

(2007) 12 GUJ CK 0020

In the Gujarat High Court

Case No : Special Civil Application No. 12526 of 2007

Kamleshkumar Parmar

APPELLANT

Vs

The State of Gujarat and Others

RESPONDENT

Date of Decision : 05-12-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 2 GLR 1267

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Hardhik C. Raval and Manoj S. Joshi, for the Appellant; H.K. Makwana, Ld. AGP for Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

S.R. Brahmbhatt, J.—Heard learned counsel Shri. Raval for the petitioner. Rule. Shri. Makwana, learned AGP waives service of notice of rule for the respondents.

2. The petitioner, son of a deceased Government employee died in harness, approached this Court under Article 226 of the Constitution of India, challenging the order dated 18/4/2007 passed by the respondent denying him compassionate appointment on irrelevant and extraneous considerations and has prayed for issuance of appropriate writ of mandamus or any other order directing the respondents to appoint the petitioner on compassionate appointment.

3. This matter was heard at length on earlier occasion and it was slated for dictation of judgment. In the meantime learned AGP Mr. Makwana was to place on record the updated compilation of Government instructions/resolutions in respect of compassionate appointment. Today Mr. Makwana has completed his exercise of re-constituting the bunch.

4. Facts in brief required to be set out in order to appreciate the controversy involved in the present petition.

The petitioner's father namely Muljibhai Jethabhai Parmar serving in Prohibition Section in the Police Department died on 2/1/1999 after rendering services of about 30 years, in harness. As the father of the petitioner died in harness leaving behind his family, the dependent family was entitled to receive benefit of the scheme for compassionate appointment to the deceased employee's dependents. The petitioner was minor at the relevant time and after making due inquiries he applied for compassionate appointment on 23/9/1999.

5. As it emerges from memo of the petition, even the petitioner was referred to the Medical Officer for his examination with regard to his fitness for employment. The necessary communication for referring him to medical test was issued on 21/11/2002. Respondent however rejected the claim of the petitioner for compassionate appointment vide their order dated 30/10/2003 on the ground that the application was made beyond the time limit of three months and therefore the same was not reconsidered. The said order is produced at Annexure F.

6. The Petitioner therefore was constrained to prefer Special Civil Application No. 4252 of 2007 challenging the said order dated 30.10.2003 wherein this Court (Coram: H.K. Rathod, J) was pleased to issue direction while disposing the petition on 15/2/2007 to consider the case of the petitioner for appointment on compassionate ground on the basis of the prevalent administrative instructions at the relevant time and pass reasoned order in accordance therewith within two months from the date of receipt of the order, with a liberty to the petitioner to approach the appropriate forum in case of any difficulty. The said order was further clarified by this Court (Coram: H.K. Rathod, J.) dated 21/2/2007 by substituting the words in place of "month" in para-2 in line No. 2 to be read as "years".

7. The respondent considered the case of the petitioner and passed order on 18/4/2007 rejecting the claim of the petitioner on the ground that when the petitioner applied for compassionate appointment on 23/9/1999 said application was made in time, however at the time of making that application he was not 18 years of age and hence not fulfilling criterion of prescribed minimum age for compassionate appointment as he was born on 10/12/1984. As the petitioner was not fulfilling the criterion of minimum age his application was rejected in view of the instructions dated 20.07.1998 issued by the General Administration Department. The time limit for making application for Compassionate appointment was two years from the death of the employee or within two years from the date the concerned dependent attained adulthood. And as the son of the deceased employee, the present petitioner being minor at the time of the death of the concerned employee the eligible eldest child of the deceased being daughter Neetaben, petitioner's sister, could have applied for Compassionate appointment and if had she applied for Compassionate appointment then she would have been appointed on compassionate grounds. As no eligible dependent of the deceased employee applied within time limit the earlier application made

by the petitioner was rightly rejected. In this case as no eligible adult dependent of the deceased employee made an application within the period of two years the petitioner's application could not be accepted and it was rejected. The Respondents have in the impugned order also attempted to justify the rejection on the ground of financial condition of the deceased's family, which is said to have pucca residence, and which is also said to have received funds of about Rupees Three lacs by way of GPF, Group Insurance, Leave Encashment etc and stated that offering of Compassionate appointment to member of such family would defeat the very objective of helping the family of the deceased employee in overcoming sudden economic crisis on account of sudden demise of its breadwinner. Thus the respondent regretted their inability to accept the application. This order is impugned in the present petition.

8. Learned advocate appearing for the petitioner has submitted that the impugned order deserves to be quashed and set aside on account of non application of mind on the part of concerned authority. The earlier order which is produced on record at page No. 46 go to show that the claim of the petitioner for compassionate appointment was rejected on account of the application being time barred. Whereas in the impugned order in this petition, the respondents have stated that though that application-dated 23.09.1999 was made within time limit the same could not be accepted as the petitioner was under aged. Therefore it suffers from non-application of mind. The Advocate for the petitioner further submitted that learned AGP has brought to the notice of the Court the statement recorded by officer of the authority wherein widow of the deceased has clearly stated that she has only one son and all daughters are married. The statement is ordered to be taken on record. Relying upon this it is contended on behalf of the petitioner that the married daughters could not have been said to be eligible dependents, as they would not form part of the family of the deceased after they were married. This is one more glaring example of non-application of mind for rejecting the request of the petitioner for Compassionate appointment. The advocate for the petitioner has further submitted that even on the face of the order it can be said that the authorities were some how interested in depriving the petitioner of his legitimate right for being considered for compassionate appointment, as the order itself is full of contradictions. In the same order at one place it is said that had the eldest daughter of the deceased and sister of the present petitioner made application for Compassionate appointment then she would have been considered and given appointment on compassionate ground, and at other place in the same order it is said that due to financial condition of the family of the deceased the applicant/petitioner was not eligible for receiving compassionate appointment. These in itself go to show that the authorities are bent against present petitioner in denying him the opportunity of being considered for compassionate appointment. The advocate for the petitioner has submitted that therefore the order dated 18/4/2007 deserves to be quashed and set aside.

9. The advocate for the petitioner invited this Court's attention to the

Government resolution dated 7/9/2002 and especially to item No. 1 & 2, which clearly show that they have been enforced, or to be treated to have been enforced w.e.f. 1/1/1996, which would cover the case of the present petitioner also.

10. Shri. Makwana, learned AGP has submitted that at the relevant time on the basis of the prevalent guidelines and administrative instructions the case of the petitioner was considered and decided. When Shri. Makwana was specifically asked about the provisions in Clause No. 1 & 2 in Government Resolution dated 9/7/2002 and its applicability to the case of the present petitioner, he could not deny the applicability of the same to the case of the present petitioner. In view of AGP's inability to point out any provisions or document indicating the inapplicability of the provisions of item No. 1 & 2 of the Government Resolution dated 9.07.2002 to the case of the present petition he was granted time to place on record written submission. Accordingly he formulated his written submissions, which are taken on record. Even in the submissions placed on record on behalf of the State this issue has not been addressed at all nor has it been in any way denied that the provisions in Clause No. 1 & 2 mentioned in the Government Resolution dated 9/7/2002 would be applicable to the case of the petitioner. The written submissions filed by Shri. Makwana learned AGP merely revolves around the financial status of the deceased's family and about availability of the eldest daughter for appointment on compassionate ground within two years of the demise of the father of the petitioner. Shri Makwana could not even answer that why the statement of widow, recorded by Government officials on 29.09.2001, copy whereof is placed on record by the respondents, was not considered by the respondent while rejecting the claim of the petitioner. The widow in that statement has categorically stated before the Government Officials on 28/9/2001 that she has only one son and the three daughters have been at their respective in-laws' place. This statement goes to show that at the relevant time the eldest daughter was not eligible for taking up the compassionate appointment for supporting the family.

11. This Court has heard the learned counsels of the parties. Before advertng to the rival contentions of the parties it would be expedient to set out the gist of the relevant applicable administrative instructions and guidelines governing the scheme of compassionate appointment. The benevolent scheme of offering compassionate appointment to the dependent of deceased class III and IV Government Employee died in harness for assuaging grief-stricken family and helping it tide over the vacuum generated on account of sudden lose of bread winner for family is in existence since 1975 in the State of Gujarat. It has undergone substantive changes over the period of time to meet with the various demands of staff and employees' associations. The various Government Resolutions and Circulars are bringing about the change. It appears from the Government Resolution dated 10.03.2000 the State issued revised guidelines taking into account the relevant factors. This revised Scheme was promulgated vide Government Resolution dated 10.03.2000. This Revised Scheme of

compassionate appointment once again was required to be amended vide Government Resolution dated 7.09.2002. The State has issued subsequent revised and amended schemes after the issuing the Government Resolution dated 07.09.2002. As it is stated herein above the provisions of Government Resolution dated 7.09.2002 would be applicable to the facts and circumstances of the present petitioner hence the gist of relevant provisions made there under deserves to be set out as under.

12. The Government Resolution dated 7.09.2002 is in fact amendment to G.R. dated 10.03.2000 so as to remove glaring discrepancies and teething problems in its smooth implementation from the appropriate effective date.

13. The General Administration Department (GAD herein after for short) issued Government Resolution dated 7.09.2002 clarifying and amending the scheme of offering compassionate appointment existing from 13.10.1975 to 10.03.2000 as it's clear from the subject of the said government resolution. The State decided to implement the GR dated 10.03.2000 from 1.01.1996 vide its GR No. Recruitment/-1201-910(1)K dated 7.09.2002. On the same date State issued another government Resolution being GR No. Recruitment-1201-910(2)K for bringing about substantive amendments in the scheme of compassionate appointment promulgated under Government Resolution dated 10.03.2000. The gist of amended provisions at item No. 1 and 2 deserve to be set out as it is relevant for the present controversy.

14. Item No. (1): It has not now been possible to maintain the standard of Income Limit prescribed for offering compassionate appointment to the dependents of employees died during the period from 1.01.1996 to 9.03.2000 on account of increase in the amount of Family Pension as revised pay scales as per the recommendation of Fifth Pay Commission have been implemented with effect from 1.1.1996. Therefore on sympathetic consideration it is decided to implement, the provision removing Income Limit Criterion of Government Resolution dated 10.03.2000 with effect from 1.01.1996 and as it's being implemented from 1.01.1996 that date should be determined as reference date for answering all the consequential questions and issues.

15. Item No. (2): As per the existing provision 9 of the Government Resolution dated 10.03.2000 that when any member of the dependent family is earning then in case of such family only widow or widower of the deceased employee as per their educational qualification is to be offered compassionate appointment on the post of Class III or Class IV and in no circumstances any other family member is to be offered compassionate appointment, is amended and replaced by the following provision. In case of the dependent family of the deceased employee any earning member separated before the death of the deceased or any earning member residing together and earning then also without taking into consideration his or her income, and in case of deceased's widow's or widower's as the case may be, unwillingness to accept the compassionate appointment any other dependent of the family fulfilling all the eligibility criteria for appointment

including time limit for making application shall be considered for compassionate appointment. But while considering such, a family member of the deceased who has been regularly appointed in Government of India, Government of Gujarat, or any other State Government, Semi- Government organizations, any Board, Corporation or Grants in aid institutions either of State Government or Central Government, any institution of Local Self Government, any offices of Taluka or District Panchayat, Nationalized Banks, Co-operative organizations (Nagrik Sahkari Bank, District Milk producers" federation, GUJKOMASOL, Agricultural Central Bank of District etc) and in any other Statutory Organization either of State or Central Law, shall not be considered to be eligible dependent for compassionate appointment. As this matter is relating and pertaining to removal of Income Limit it shall come into force from 1.01.1996 itself.

16. Thus aforesaid guidelines are the guidelines applicable in the case of the present petitioner. The Respondent ought to have considered the case of the present petitioner in light of these guidelines. In view of the Guidelines the dependents of the deceased employees died during 1.01.1996 to 9.03.2000 were to be governed by the item No. 1 and 2 of the Government Resolution being G.R. No. Recruitment-1201-910(2)K dated 07.09.2002 so far as the eligibility and income criteria are concerned.

17. The petitioner in fact approached the authorities way back on 23.09.1999. As per the prevalent guidelines for compassionate appointment the minor dependent was entitled to apply for compassionate appointment within two years of attaining adulthood. The application-dated 23.09.1999 produced at annexure C page 42 on the compilation clearly show that the applicant had in unequivocal terms stated in the application that at that time he was studying in 9th, standard and his age was 15 and half but he may be considered for compassionate appointment after he attains adulthood as his father died in harness. It deserves to be noted that pursuant to this application the concerned Superintendent of Prohibition, Palanpur referred the petitioner to the Civil Surgeon Palanpur for medical examination as it could be seen from the letter-dated 21.11.2002. The concerned Civil Surgeon Palanpur issued Medical Certificate dated 22.11.2002 produced on page 43 on the compilation. It deserves to be noted that a letter dated 25.03.2003 issued by the Gujarat Subordinate Service Selection Board to office of the Police Commissioner refers to the G.R. dated 07.09.2002 and states that the concerned Head Of the Departments in consultation with respective Administrative Department have to evaluate and examine the proposal for compassionate appointment. Ultimately vide letter dated 30.10.2003 the concerned Superintendent of Prohibition, Palanpur relying upon the GR dated 10.03.2000 rejected the application of the petitioner as it was provided in the said GR dated 10.03.2000 that in no circumstances the application made after three months of the death of the deceased is to be considered and as such his application was rejected. The GR dated 10.03.2000 has in unequivocal terms in paragraph two made it clear that the amended guidelines and compiled instructions would be effective and applicable only to the employees who died

after the date of this Government Resolution i.e. 10.03.2000 and cases of the dependents of the employees died before that the guidelines then prevalent would be applicable. As per the earlier Guidelines before 10.03.2000 the time limit for application was two years from the date of the minor attaining adulthood and hence the non-application of the mind on the part of the respondent becomes evident as the case of the petitioner was rejected on all together non-applicable guidelines.

18. It also deserves to be noted that when the petitioner's case was rejected on 30.10.2003 the Government Resolutions dated 07.09.2002 being GR No. Recruitment-1201-910-(1)-K and GR No. Recruitment-1201-910-(2)-K dated 07.09.2002 were already promulgated and in existence. The provisions of G.R. dated 07.09.2002 as it is stated herein above were applicable to all the employees and their dependents that died from 1.1.1996 to 9.03.2000. In view of this the order dated 30.10.2003 impugned in Spl. C.A. 4252 of 2007 was absolutely without application of mind and deserved to be quashed and set aside.

19. The Respondents were duly represented in the Spl. C.A. 4252 of 2007 as it appears from the order dated 15.02.2007 passed by this Court (Coram: Hon"ble H.K. Rathod J) The Court granted two months time to the respondents to make reasoned order on the claim of the petitioner but for the reasons best known to the respondents once more they ignored the provisions of GR dated 07.09.2002 and relying upon the absolutely inapplicable administrative instructions rejected the claim of the petitioner.

20. As it is stated herein above the benevolent scheme of offering compassionate appointment to the dependents of deceased employee died in harness is in one or the other forms in existence since 13.10.1975. It has undergone substantive change over a period of time but major amendments and its provisions has underlying objective of helping the deceased employees' family in overcoming the calamity befallen upon the family on untimely death of their breadwinner. The close perusal of various Government Resolution indicate that any of the dependent of the deceased was treated as eligible for compassionate appointment in majority of the resolution. It appears that respondent have culled out and quoted out of context few lines of the Circular Letter dated 20.07.1998 and not Government Resolution, for rejecting the claim of the present petitioner. The close reading of the Circular Letter dated 20.07.1998 sought to be relied upon by the respondent would also go to show that the Guidelines existing vide G.R. dated 16.12.1991 amended vide GR dated 26.12.1997. Therefore the relevant Guideline was that of GR dated 26.02.1997, which did not contain any stipulation that only the eldest child or dependent shall alone be eligible for compassionate appointment. In fact the Circular letter appears to have been issued for infusing sense of urgency in the staff and officers responsible for making and approving the proposal and for avoiding unnecessary delay occurring in offering compassionate appointment to the dependents of the deceased employees. The third paragraph of the Circular letter dated 20.07.1998 states

that "any one of the dependent of the deceased employee will have to apply within two years from the date of death and in case the widow of the deceased was illiterate and children were minor than the eldest child will have to apply within two years from the date of attaining adulthood. These wordings have been literally lifted and used out of contexts by the respondents for denying compassionate appointment to the petitioner. In fact there cannot be any suggestion that in the matter of offering Compassionate Appointment State or any authority can insist upon confining the benefit only to the eldest child irrespective of it's gender. The State cannot ignore that eldest girl dependent will cease to be a part of deceased's family and dependent of the deceased once she marries. In fact no such proposition could be said to be in existence looking to the various Guidelines and Resolution. Assuming for the sake of examining the plea of the State that one such proposition was existing then also in the instant case the Respondents were not justified in denying the compassionate appointment to the petitioner as the Statement of the Widow of the deceased and petitioner's mother recorded on 28.09.2001 by the Government Officials go to show that at the relevant time she had all the three daughters married and residing at the place of their respective in laws and the petitioner the only son of the deceased was there to take responsibility of the family of the deceased. The married daughters cannot be considered as dependents of deceased for the purpose of offering compassionate appointment. Thus on this count also the respondents cannot justify their illegal action of denying the petitioner his legitimate right to be considered for compassionate appointment.

21. The Respondent could not justify their action on any count. In fact as it is stated herein above when for the first time the application of the petitioner was being rejected vide order dated 30.10.2003 the two Government Resolutions of even dated 07.09.2002 were in existence and it was absolutely clear there from that item No. 1 and 2 of the G.R. dated 07.09.2002 governed cases of all the employees died during the period from 1.01.1996 to 9.03.2000 and the petitioner's case was also therefore to be governed there from. However for the reasons best known to them the respondents not only did not apply the correct guidelines while rejecting the case of the petitioner on 30.10.2003 but also perpetrated the same folly, if it could be so said, callously once again in passing order dated 18.04.2007 impugned in the present petition when they were under the specific direction of this Court (Coram: H.K. Rathod J) in order dated 15.02.2007 passed in Spl. C.A 4252 of 2007 to consider the claim of the petitioner in light of the applicable administrative instructions. When the Respondents were under the specific direction of this Court as stated herein above they were expected to be very vigilant and meticulous in examining the claim of the petitioner in light of the applicable guidelines and instructions but as it could be seen from the impugned order dated 18.04.2007 the respondents have not only attempted to justify their earlier order dated 30.10.2003 which ex facie appears to be erroneous and illegal, unjustified and passed without application of mind, but have also once again evinced same lack of concern and

scruples in second time examining the case of the petitioner. This time the respondents not only did not apply the correct guidelines but once again rejected the claim of the petitioner on the basis of another non applicable and out of contexts Circular Letter dated 20.07.1998 and attempted to justify their stand on culling out few lines from the non applicable and out of context circular dated 20.07.1998. The respondents have reiterated their stand in their affidavit in reply also. The learned AGP however despite given enough opportunity could not show any document or Government Resolution or Letter indicating that the Item No. 1 and 2 of the GR dated 07.09.2002 would not be applicable to the case of the petitioner. Nor has the State taken even stand in their written submissions that GR dated 07.09.2002 would not be applicable to the case of the petitioner. Naturally State could not have taken such stand contrary to their own unequivocally clear GR dated 07.09.2002. The handling of this case by the Respondents leaves much to be said about their conduct.

22. Before parting with this judgment this Court is constrained to observe that in this case concerned respondents have not acted in letters and spirit of the Scheme of offering Compassionate Appointments to the dependents of deceased employees. The State has time and again issued various Government Resolution and Circulars for instilling sensitivity and urgency with which the proposal of offering Compassionate Appointments to the dependents of deceased employees is to be handled. The concerned respondents have evinced enigmatic adamancy in rigidly and unreasonably adhering to their illegal stand of denying the Compassionate Appointment to the petitioner on consistently ignoring applicable guidelines contained GR dated 07.09.2002 and invoking on both the occasions different and totally irrelevant material for depriving the petitioner of the benefit of scheme of Compassionate Appointments to the dependents of deceased employees. The little sensitivity, care and caution on the part of the concerned respondent would have saved petitioner, a citizen from undergoing repeated ordeal of undertaking avoidable litigation.

23. In the result, the petition deserves to be allowed and is allowed accordingly. The order impugned in this petition dated 18/4/2007 passed by the Section Officer is hereby quashed and set aside. The respondents are directed to consider petitioner's case afresh in light of the Government Resolution dated 07.09.2002 with utmost care and consideration keeping in mind the observations of this Court made herein above. The reconsideration should be completed and the decision shall be intimated to the petitioner within a period of thirty days from the date of receipt of writ of this order. Rule is made absolute accordingly. No cost. Direct service permitted.