
(1993) 08 GUJ CK 0013
In the Gujarat High Court

Pravinchandra Jeram Sindhal

APPELLANT

Vs

Gujarat State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 16-08-1993

Acts Referred:

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

Citation : (1993) 2 GLR 1663

Hon'ble Judges : K.J. Vaidya, J

Bench : Single Bench

Judgement

K.J. Vaidya, J.—Pravin J. Sindhal by this writ petition under ArticleS 14, 16 and 226 of the Constitution of India, has moved This Court, inter alia praying for issuance of the writ of mandamus or any other appropriate writ, direction or order directing the respondents-The General Manager, Gujarat State Road Transport Corporation, Ahmedabad and the Divisional Controller, Kachchh Division, Bhuj, the respondent Nos. 1 & 2 herein respectively, to appoint him on compassionate ground to any suitable post in any of its departments with immediate effect.

2. According to the petitioner, the happens to be son of the deceased. Jeram Meghji Sindhal who was serving as Bus Driver at Bhuj Depot of G.S.R.T. Corporation (respondent No. 2 herein) and died on duty in an accident that took place on 27-4-1975, near Gondal while driving his bus on Bhuj-Junagadh route. According to the petitioner, his birth date is 5-12-1963, and accordingly, at the time when his father met with accidental death, he was minor being that of 12 years only. On attaining majority on 5-12-1981, petitioner submitted an application dated 9-12-1981 (Annexure "C") to the Divisional Controller, Bhuj (respondent No. 2 herein) requesting him to give suitable job in S.T. Corporation on compassionate grounds as a helpless dependent son of his father who died in an accident while on duty. Further according to the petitioner, though his mother was assured by Mr. Parikh, the then Controller of the Section T. Corporation, Bhuj Depot that he will try to give her job as a Water Woman, however, the same

ultimately remained only at the stage of lip service, as nothing was materialised thereafter. According to the petitioner, he has studied upto Std. VIII and there being no earning member in the family who can look after them in these hard days of economic crisis, he submitted his application to the respondent No. 2.

3. The further grievance of the petitioner is to the effect that despite this application, the respondent-Corporation had no courtesy even to acknowledge the same. Under the circumstances, the petitioner once again sent another application dated 15-5-1984 (Annexure "D") to the General Manager of the Corporation at Ahmedabad requesting him to re-consider his case for appointment on compassionate ground as per the General Standing Order No. 361. This was fortunately replied to by the respondent vide his two different letters dated 20-5-1984 and 4-6-1984 (Annexure "E") expressing regret that they were unable to give him a job. Thereafter, petitioner made yet one more attempt by submitting an application dated 25-10-1984 (Annexure "F") to the respondent No. 2 praying for giving him job as a helper. This, it appears also fail to bring about the desired result. However, though having failed so far but not frustrated, the petitioner made one more attempt by sending a registered letter dated 8-2-1991 (Annexure "G") to the Managing Director of the Corporation at Ahmedabad (respondent No. 1). It is also the case of petitioner that when he personally met the respondent No. 2 at Bhuj on 6-6-1991, he was given consolation to the effect that as and when there will be vacancy, he will be given suitable appointment. Not only that but thereafter on 31-7-1991, petitioner was called for the post of Chowkidar but somehow, he was not given appointment. It is under these exasperating circumstances of utter helplessness and compulsion of hunger and starvation that the petitioner has been constrained to knock the doors of This Court by way of present Writ Petition inter alia praying for direction to the respondent -Corporation to give him immediately any suitable appointment on the compassionate grounds.

4. Mr. Bhavyesh Mankad, the learned Advocate for the petitioner on the basis of facts situation highlighted above submitted that the petitioner was indeed the most needy and deserving person who as per the accepted policy of giving appointment on compassionate grounds should have been given suitable appointment in the S.T. Corporation, and yet the same is denied to him. Mr. Mankad further submitted that once the Corporation having adopted the policy of giving job to the dependent of deceased employee on compassionate grounds, there appears to be no justification whatsoever for not giving the same to the petitioner. Mr. Mankad in support of this submission has relied upon following decisions of This Court as well as that of the Supreme Court:

(i) Special Civil Application No. 7324 of 1990, decided on 3-9-1991. (Coram: N.J. Pandya, J.)

(ii) Special Civil Application No. 2951 of 1991, decided on 5-2-1991. (Coram: S.D. Shah, J.)

(iii) Divya Ben D. Oza Vs. Divisional Controller, State Road Transport Corporation, Ahmedabad, .

(iv) Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, .

On the basis of the above submissions, Mr. Mankad finally urged that the respondents be directed to immediately appoint the petitioner on any suitable post in the Corporation on compassionate grounds.

5. Opposing the above submissions of Mr. Mankad, the learned Advocate for the respondent Mr. Shelat submitted that with all sympathy for the petitioner, having regard to the various General Standing Orders, it was indeed impossible to give any appointment to him on compassionate grounds. Mr. Shelat submitted that the father of petitioner died on 27-4-1975, and according to the provisions applicable at the time of death of the father of the petitioner, the heir of a deceased employee could apply for employment subject to his satisfying other conditions laid down in G.S.O. 361 of 1973 directly and was entitled to be considered for selection on merits on priority basis. According to Mr. Shelat, since the petitioner was minor at that time, he could not avail of the benefit of the said G.S.O. Subsequently, G.S.O. 659 of 1979 came into force from 12-2-1979, and thereunder, it was laid down that a dependent of deceased could apply within one year from the date of death of the deceased employee, if he was minor at the time of death of the employee and attained majority within one year. The petitioner could not get benefit of this G.S.O. as his case was not covered by the same. Mr. Shelat further submitted that thereafter G.S.O. 687 of 1980 was framed which laid down that such applications could be considered within five years from the date of death of deceased, if his heir attained majority within five years from that date. This G.S.O. was prospectively applicable from 15-12-1980 onwards. Mr. Shelat further submitted that the benefit of only the relevant G.S.O. of the Corporation which is applicable at the time of death of an employee could be given to the dependents of such employee. Mr. Shelat further submitted that at the relevant point of time, when father of the petitioner expired in the year 1975, G.S.O. 687 of 1980 was no more in existence, and accordingly, the same would not be applicable in this case. Mr. Shelat further submitted that even if This Court was inclined to take a view that the said G.S.O. would be applicable with retrospective effect then even, the benefit arising thereunder would not be available to the petitioner for the simple reason that the father of petitioner died on 27-4-1975, and the petitioner attained majority thereafter on 5-12-1981, that is to say after five years and seven months. As per G.S.O. 687 of 1980, the petitioner should have applied on or before 26-4-1980, but as stated above, he attained majority only on 5-12-1981, Not only that but according to Mr. Shelat, the present petition even otherwise suffers from gross delay and latches inasmuch as the petitioner is not found to be diligent enough in approaching This Court which he has done 12 years after his attaining majority, and therefore, on this ground along, this petition deserves to be rejected. Mr. Shelat further submitted that taking into consideration the provisions contained in aforesaid

G.S.OS, the case of petitioner unfortunately does not fall within any of the criterion laid down therein. Mr. Shelat under the circumstances submitted that to give appointment to the petitioner on compassionate ground would not only be contrary to the prescribed rules but the same would also be in violation of Article 14 of the Constitution as it would amount to illegally snatching away one post from those eligible candidates who compete for the same on merits and would also amount to frustrating the purpose of the relevant beneficial provisions framed for giving succour to the family of deceased employee who is in need of immediate financial support and assistance.

6. Having heard the learned Advocates for the respective parties at length, it clearly appears that the stand taken by the respondent-Corporation in not giving appointment to the petitioner on compassionate grounds under the clever disguise of some rules is something contrary to the very basic humanistic policy/philosophy of providing employment to the needy and starving members of the family which has lost the only bread-winner! It is hardly required to be highlighted that the underlying philosophy of providing employment on compassionate grounds is just to mitigate the hardships arisen out of the sudden demise of the only bread-winner of the concerned families. This is the only object which ought to have been properly considered while entertaining such applications for appointment on compassionate grounds. It may also be stated that a person having served in a department, if he was the only bread-earner and dies while on duty, his heirs can certainly hopefully look at the concerned department for legitimate reward of being appointed on compassionate ground in token of respect, appreciation of services rendered to it. Such humanistic appointments on compassionate ground should never be taken as some mercy shown to some beggar, rather it is the duty of concerned department to see that the deceased employee who was as good as its family member, his heirs are not let down and rendered destitute in absence of the deceased, viz., the only bread-winner. Thus, taking into consideration the facts and circumstances of this case, to permit the respondent-Corporation to refuse a "right to bread" to the petitioner and his family under the pretext and technicalities of some rules not complied with would be tantamount to giving undue weightage to the rules which run counter to the benign humanistic spirit and policy of sustaining life of the members of the deceased employee. Thus, when the Court finds that such rules more hinder than help and are more or less unnecessary noose round the neck of a person who cannot be otherwise denied the benefit under the Compassionate Scheme, then the same has to be either liberally construed, and if not, may be required to be cut and scrapped to save their bright sides from being eclipsed by inconsistent rules.

7. In fact, having accepted in principle and accordingly practised the benign social welfare policy of giving suitable job to the dependent of the sole bread-winner employee who dies in harness, the same can never be permitted to be shelved merely on the ground of some technical shortcomings of not complying with the relevant rules. This Court feels that whenever any department is be

faced with a situation, viz., the philosophy and spirit of employing dependent of the sole bread-winner on compassionate ground as against the technical pedantic approach of taking too narrow and shallow view of the matter while interpreting such rules, the guiding principle should be, not to be swayed by form, by way of technicalities, but rather the substance of providing bread and butter, otherwise what happens is that the lofty policy in substance remains where it is, and the technicalities take driver's sit and deny all the benefits of the said policy to the deserving families. Under such type of cases, the scale of justice should tilt towards the humanistic approach, rather the technical one.

8. The second argument of Mr. Shelat that to give appointment to the petitioner on compassionate ground against the rules would run counter to Article 14 of the Constitution has also not substance whatsoever. Article 14 forbids only the hostile discrimination and certainly not the reasonable classification. If under such circumstances, if the petitioner is appointed on compassionate grounds than by no stretch of imagination, it can be alleged to be violative of Article 14 of the Constitution. Similarly, another contention of Mr. Shelat that this petition should be dismissed on the sole ground of delay as the petitioner has chosen to approach This Court after about 12 years has also no substance worth the name. No doubt, the present petition is filed after about 12 years but this time gap immediately pales into insignificance as one cannot ignore the fact situation wherein soon after the death of the father of the petitioner, his widow mother had applied to the respondent-Corporation for suitable job, not only that but even thereafter on attaining majority, the petitioner on several occasions had made applications for giving him suitable employment in the Corporation on compassionate grounds. If under such circumstances, on the one hand not to favourably consider the application of the petitioner at the earliest which the respondent-Corporation was ordinarily expected to and to keep the petitioner on run chasing the shadow, and on the other hand, to allege that the petitioner filed writ after 12 years, is something which the respondents are asking This Court to permit it to take advantage of its own wrong and thereby to put a premium over the same by denying him the rightful justice! At this stage, it may be pointed out that the averments made in the petition regarding approaches and applications made to the respondent authorities time and again by the petitioner have not been denied by the respondent-Corporation in its affidavit-in-reply. Thus, taking into consideration the overall facts and circumstances of the present case, it can never be said that the petitioner has remained indolent all throughout, rather it is only when the petitioner realised that he was hoping against the hope and he appears to have been constrained to move This Court for justice.

9. Taking into consideration the aforesaid facts and circumstances of this case, and keeping in mind the ratio laid down by the Supreme Court in a decision rendered in case of Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , This Court after duly appreciating the difficulties of the present petitioner, is of the opinion that if there is no suitable post vacant and immediately available in the respondent-Corporation as stated by Mr. Shelat,

then even supernumerary post shall have to be created to accommodate the petitioner who has been kept on run for all these years. In view of the aforesaid discussion, since the objections to the appointment of the petitioner on compassionate grounds are totally unsustainable, this petition deserves to be allowed and is allowed accordingly.

10. In the result, this petition is allowed with costs. The respondent-Corporation is directed to give suitable appointment to the petitioner on compassionate grounds within one month from the date of receipt of this judgment. In case there is no vacancy, some supernumerary post may be created and the petitioner be accordingly accommodated. The respondent-Corporation is directed to pay Rs. 750/- to the petitioner by way of costs of this petition. The office is directed to hand over a copy of this judgment to the petitioner on his demand. The office registry is directed to immediately forward a copy of this judgment to [i] the respondent-Corporation at its Ahmedabad address and [ii] the Divisional Controller, Kachchh Division, Bhuj.