also received the terminal benefits amounting to Rs.2,20,110/-towards BCRG, Rs.1,17,825/-towards GPF balance, Rs.5,000/-CGEI and Rs.27,347/- towards leave encashment. It has been submitted on behalf of the respondent that therefore it can not be said that the financial condition of the petitioner and the family members is such that they can not maintain and therefore the appointment on compassionate grounds has been denied.

5. Ld.counsel appearing for the petitioners Mr.Raval as well as Mr.Vora have submitted that as per the view taken by this court in various decisions including the decision dated 29.1.2003 in SCA No.10021/01 that while considering the income of the family of the deceased employee for the purpose of appointment on compassionate ground the income of the family pension is required to be excluded. The learned counsel appearing for the petitioners have relied upon the judgment of this court in the matter of Chhanabhai Bababhai Maaru vs President/ Secretary, Dhandhuka Nagar Panchayat reported in 1993 (2) GLH 822 and have also relied on the judgment of the Apex Court in the matter of Balbir Kaur vs Steel Authority of India Ltd reported in AIR 2000 SC 1596 for contending that the terminal benefits are required to be excluded for the purpose of considering the case for compassionate appointment.

6. The learned counsel on behalf of the respondents has mainly contended that the policy of the State Govt for considering the case for appointment on compassionate grounds can not be at par with BSNL and it has been further submitted that the intention is to see that some support is given to the family of the deceased so that the family can survive and in the present case considering the amount paid as terminal benefits and the income of the family pension it can be said that the family of the deceased can survive. It has been further submitted that in case the court finds that the income of family pension and terminal benefits were required to be excluded then at the most the matter may be directed for reconsideration for appointment on compassionate grounds. So far as exclusion of income of family pension is concerned while computing the income of the family of the deceased, in my view same is covered by the decision of this court dated 29.1.03 in SCA No.10021/01 and therefore no elaborate discussion is required. It is worthwhile to note that even in the said decision

dated 29.1.03 in SCA No.10021/01 this court relied relied on various decisions of the coordinate benches of this court whereby same view was taken and therefore in my view the ground for considering the income of the family pension for the purpose of considering the income of the deceased employee would be unsustainable and can not be warranted in law.

7. So far as consideration of terminal benefits for the purpose of deciding the status of the family is concerned the contention raised on behalf of the petitioners deserves to be considered. In case of Chhanabhai (supra) the learned single judge of this court (K.J.Vaidya,J as His Lordship then was) while considering the matter for appointment on compassionate ground at para 5 observed as under:

"To take totally unjustifiable shelter under the pretext that the widow of the deceased employee would be entitled to family pension and other incidental service benefits that by itself does not and can not take of the respondents any further and in this view of the matter this can never be made a ground to refuse appointment to the son of the deceased on compassionate grounds. In fact the above view that this court is taking is duly supported by the decision of the Supreme Court in the case of Smt. Phoolwati Vs. Union of India and Others, ."

It is also pertinent to note that in the earlier portion of para 5 this court has also observed as under:

"To start with - to refuse to give employment to the dependent (petitioner) of the deceased employee on the ground that his mother was entitled to get family pension of Rs.645/-p.m. along with other benefits like PF, gratuity etc is absolutely unreasonable. Merely because the widow of the deceased employee was entitled to some retiral benefits that by itself can never be made a ground to refuse appointment to the son of the deceased employee on compassionate grounds."

In case of Balbir Kaur (supra) the Apex court had an occasion to consider the case for appointment on compassionate grounds at para 13 had considered the arguments raised on behalf of the employer that the Family Benefit Scheme was meant to provide an assured or regular income per month while the bulk amount deposited by way of PF and gratuity with the management remained intact. After considering the arguments raised on the same line as they are raised in the present case it was observed as under:

"But, in our view, this Family Benefit Scheme can not be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of death of the bread earner can only be absorbed by some lumpsum amount being made available to the family. This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lumpsum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner but that would undoubtedly bring some solace to the situation."

The Apex Court at para 15 while considering the submissions for nonconsideration for compassionate appointment on the ground of payment of gratuity amount has observed as under:

"It does not take long to to appreciate the purpose for which this particular Family pension Scheme has been introduced by deposit of the provident fund and the gratuity amount and we are not expressing any opinion in regard thereto but the fact remains that the statutory obligation can not be left high and dry on the whims of the employer irrespective of the factum of the employer being an authority within the meaning of Article 12 or not."

8. Considering the above, I am of the view that so far as the payment of terminal benefits are concerned, same is on account of statutory obligation on the part of the employer and it can not be a set off for negativing the claim for appointment on compassionate ground. It may be that after excluding the amount of family pension and after excluding the amount of terminal benefits the employer may consider the case for appointment on compassionate ground keeping in view the availability of post, qualification of the dependent etc who applied for appointment on compassionate ground but the appointment on compassionate ground can not be denied merely on the ground that the family of the deceased is receiving income of family pension and or that it has received the amount by way of terminal benefits.

9. In view of the aforesaid discussion, the decision of the respondent authority of denying the appointment on compassionate grounds to the petitioners on the ground that the income of the family of the concerned deceased employee is comprising of family pension and the terminal benefits are quashed and set aside. As a consequence thereof the respondents are directed to consider the case of the petitioners for appointment on compassionate ground by excluding the income of the family pension and the amount paid to the family of the deceased by terminal benefits and they are directed to consider the case in accordance with law within a period of three months from the date of receipt of writ of this court.

10. Both the petitions are allowed to the aforesaid extent and rule in each petition is made absolute accordingly. There shall be no order as to costs.