
(2012) 01 GUJ CK 0066
In the Gujarat High Court

Case No : Letters Patent Appeal No. 2116 of 2011 in Spl. C.A. No. 16059 of 2011 with C.A. No. 13494 of 2011 in L.P.A. No. 2116 of 2011

Nirmalaben Hamirbhai Solanki

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Citation : (2012) 134 FLR 176

Hon'ble Judges : C.L. Soni, J;A.L. Dave, J

Bench : Division Bench

Advocate : A.S. Supehia, for the Appellant; Reeta Chandarana, A.G.P. Counsel for the Respondent Nos. 1 to 3, for the Respondent

Judgement

A.L. Dave, J.—Admit Ms. Reeta Chandarana, learned AGP appearing for the respondent authorities waives notice of admission of the appeal on behalf of the respondent authorities. With consent of learned advocates for both sides, the matter is taken up for final hearing today. The appellant-original petitioner is the daughter of the deceased employee who was working with the respondent authority and expired on 9.6.2010 while in service. The petitioner's marriage took place on 26th May, 2009. However, there were matrimonial disputes and the petitioner started staying with the deceased employee from 10.4.2010. The marriage relationship ended on 15.8.2010 by Customary Divorce. On 17.8.2010, the petitioner made an application to the respondent authorities for appointment on compassionate ground. The authority rejected the said application and, therefore, petitioner filed the writ petition before this Court which came to be dismissed by the learned Single Judge by the order impugned in this appeal.

2. The bone of contention of the learned advocate for the petitioner is that the petitioner was staying with the deceased employee on the date of his demise pursuant to the disturbance in her matrimonial life. It is submitted that the disturbance in title matrimonial life ended in divorce and the petitioner had, therefore, to fall back on her maiden family. She, therefore, made the application

for appointment on compassionate ground. According to the learned advocate for the petitioner, the petitioner has therefore, to be considered eligible for being considered. He relied on Clause 2(B) and (C) of the Revised Scheme of giving compassionate appointment which run as under:

2.(A) To whom applicable:--

(1) No income limit shall be applicable for securing compassionate appointment under this scheme.

(2) This scheme shall be applicable only to the member of dependent family of Class-III and IV employees who are appointed on regular basis and who have put in at least five years of service and died during service as well as who are on work charged establishment. This scheme shall not apply to daily wage workers, casual workers, apprentices and those who are appointed on ad hoc, contract or re-employment basis;

(B) Who will be considered members of dependent family:--

(1) Legitimate wife or husband of the deceased employee.

(2) Son or unmarried daughter (in case of childless employee with legally adopted child with adoption under "the Hindu Adoption Act, 1956" during his existence) of the deceased employee.

(C) Who are not to be considered member of the dependent family:

(1) Mother,

(2) Father,

(3) Brother,

(4) Sister,

(5) Other relatives of the deceased employee.

(D) In order to ascertain that the person is the member of dependent family, if required, the nomination made by the deceased employee for his death-cum-retirement gratuity, General Provident Fund/Contributory Provident Fund at the relevant time, shall be considered an authentic document.

3. Learned Advocate for the appellant has submitted that for all practical purposes, petitioner is and has to be treated as unmarried daughter. According to him, divorced daughter is not included in Clause (C) and, therefore, has to be treated as having been included in Clause B(2).

4. We have heard the learned AGP Ms. Chandarana for the respondent authorities.

5. Having given our anxious consideration to the submissions made before us by the learned advocates for both sides, the question that arises for our

consideration is whether a divorced daughter can be considered as a member of the dependent family as envisaged under the Scheme for offering employment to relatives of an employee who dies in harness. In this regard, if we examine the provisions, member of the dependent family would include either legitimate wife or husband of the deceased employee as per Clause 2(B) (1) of the Scheme, and son or unmarried daughter of the deceased employee as per Clause 2(B) (2) of the Scheme. Beyond this, there is no provision. If Clause 2(C) is examined, it enlist the persons who are not to be considered as member of the dependent family and that include mother, father, brother, sister and other relatives of the deceased employee.

6. It cannot be said that a divorced daughter is not included in Clause 2(C) of the Scheme for Compassionate Appointment. Divorced daughter would fall in Item-5 of Clause 2(C) of the Scheme i.e. other relatives of the deceased employee.

6.1 It would be stretching the principles of interpretation too far to hold that because a divorced daughter is not specifically included in Clause 2(C), she cannot be included in term "other relatives of deceased employee" is to be treated as unmarried daughter, even in the given set of circumstances and where she was staying with the deceased employee as a married daughter at the time of his death and is subsequently divorced.

7. Factually what emerges is that on the date of demise of the deceased employee, the petitioner was a married daughter although she might have been staying with her father because of matrimonial disputes and divorce took place only after the demise of her father who was a Government employee and, therefore, on the date of demise of the deceased employee, the petitioner was a married daughter. For accepting the argument of the learned advocate for the petitioner, this Court will have to interpret Clause 2(B)(2), which includes unmarried daughter, to include divorced daughter as well. These two categories are totally different and cannot be equated with each other nor can they be merged with each other. A lady has to leave behind her status of being unmarried to acquire the status of being a married person. And Status of "divorced" would presuppose that the lady is married before being divorced. Simply going back to father's family after marriage, whether as divorcee or otherwise, cannot give to her today the status of being unmarried.

8. Therefore, the scheme would not be applicable to a divorced daughter.

9. The authorities were justified in rejecting her application of the petitioner for compassionate appointment so also the learned Single Judge in not entertaining the petition. The appeal must fail and it stands dismissed accordingly with no order as to costs. Civil Application No. 13494 of 2011 stands disposed of accordingly.