

(2022) 10 GUJ CK 0061
In the Gujarat High Court

Case No : R/Special Civil Application No. 14423 Of 2019

Mehulkumar Ghanshyambhai Dahodiya	APPELLANT
Vs	
State Of Gujarat	RESPONDENT

Date of Decision : 11-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2022) 10 GUJ CK 0061

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Aaditya D Bhatt, Chandni S Joshi, Kurven Desai

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1. Heard learned advocates for the parties.
2. The petitioner has filed this petition with a prayer that he should be granted the benefits of compensation in lieu of compassionate appointment by virtue of policy dated 05.07.2011.
3. Facts in brief would indicate that the petitioner's father who was working as a Peon-cum-Driver in the office of respondent no. 4 died on 10.11.2007. The petitioner who at the time of his father's death was a minor applied for appointment on compassionate grounds on 30.01.2008. At that time, the petitioner was aged 17 years and few months, his date of birth being 25.04.1991. After examining the resolutions, the case of the petitioner was rejected on the ground that at the time when he applied he was a minor.
- 3.1 Subsequently it appears that by a communication dated 25.07.2012, the Collector Junagadh has informed the petitioner that his application having once been rejected in accordance with the policy of 05.07.2011, compensation can be paid to only such beneficiaries whose applications at that point of time are

pending. In light of these facts the petitioner's application for compassionate appointment / compensation being rejected the present petitioner has approached this court by filing the present petition.

4. Mr. Aditya Bhatt, learned advocate for the petitioner would rely on a decision of this court in Letters Patent Appeal No. 1312 of 2017 dated 21.03.2018 and submit that the petitioner's case deserves consideration.

5. This court has considered the aforesaid decision. However, time and again the law on compassionate appointment has been discussed by the Apex Court and this court. This court in Special Civil Application No. 2227 of 2019 has considered the decision of the Apex Court in the case of State of Himachal Pradesh vs. Shashi Kumar [(2019) 3 SCC 653] and has observed as under:

"5. From the matrix of facts noted above, it is clear that the mother's application was rejected on the ground that she did not possess the requisite education qualification. The rejection was communicated. After the rejection of request of the mother, the same was not liable to be reopened in view of Clause 6 of the Resolution dated 05.07.2011. Since the application of the mother was already rejected, the same was not liable to be reopened. Therefore, the rejection of the claim for the benefit under the said Resolution dated 05.07.2011, also did not book any error on part of the authorities.

5.1 In State of Himachal Pradesh v. Shashi Kumar [(2019) 3 SCC 653], the Supreme Court reiterated the principle that granting of appointment on compassionate basis has to be an immediate measure. The Apex court highlighted the aspect of immediacy to be observed in grant of compassionate appointment. It was stated that observance of immediacy was necessary having regard to the nature of such appointment. It was reiterated further that the compassionate appointment is an exception to general rule that the appointment to any public post in service of the state has to be made on the basis of the opportunities which accord with Articles 14 and 16 of the Constitution. In the case before the Apex Court, there was a delay of seven years in making application for compassionate appointment, in respect of which the Supreme Court observed that after passage of long time, sense of immediacy was evidently lost. The delay which may have occurred for either reason would take out the element of immediacy which is sine qua non in offering the appointment on compassionate appointment. The very *raison d'etre* for giving compassionate appointment or compassionate benefit is lost once the immediacy has died down.

5.2 The principle was highlighted by learned Assistant Government Pleader from decision of the Supreme Court in Karnataka Power Corporation Limited v. K. Thangappan [(2006) 4 SCC 322] that mere making of representation or the conduct or continuing to make representations do not answer the delay on part of the litigant and representations alone would not be a ground to condone the delay. In the present case, the overriding aspect emerging from the facts is that father of the petitioner died in the year 2002. The application of the mother of

the petitioner was thereafter rejected for compassionate appointment on valid grounds as per the policy. The petitioner made application on 18th February, 2017. In the meantime, the policy of giving appointment on compassionate basis came to be substituted with policy of payment of lump sum amount.

6. It is well settled that claim for compassionate appointment has a purpose of giving immediate help to the family who has suffered crisis due to death of breadearner in the family. The claim of compassionate appointment has to be put forth and the benefit has to be conferred within reasonable time. Once the long time passedby, the compassionate element stands extinguished. A family who could survive for long years would not be entitled to any compassionate benefit since compassionate benefit is not a largesse nor it is a rule in the employment. The very policy of giving compassionate appointment has the object of providing immediate relief to the family. It is well settled that the request of such nature would not be entertained after span of long years.

7. For the aforesaid facts and the reasons, no case is made out for granting any relief to the petitioner. Petition is summarily dismissed.”

6. Even recently the Apex Court in the case of Fertilizers and Chemicals Travancore Ltd. & Others vs. Anusree K.B. rendered in Civil Appeal No. 6958 of 2022 on 30.09.2022 in light of the several decisions of the Apex Court has laid down the principles governing appointment on compassionate grounds. The relevant paras read as under:

“7. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in the case of Director of Treasuries in Karnataka and Anr. Vs. V. Somyashree, 2021 SCC Online SC 704, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in N.C. Santhosh Vs. State of Karnataka, (2020) 7 SCC 617, this Court has summarised the principle governing the grant of appointment on compassionate ground as under:-

(i) that the compassionate appointment is an exception to the general rule;

(ii) that no aspirant has a right to compassionate appointment;

(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;

(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State’s policy and/or satisfaction of the eligibility criteria as per the policy;

(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

8. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

8.1 In the case of State of Himachal Pradesh and Anr. Vs. Shashi Kumar reported in (2019) 3 SCC 653, this Court had an occasion to consider the object and purpose of appointment on compassionate ground and considered the decision of this Court in the case of Govind Prakash Verma Vs. LIC, reported in (2005) 10 SCC 289, in paras 21 and 26, it is observed and held as under:-

"21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138], SCC pp. 139-40, para 2)

"2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus 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 or 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 Classes III and IV are the lowest posts in nonmanual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in *Govind Prakash Verma v. LIC*, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case."

9. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.

9.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If

such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.

9.2 Under the circumstances, both, the learned Single Judge as well as the Division Bench of the High Court have committed a serious error in directing the appellants to reconsider the case of the respondent for appointment on compassionate ground. The impugned judgment and order passed by the High Court is unsustainable.

10. In view of the above and for the reasons stated above, the present appeal succeeds. The judgment and order passed by the learned Single Judge as well as the Division Bench of the High Court are hereby quashed and set aside.”

7. Evidently what is borne out from the discussion hereinabove is that appointment on compassionate grounds is for giving immediate help to the family of the bread winner who has died. 2012 order is challenged in the year 2019 raising a presumption that the petitioner was not in need of any appointment / compensation.

8. In view of the above, petition is dismissed. Notice is discharged. Interim relief if any shall stand vacated.