

(2014) 09 GUJ CK 0085

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1087 of 2012 in Special Civil Application No. 1723 of 2012

Pravinbhai Hamirbhai Gadhvi

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 15-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16, 226, 227

Citation : (2014) 09 GUJ CK 0085

Hon'ble Judges : Jayant M. Patel, J;C.L. Soni, J

Bench : Division Bench

Advocate : Anand B. Gogia, B.B. Gogia and R.B Gogia, Advocate for the Appellant; P.P. Banaji, Asstt. Govt. Pleader and H.S. Munshaw, Advocate for the Respondent

Judgement

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C.L. Soni, J.—The appellant is the original petitioner who had preferred petition under Article 226/ 227 of the Constitution of India seeking to quash and set aside the decisions dated 21.2.2009 and 8.9.2006 taken by the respondent No. 1 refusing to grant the request of the petitioner for compassionate appointment. The petitioner has also sought direction to the respondents to consider and grant his application for compassionate appointment in accordance with law.

2. Learned Single Judge has dismissed the petition on the ground that the request of the petitioner for compassionate appointment was rejected in the year 2006 and again such request was rejected in the year 2009. However, the petitioner approached the Court against the above decision after a period of three years for which no explanation was provided. Observing that the policy of providing compassionate appointment is to mitigate the hardship due to death of breadwinner in the family, the learned Judge found that the petition was devoid of merit on the ground of delay in approaching the Court.

3. We have heard learned advocates for the parties.

4. Learned advocate Mr. Gogia for the appellant submitted that earlier application of the petitioner for compassionate appointment was rejected on the ground that the petitioner was not possessing the requisite qualification for appointment on Class-IV post. However, subsequently, when the appellant acquired such qualification in the year 2008, the appellant again made application on 16.7.2008 but the said application was not accepted on the ground that earlier order refusing to accept the proposal for compassionate appointment was not required to be changed. Mr. Gogia submitted that such decision was in fact contrary to the very purpose and object of the policy providing for compassionate appointment. Mr. Gogia submitted that the application of the petitioner was required to be considered as per the policy prevailing then and the policy was of 2002 as per which the appellant was eligible to be appointed on Class-IV post. Mr. Gogia submitted that subsequently change in the rules for qualification for Class-IV post would not dis-entitle the appellant from claiming appointment on compassionate ground under the old policy. Mr. Gogia submitted that delay in approaching this Court will not defeat the right under the policy which was a kind of benevolent policy of the State Government. Mr. Gogia submitted that as per the settled principle of law, the application of the petitioner was required to be considered as per the old policy. He thus urged to allow the appeal and to quash and set aside the impugned order of the learned Single Judge.

5. Learned Assistant Government Pleader Mr. P.P. Banaji appearing for the respondents submitted that when the application of the petitioner was considered in the year 2006, undisputably, the appellant was not holding the requisite qualification and therefore, there was no illegality in the said decision. Mr. Banaji submitted that acquiring of requisite qualification subsequently in the year 2008 would not be a ground available to the appellant to get his request accepted for compassionate appointment, especially when the decision on his application had become final in the year 2006. Mr. Banaji submitted that even after the impugned decision dated 21.2.2009, the petitioner approached this Court after a period of more than 3 years and therefore, the learned Single Judge has rightly not entertained the petition on the ground of delay. Mr. Banaji submitted that even otherwise on account of introduction of the new policy under the Government Resolution dated 5.7.2011, nobody is entitled to compassionate appointment and the applications which remain pending for such compassionate appointment are to be dealt with for the purpose of grant of ex-gratia compensation if they fulfill the eligibility criteria for compensation. Mr. Banaji thus urged to dismiss the appeal.

6. Learned advocate Mr. H.S. Munshaw while adopting the arguments of learned Assistant Government Pleader Mr. Banaji submitted that the appellant is not right in contending that his application was required to be accepted in the year 2006 as per the old policy, especially when as on the date of taking decision, required qualification for Class-IV was of 10th Std. pass which undisputably the appellant

was not possessing. Mr. Munshaw submitted that acquiring of requisite qualification in the year 2008 after the decision was already taken on the application of the appellant would not make any difference and therefore, there is no illegality in the impugned decision dated 21.2.2009. Mr. Munshaw submitted that even otherwise, the petitioner had approached this Court after long time of three years and therefore, the learned Judge has committed no error in dismissing the petition on the ground of delay.

7. Having heard learned advocates for the parties, what is not in dispute is that as on the date when the application of the appellant for compassionate appointment was first time decided vide order dated 8.9.2006 at Annexure-A (page 13), the appellant since was not holding the requisite qualification for Class-IV post, proposal from the District Development Officer for giving compassionate appointment to him was not accepted. However, it appears that subsequently, the appellant acquired qualification of SSC required for Class-IV post and on that basis, he again applied on 16.7.2008. Such application was not accepted by the impugned order dated 21.2.2009 on the ground that the appellant was not holding the requisite qualification at the time of making application or within the time limit of six months available for making application.

8. The concerned authority when took decision of not changing or modifying the earlier decision taken in the month of September 2006 for not accepting the proposal for compassionate appointment on the ground that the applicant was not holding the requisite qualification committed no error. Acquiring of required qualification for Class-IV post subsequently almost after a period of two years would not make the appellant entitled to ask for reconsideration of his request for compassionate appointment.

9. It is required to be noted that the above-such decision was though taken in the month of February 2009, the appellant still chose to file the petition before this Court in the year 2012, i.e. almost after a period of three years. Learned Single Judge, therefore, has rightly not entertained the petition on the ground of such long delay of three years by observing that the purpose of providing appointment on compassionate ground is to mitigate the immediate hardship and delay at the end of the appellant would suggest that there was no crisis in the family.

10. We find that the case of the appellant since was rejected in the year 2006 on the ground that the appellant was not holding the required qualification for Class-IV posts, the appellant at this stage cannot be made entitled to any relief especially when the appellant was himself responsible for causing delay for the claim of compassionate appointment.

11. Learned advocate Mr. Gogia, however, relied on the decision of the Division Bench of this Court rendered in Letters Patent Appeal No. 22 of 2010 and allied matters so as to submit that the application of the appellant was required to be considered as per the policy prevailing on the date when the appellant made

application for compassionate appointment.

12. We have dealt with above such contention in a group of appeals, being Letters Patent Appeal No. 2385 of 2009 and allied matters, and rejected such contention. In the judgment in the said group of appeals, we have held and observed in para 15 to 20 as under:-

"15. However, there is further development in the law. In the case of State of Gujarat and Others Vs. Arvindkumar T. Tiwari and Another, , the Hon"ble Supreme Court examined the issue of eligibility criteria while considering the applications for appointment on compassionate ground. The Hon"ble Supreme Court held and observed in para 8 to 10 and 12 as under:-

8. It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Articles 14 and 16, which provide that there can be no discrimination in public employment. The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crisis it finds itself facing, and not to confer any status upon it.

9. The eligibility for the post may at times be misunderstood to mean qualification. In fact, eligibility connotes the minimum criteria for selection, that may be laid down by the executive authority/legislature by way of any statute or rules, while the term qualification, may connote any additional norms laid down by the authorities. However, before a candidate is considered for a post or even for admission to the institution, he must fulfill the eligibility criteria.

10. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that, the same may be lower than the ones fixed by the statute. In a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible.

12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the

subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of "fair play", "good conscious" and "equity".

(Emphasis Supplied)

However, since in the facts of the case, Hon"ble Supreme Court found that as on the date of the applications for compassionate appointment, the eligibility criteria was 10th Std. and the applicant was unable to pass 8th Std., he was certainly not eligible to apply for the post and it was not desirable nor even permissible to issue direction to relax the said eligibility criteria and to appoint him on merely humanitarian ground. In such facts of the case, the Hon"ble Supreme Court further observed that the question framed as to whether application for compassionate appointment was to be considered as per the existing rules or under the rules as existing on the date of death of the employee was not required to be considered.

16. Hon"ble Supreme Court has further considered the issue about the applicability of the Scheme for compassionate appointment in the recent decision in the case of MGB Gramin Bank (supra). In this judgment, Hon"ble Supreme Court has considered its earlier judgment in the case of State Bank of India (supra) and has held and observed in para 8 to 15 as under:-

8. The Courts and the Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments.

9. In A. Umarani Vs. Registrar, Cooperative Societies and Others, , while dealing with the issue, this Court held that even the Supreme Court should not exercise the extraordinary jurisdiction under Article 142 issuing a direction to give compassionate appointment in contravention of the provisions of the Scheme/ Rules etc., as the provisions have to be complied with mandatorily and any appointment given or ordered to be given in violation of the scheme would be illegal.

10. The word "vested" is defined in Black's Law Dictionary (6th Edition) at page 1563, as "vested", Fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not

subject to be defeated by a condition precedent. Rights are "vested" when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights.

11. In Webster's Comprehensive Dictionary (International Edition) at page 1397, "vested" is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide: Masammatt Bibi Sayeeda and Others etc. Vs. State of Bihar and Others, ; and J.S. Yadav Vs. State of U.P. and Another, .

Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/scheme could be changed. (Vide: Kuldeep Singh Vs. Govt. of NCT of Delhi, .

12. A scheme containing an in pari materia clause, as is involved in this case was considered by this Court in State Bank of India and Another Vs. Raj Kumar, . Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:

"14. Date of effect of the scheme and disposal of pending applications:

The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme."

13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered.

14. In view of the above position, the reasoning given by the learned Single Judge as well as by the Division Bench is not sustainable in the eyes of law. The appeal is allowed and the impugned judgments of the High Court are set aside.

15. The respondent may apply for consideration of his case under the new Scheme and the appellant shall consider his case strictly in accordance with clause 14 of the said new Scheme within a period of three months from the date

of receiving of application.

With these observations, appeal stands disposed of.

17. The Government has now introduced the policy dated 5.7.2011 which provides for payment of ex-gratia amount of compensation in lieu of compassionate appointment. We had an occasion to go through the said policy, copy of which was produced in another appeal which was also heard on the same day when these appeals were heard by us.

18. Thus, considering the observations made in para 8 to 10 and 12 by the Hon''ble Supreme Court in the case of Arvindkumar T. Tiwari (supra) and in light of recent decision of Hon''ble Supreme Court in the case of MGB Gramin Bank (supra) and also on account of change in the policy for compassionate appointment, the view expressed by the Hon''ble Division Bench in the above group of appeals cannot be now followed.

19. In light of such development and as held by the Hon''ble Supreme Court in the case of Raj Kumar (supra) and MGB Gramin Bank (supra), the compassionate appointment cannot be claimed as a matter of right but it should be strictly in accordance with the rules, regulations and administrative instructions governing the subject.

20. In view of above, even while considering that delay in deciding the application would defeat the purpose of compassionate appointment, as observed by the Division Bench of this Court in the above-referred group of Letters Patent Appeals, the impugned orders cannot be now allowed to be operated. If it is permissible to the original petitioners, they may apply under the new scheme and the appellants may take decision thereon in accordance with law.

13. For the above-said reasons, this appeal is required to be dismissed. It is, therefore, dismissed. However, if it is permissible to the appellant, the appellant may apply under the new scheme and when the appellant applies, the respondents may take decision in accordance with law. The appeal is disposed of accordingly with no order as to costs.