
(2012) 03 GUJ CK 0106

In the Gujarat High Court

Case No : Special Civil Application No. 18729 of 2011

Parmar Bhanumatiben Jayantilal

APPELLANT

Vs

State of Gujarat and 2

RESPONDENT

Date of Decision : 01-03-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 226

Citation : (2012) 03 GUJ CK 0106

Hon'ble Judges : R.M. Chhaya, J

Bench : Single Bench

Advocate : Sanjay D. Suthar for Petitioners 1, for the Appellant; Niraj Sharma, AGP for Respondents 1 - 3, for the Respondent

Judgement

Honourable Mr. Justice R.M. Chhaya

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for the following reliefs: A) admit this petition;

B) issue appropriate Writ, order or direction quashing and setting aside the illegal and arbitrary action on the part of the concerned authorities in not considering the case of the petitioner for giving her appointment on compassionate ground and be pleased to hold that the petitioner is entitled to get appointment on compassionate ground as per the policy which was prevalent at the relevant point of time when the application was made by the petitioner on 23/9/2010;

C) issue appropriate writ, order or direction directing the concerned respondent authorities to consider the case of the petitioner for giving her appointment on compassionate ground as per the policy which was prevalent at the relevant point of time when the application was made by the petitioner on 23/9/2010;

D) pending admission and final disposal of the petition, be pleased to issue appropriate writ, order or direction directing the concerned respondent authorities to consider the case of the petitioner for giving her appointment on compassionate ground as per the policy which was prevalent at the relevant

point of time when the application was made by the petitioner on 23/9/2010 in the aforesaid peculiar facts and circumstances of the case;

E) pass such orders as thought fit in the interest of justice.

Heard Mr. Sanjay D. Suthar, learned advocate for the petitioner and Mr. Niraj Sharma, learned AGP for the respondents on advance copy served. 2. The facts that emerge from the record of the petition can be summarized as under:-

The husband of the petitioner-Jayantilal Punjabhai Parmar was serving as a Policeman in S.R.P. Group No. 15, ONGC, Mehsana who passed away on 10.8.2010. It is the case of the petitioner that immediately on death of her husband, she applied for compassionate appointment by an application dated 23.9.2010 along with all necessary documents like leaving certificate, pedigree certificate of CCC course as well as the relevant documents showing the educational qualifications of the present petitioner. It is the case of the petitioner that the petitioner is eligible for the post of Class IV category. It further transpires that on receipt of the said application, the respondent authorities scrutinized the same and asked the petitioner to submit further documents by communication dated 1.3.2011. In fact it is the case of the petitioner herself that on death of her husband, the petitioner has been granted all other benefits like pension, gratuity and other retiral benefits. It is the case of the petitioner that the State Government has come out with a policy decision by Government Resolution dated 5.7.2011, whereby the earlier policy of giving compassionate appointment is replaced by a new policy of giving lumpsum compensation and because of the said policy decision, the application is not being considered. As the case of the petitioner for compassionate appointment has not been considered, the present petition is filed.

3. Mr. Sanjay D. Suthar, learned advocate for the petitioner submitted that in fact the petitioner filed an application for compassionate appointment on 23.9.2010, whereas the Government has come out with a Government Resolution dated 5.7.2011 and therefore, the said policy would not be applicable and the respondents cannot give retrospective effect to the same and the respondents are duty bound to consider the same as per the policy which existed on the date on which the application was made i.e. 23.9.2010.

4. Per contra, Mr. Niraj Sharma, learned AGP for the respondents submitted that in fact the respondent authorities have asked for certain documents from the petitioner so as to consider her case as per the Government Resolution dated 5.7.2011. The learned AGP further pointed out that in response to the said query raised by the respondents, the petitioner vide communication dated 16.12.2011 (Annexure-G to the petition) has reiterated the same contention which is raised by the learned advocate for the petitioner.

5. Considering the rival submissions made by the learned advocates appearing for the parties, it is an admitted position that the application dated 23.9.2010 is under consideration and that in fact the respondents have asked for further

details from the petitioner. The contention raised by the learned advocate for the petitioner as well as by the petitioner vide communication dated 16.12.2011 (Annexure-G to the petition) that only the policy which prevailed on the date on which the application was filed by the petitioner i.e. 23.9.2010 is applicable deserves to be negated outright. The compassionate appointment is not a matter of right and the compassionate appointment and/or any other relief is to see that the family of the employee who die in harness may not suffer and as such, such schemes are benevolent in nature. Even as per the provisions of the Government Resolution dated 5.7.2011 and more particularly, Clause 5, it is inter-alia provided that even pending applications are to be considered as per the prevailing policy declared by Government Resolution dated 5.7.2011.

6. At this stage, it would be appropriate to refer to the decision of State Bank of India and Another Vs. Raj Kumar, .

16. In this case the employee died in October, 2004, the application was made only in June, 2005. The application was not even by the respondent, but by his mother. Therefore, it was necessary to ascertain whether respondent really wanted the appointment, whether he possessed the eligibility, and whether any post was available. Within two months of the application, the new scheme came into force and the old scheme was abolished. The new scheme specifically provided that all pending applications will be considered under the new scheme. Therefore it has to be held that the new scheme which came into force on 4.8.2005 alone will apply even in respect of pending applications.

17. The respondent relied upon the following observations in State Bank of India and Others Vs. Jaspal Kaur, to contend that he was entitled to be considered under the old scheme which was in force at the time of the application by his mother:

(SCC pp. 578-79, para 26)

26. Finally in the fact situation of this case, Sri. Sukhbir Inder Singh (late), Record Assistant (Cash and Accounts) on 01.08.1999, in the Dhab Wasti Ram, Amritsar branch, passed away. The respondent, widow of Sri. Sukhbir Inder Singh applied for compassionate appointment in the appellant Bank on 05.02.2000 under the scheme which was formulated in 2005. The High Court also erred in deciding the matter in favor of the respondent applying the scheme formulated on 04.08.2005, when her application was made in 2000. A dispute arising in 2000 cannot be decided on the basis of a scheme that came into place much after the dispute arose, in the present matter in 2005. Therefore, the claim of the respondent that the income of the family of deceased is Rs. 5855/- only, which is less than 40% of the salary last drawn by Late Shri. Sukhbir Inder Singh, in contradiction to the 2005 scheme does not hold water. 18. The said observations are read out of context by the respondent. In that case the Bank employee died on 1.8.1999. Application was filed by the widow on 5.2.2000. The case of the widow was considered twice and the request for appointment on

compassionate grounds was declined by taking into consideration the financial position/ capacity of the family. The High Court allowed the writ petition filed by the widow in 2004 on the ground that the terminal benefits of Rs. 4,57,607/- received by the family were not sufficient for the sustenance of the family. In an appeal by the Bank, it was contended before this Court that in addition to Rs. 4,57,607/- paid as terminal benefits, the widow was getting Rs. 2055/- per month as family pension and that was not considered by the High Court. During the hearing before this court, the widow relied upon the new scheme dated 4.8.2005 and sought additional payment in terms of the scheme.

19. The above observations were made in the context of rejecting the widow's request for additional payment under the 2005 scheme. In fact, this court allowed the Bank's appeal and dismissed the writ petition filed by the widow for additional benefits. The said observations, cannot therefore be of any assistance to consider the applicability of the old scheme for compassionate appointment vis-?-vis the new scheme for ex gratia payment.

20. The respondent was not entitled to be considered for compassionate appointment. The High Court was not justified in quashing the communication dated 31.1.2006 or in directing reconsideration of the case of the respondent for compassionate appointment.

21. We therefore allow this appeal in part as follows:

(i) The orders of the learned Single Judge and Division Bench are set aside.

(ii) The respondent and/or his family may file a fresh application under the new scheme, as directed by the Bank in its letter dated 31.1.2006.

(iii) The appellant Bank is directed to process such application under the new scheme, if and when made, and pay the lump sum ex gratia amount due in terms of that scheme, to the beneficiaries, within four months of the receipt of the application.

7. Even this Court (Coram : Anant S. Dave, J.) vide judgment and order dated 28.9.2011 passed in Special Civil Application No. 7857 of 2011 observed as under:

15. The Apex Court in the case of State Bank of India and Another Vs. Raj Kumar, once again reiterated the nature and scope of claim and consideration of compassionate appointment and in paras 8 to 12 it is held as under:

8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to

enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favor of the applicant.

9. Normally the three basic requirements to claim appointment under any scheme for compassionate appointment are:

- (i) an application by a dependent family member of the deceased employee;
- (ii) fulfillment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and
- (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favor of the family member for appointment on the date of death of the employee. In such an event the scheme in force at the time of death would apply. On the other hand if a scheme provides that on the death of an employee, if a dependent family member is entitled to appointment merely on making of an application, whether any vacancy exists or not, and without the need to fulfill any eligibility criteria, then the scheme creates a right in favor of the applicant, on making the application and the scheme that was in force at the time when the application for compassionate appointment was filed, will apply. But such schemes are rare and in fact, virtually nil.

11. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfills all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a selection committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies.

12. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the

scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable.

16.....

17. Therefore, the decision in "State Bank of India and Ors. vs. Jaspal Kaur"(Supra) and "Mumtaz Yunis Mulani vs. State of Maharashtra"(Supra) and "State Bank of India and Anr. vs. Raj Kumar" (Supra) clearly empowered an authority to consider monthly family pension and retiral dues while considering the financial status of the family of the bereaved, and thus, the decision taken by the authority while denying the compassionate appointment to the applicant by taking into account the above factors in the case on hand, cannot be said to be in any manner illegal or unreasonable or contrary to provisions of Article 14 and 16(1) of the Constitution of India.

18. Thus, the contention that the scheme that is in force or prevalent when the application is actually considered, as canvassed by the learned AGP, will be in consonance with the decisions of the Apex Court in the case of "State Bank of India and Anr. vs. Raj Kumar", wherein the Apex Court in no uncertain terms pronounced the law that the authority is to consider the application in light of the scheme which is in force and not the scheme that was in force or the earlier scheme.

19. In view of the above decisions of the Apex Court last in time, with due respect to earlier decisions, I am inclined to follow the ratio laid down by the Apex Court in the last decision as above.

8. Considering the ratio laid down by the Apex Court in State Bank of India and Anr. Vs. Raj Kumar (supra) as well as this Court, the contention raised by the learned advocate for the petitioner cannot be accepted.

9. However, in the interest of justice, the respondents are directed to examine the case of the petitioner under the prevailing policy as declared by Government Resolution dated 5.7.2011 as expeditiously as possible not later than 30.04.2012. In case if the petitioner is not desirous to avail the benefit of the Government Resolution dated 5.7.2011, it would be open for the respondents to take appropriate decision in accordance with law. With these observations, the petition is disposed of.