

(2006) 01 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 12318 of 2005

Jayeshkumar Amratlal Makwana

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 13-01-2006

Acts Referred:

Citation : (2006) 01 GUJ CK 0004

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : Pradeep Patel, for Petitioner 1 and Sangeeta Pahwa, in SCA No. 13386/05, for the Appellant; Dipan Desai, AGP for Respondent 1 and G.C. Mazmudar and H.G. Mazmudar for Respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr. Desai, learned AGP waives service of notice of Rule for the respondent State authorities. With the consent of both the sides, the matters are finally heard today.

2. Heard Mrs. Pahwa and Mr. Patel, learned Counsel for the petitioners in respective petitions and Mr. Desai, learned AGP for the respondent State Authorities.

3. Upon hearing the learned Counsel appearing for the petitioners, it appears that on factual aspects there is no dispute that after the death of the deceased employee, the widow of the concerned employee did not apply and at the relevant time the son of the deceased employees were minor. It is also not in dispute that after becoming major, the applications were made within time and the applications were rejected on the ground that the applications were not made within the stipulated time by the widow of the concerned deceased employee for compassionate appointment. The perusal of the instructions dated 26.2.1997 shows that the option is available to the dependent son or daughter of the deceased, who is eldest to apply after attaining the majority and, therefore, as

such the application can be considered if it is made within the stipulated time after attaining the majority by the dependent member of the family of the deceased employee and the application cannot be said as time barred or the consideration cannot be denied on such aspects. In SCA No. 13386 of 2005 the additional circumstances are that the petitioner earlier approached this Court when the application was rejected as time barred by preferring SCA No. 2704 of 2004 and as per the order dated 27.1.2005 passed by this Court (Coram: Akil Kureshi, J.) it was observed by the Court, inter alia, that the application shall be treated as within time prescribed by the Government. Therefore, it was required for the Authority to consider the application on merits for compassionate appointment as having been submitted within prescribed time limit.

4. Mr. Desai, learned AGP for the State Authorities, however, submitted that the intention of the compassionate appointment is to give solace to the family members of the deceased employee by providing financial support and if the reasonable time has passed, it can be said that the financial support is not required since the compassionate appointment cannot be claimed as of right and, therefore, he submitted that if the reasonable time has passed after the death of the deceased employee and if the application is rejected, such decision cannot be said as unreasonable or arbitrary.

5. It is true that one of the considerations while entertaining the application of compassionate appointment can be as to whether financial support is required to be given to the family members of the deceased, but the expiry of some time cannot be the sole criteria but while concluding on the said aspect, the financial condition of the family members of the deceased employee is required to be examined, which would include the income, the available fund, the property etc. If after considering the aforesaid relevant aspects the authority finds that the financial support is not required to be extended, it may stand on a different footing, but the rejection of the application on the ground that the time has passed until the eldest son or the daughter of the deceased employee attained the majority cannot be said to be reasonable, more particularly when the application is made well in time after attaining the majority by the eldest son or daughter of the deceased employee.

6. It was also submitted on behalf of the State by the learned AGP that if the widow is illiterate or not eligible for compassionate appointment, it may stand on a different footing, but if the widow is eligible and in spite of the same, she does not apply for compassionate appointment immediately after the death of the deceased employee or fore-goes her right, the same can be said as sufficient circumstance to conclude that the financial support is not required to the family members of the deceased employee.

7. To appreciate and examine the contention raised on behalf of the State, it deserves to be recorded that the social circumstances prevailing cannot be ignored. It is true that in public employment, the involvement and participation by female member is encouraged but, if due to peculiar social circumstances, the

widow woman who is otherwise not as a working woman, is not desirous to offer herself for public employment and is desirous to see that other male member or other dependent child of the deceased employee is given right to apply for compassionate appointment, the same cannot be said as a valid ground to conclude that the family member/widow of the deceased employee has abandoned right for compassionate appointment. Such may not apply generally to every case but at the same time, the possibilities of certain peculiar social circumstances for the widow of the deceased employee for not offering herself for the public employment, cannot be ignored and the same may not operate as a bar when the application of other dependent member of the family who is the eldest in the family is to be considered.

8. If such other members of the family of the deceased employee has become major after some time, then in that case, it would be required for the authority to examine the financial conditions of the family of the deceased employee prevailing at the time of application for compassionate appointment and then to decide as to whether financial support is required to be extended for survival to the family of the deceased employee or not, subject to the applicability of other conditions as may be prevailing at the time of considering the application for compassionate appointment, which may include the fulfilling of the educational qualification, the availability of the post etc.

9. In the present cases, both the concerned petitioners' applications are rejected only on the ground that since the widow of the concerned deceased employee did not apply and as the time has passed, no purpose would be achieved in extending the benefit of compassionate appointment. Had it been a case where the application was not made well in time within the stipulated period after the majority is attained by the eldest family member of the deceased employee, it may stand on different footing, but in the present case, the applications are made by the concerned petitioners within stipulated time after acquiring majority. Therefore it would be required for the authority to examine the applications on merit including the financial status of the family of the deceased and as to whether the applicants are fulfilling the necessary qualifications and that the posts are available etc. Since the aforesaid aspects are not examined on merits, the impugned order passed by the authority in case of the concerned petitioners deserves to be quashed and set aside and the direction deserves to be issued to the authority to decide the application of the concerned petitioners for compassionate appointment in light of the observations made by this Court hereinabove and in accordance with law as per the policy prevailing of the State Government from time to time.

10. Hence, the impugned orders are quashed and set aside with the direction that the application of the concerned petitioners shall be decided by the respondents in light of the observations made by this Court hereinabove and in accordance with law as per the policy prevailing of the Government from time to time and such an exercise shall be completed as early as possible preferably

within a period of four months from the receipt of the order of this Court.

11. Petitions are allowed to the aforesaid extent. Rule partly made absolute. Considering the facts and circumstances, there shall be no order as to costs.