

(2015) 01 GUJ CK 0077

In the Gujarat High Court

Case No : Special Civil Application No. 12510 of 2013

Samirkumar Dilipbhai Vasava

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2015) 2 GLR 1010 : (2015) 3 SCT 338

Hon'ble Judges : K.M. Thaker, J

Bench : Single Bench

Advocate : Samir B. Gohil, for the Appellant; Swapneshwar Gautam, A.G.P.,
Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

K.M. Thaker, J.—Heard Mr. Gohil, learned Advocate for the petitioner, and Mr. Gautam, learned A.G.P. for the respondent-State.

1.1. (xxx xxx xxx)

1.2. In view of the facts of the case and at the request of learned Advocate for the petitioner and with consent of learned A.G.P., the petition is taken up for final hearing and decision today.

In present petition, the petitioner has prayed, inter alia, that:

"9(A) Quashing and setting aside the communication dated 19-3-2011 and directing the Respondents to reconsider the case of the petitioner and appoint him on compassionate ground within stipulated time."

(xxx xxx xxx)

2. Learned Advocate for the petitioner submitted that the petitioner had made application within time-limit provided for and contemplated under the policy. He submitted that the petitioner's application ought not have been rejected and the

respondents could have and should have deferred the decision until the petitioner became major and then the petitioner's application ought to have been considered. However, without considering the said aspect, the respondents arbitrarily rejected the petitioner's application, and therefore, the petitioner is constrained to file present petition.

3. Learned A.G.P. submitted that the Director General of Police has issued guidelines dated 20th February, 2010 under which it is clarified that if at the time of death of an employee, an heir who is entitled to submit application seeking appointment on compassionate ground is minor and if he becomes major more than six months after the death of the employee, and thereafter, submits his application, then, such application would not be maintainable, and that therefore, in view of said circular by the Director General of Police, the petitioner's application came to be rejected vide order dated 19-3-2011. Learned A.G.P. submitted that in view of the said clarification, the decision of the authority is just, proper and correct and the petitioner is not entitled for appointment on compassionate ground. Learned A.G.P. further submitted that the petitioner cannot claim appointment as a matter of right. In support of his submission, learned A.G.P. has relied on the decision in case of Vishal Keshubhai Chudasama Vs. State of Gujarat and Others, (2014) 2 GLR 1243 .

4. Having regard to the fact that the policy granting appointment on compassionate ground is cancelled and withdrawn by the respondent State, and instead policy to pay lump-sum compensation is brought in force since July, 2011, it was inquired from the respondents as to whether the respondents would consider the petitioner's application for appointment on compassionate ground or for lump-sum compensation, learned A.G.P. submitted that he has not received any instructions from the respondents, however, in view of the fact that the policy of July, 2011 provides that if the application is already rejected, then, such claim cannot be re-considered, and that therefore, even under the new policy, the petitioner's case cannot be reconsidered by the respondents.

5. I have heard learned Advocate for the petitioner and learned A.G.P. for the respondent-State.

6. The petitioner seeks appointment on compassionate ground. So as to justify the request and the relief prayed for in the petition, the petitioner has mentioned some relevant facts.

6.1. However, before taking into account the facts of the case, a profitable reference needs to be made to the decision dated 14-12-2012 in L.P.A. No. 2615 of 2010. In the said decision, the Division Bench has observed, inter alia, that :

"It is not in dispute that the appellant technically applied within time on 30th August, 2005. If he was minor, the matter ought to have been kept pending by the respondents, as he was to attain majority within few months. It is also not in dispute that compassionate employment was required by one of the members of bereaved family. That ground having not taken in the order of rejection by the

respondents, we are of the view that they should reconsider the case of the appellant for compassionate appointment."

7. At this stage, it would also be appropriate and profitable to take into account the decision by Hon"ble Apex Court in the case between Syed Khadim Hussain v. State of Bihar, 2006 (9) SCC 195. The relevant facts considered by Hon"ble Apex Court in the said decision are mentioned in paragraph No. 2 thereof, which reads thus :

"2. The appellant's father was working as a peon in the Public Works Department of the Government of Bihar. He died in harness on 12-9-1991 leaving behind the widow and five minor children. After the death of the appellant's father the appellant's mother submitted an application for appointment on compassionate grounds on 2-4-1993. This application was within time, but it was rejected for the reason that it was not in the prescribed proforma. The appellant herein was a child aged about 9 years at the time of the death of his father. He submitted an application on 7-9-1995. This application was rejected by the authorities on 12-10-2001 by holding that the appellant at the time of filing the application was aged only 13 years and 3 months and 23 days old, and therefore, he could not be appointed in Government service."

7.1. After having considered the said facts, Hon"ble Apex Court observed in the said decision thus :

"4. We have heard the appellant's Counsel and Counsel for the respondent. Counsel for the appellant points out that after the death of the Government servant his wife submitted an application and it was rejected without giving any reasons and the Counsel for the State submits that the same must have been rejected as it was not in the prescribed format. If the applicant had not submitted the application in the prescribed format, the State authorities should have asked the applicant to submit the application in the prescribed format giving out the details of the procedure. In the matters of compassionate appointments, the authorities should extend the service in an effective manner so that the eligible candidate may avail the opportunity. Though, the orders of rejection of the application of the appellant's mother was not challenged the appellant pursued the matter and submitted the application later. The contention of the Counsel for the State is that the application filed after 5 years after the date of death of the Government employee will not be considered and he further submitted that the application filed on 7-9-1995 was rightly rejected by the authorities.

5. We are unable to accept the contention of the Counsel for the State. In the instant case, the widow had applied for appointment within the prescribed period and without assigning any reasons the same was rejected. When the appellant submitted the application he was 13 years" old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of the

application he must have crossed 18 years and he could have been very well considered for appointment. Of course, in the rules framed by the State there is no specific provision as to what should be done in case the dependents are minors and there would be any relaxation of age in case they did not attain majority within the prescribed period for submitting application."

(Emphasis supplied)

7.2. It is trite that appointment on compassionate ground is not and cannot be converted into source of recruitment. It is also settled position that employment on compassionate ground cannot be claimed as a matter of right. It is a concession and not a vested right. Actually, appointment by and/or under the Government, local authority, public body like statutory corporation or the authority under Art. 12 of the Constitution must be made by strictly and diligently observing and complying mandatory requirements under Arts. 14 and 16 of the Constitution and in accordance with the procedure prescribed for selection and recruitment.

7.3. The mode of appointment on compassionate ground is carved out only by way of an exception with a view to extending assistance to the deceased employee's family, who may be in distress on account of sudden demise of the bread-earner of the family. When a claim for appointment on compassionate ground is made by member of the deceased employee's family, the authority would be obliged to take into account various factors and will not be driven only with the unfortunate death of the employee, in sight and in focus.

7.4. The concerned authority will have to take into account, for an instance, as to whether there is any existing vacancy in the same department or same organization or not and whether the concerned applicant fulfills prescribed qualifying criteria or not and whether he fits into the four corners of the policy or not. The concerned applicant should satisfy the authority that he possesses minimum educational qualification prescribed for the post in question and that he fulfills the other prescribed requirements like maximum age-limit prescribed for the post. If the policy so postulates, the authority would also consider financial position of the family.

7.5. The Court has to keep in focus that the claim for appointment on compassionate ground can be made and can be considered and can be granted or directed within the frame-work of the policy. In the event, there is no policy or if the policy provides particular type of remedy for members of the deceased employee's family, then, the Court cannot expand the scope and purview of the policy and cannot direct the competent authority to extend such benefit, which is not provided for or contemplated under the policy. If a particular policy which was in force until particular point of time is modified or is withdrawn and substituted by another policy, then, it would not be just and proper for the Court to direct the competent authority to consider and decide the application by member of deceased employee's family in light of the provisions under the

erstwhile policy or de hors the existing policy.

7.6. The Court cannot stretch or bend the terms and conditions of the policy which allows the appointment on compassionate ground and liberal interpretation of the terms and conditions beyond permissible limit, either on humanitarian or such other grounds, ought not be undertaken by the Court for issuing directions to the competent authority. The Court would be obliged to ensure that the competent authority deals with and decides the application, by an heir or legal representative of the deceased employee, at the earliest and without any avoidable and unjustified delay, so that the family in distress gets the support immediately.

7.7. While it is true that the petitioner cannot claim appointment on compassionate ground as a matter of right, it is, however, equally true that if the respondent State has framed and brought in force a policy allowing appointment on compassionate ground, then, a citizen has legitimate expectation that the respondent State will act in accordance with the policy introduced and brought in force by it, more so when such policy is being implemented and acted upon in case of other persons.

7.8. So long as the policy to grant appointment on compassionate ground or to pay lump-sum amount to an heir of the deceased employee, so as to provide relief to the family in distress, is in force the heir of deceased employee would obviously expect that his/her application would be considered in light of the terms and conditions of existing and applicable policy.

7.9. Of course, no one can expect, and Court also cannot direct that the application should be considered de hors the policy or for considering the application and for extending the benefit, the provisions of the scheme should be diluted and relaxed or discounted or overlooked in his/her case.

7.10. Further, the policy should be implemented in its true spirit i.e. so as to give effect to its spirit; and liberal interpretation so as to expand the contemplated purview of the policy should not be employed.

7.11. The benefit, if available, can be extended in terms of the conditions of the policy and on compliance of the terms and conditions of the policy. Equally so, the prescribed eligibility criteria, be it related to minimum and upper-age-limit or minimum educational qualification and any other restriction will also have to be strictly complied with and diligently observed. Neither the authority can ignore, relax, overlook or dilute such provisions nor can the Court give such direction to the authority.

However, when it is noticed that the case falls within the four corners of the relevant policy and yet the authority has mechanically or unjustifiably or arbitrarily rejected any application, then, the Court would not be justified in not interfering. In such cases, the Court would step-in and issue appropriate directions to the respondent authority.

8. In this context, a profitable reference may be made to the observation by Hon"ble Apex Court in the case of State Bank of India and Another Vs. Raj Kumar, (2010) 11 SCC 661 : (2011) 1 SCC(L&S) 150 , wherein Hon"ble Apex Court observed that :

"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 favour 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.

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, upto 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.

13. Further where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts."

8.1. Reference may also be made to the observation by Hon"ble Apex Court in case of MGB Gramin Bank Vs. Chakrawarti Singh, (2013) 9 AD 253 : AIR 2013 SC 3365 : (2013) 139 FLR 469 : (2013) LabIC 3824 : (2013) 10 SCALE 223 : (2013) 4 SCT 541 : (2013) 114 SLJ 328 : (2013) AIRSCW 4801 , wherein Hon"ble Apex Court observed that :

"6....."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. 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. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis."

(Emphasis added)

7. An "ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

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."

The facts of present case deserve to be considered in light of the above-mentioned decisions.

9. In light of this position, when the petitioner's case is examined, following facts emerge :

9.1. It emerges from the above-mentioned facts that when the petitioner's father died on 23-8-2008, he was an employee with the respondent and was working at the relevant time as Assistant Police Constable. It also comes out that the date of birth of the petitioner is 7-8-1992. Thus, the petitioner was minor at the relevant time.

9.2. Though the petitioner was minor at the relevant time, so as to ensure that his application reaches the authority within prescribed time-limit, the application seeking appointment for the petitioner was submitted by the family on 20-12-2008.

Thus, it is not in dispute that the application seeking appointment on compassionate ground was made within time-limit prescribed for the purpose of submitting the application.

It also emerges from the record that the petitioner reached the age of 18 years on 7-8-2010.

9.3. At this stage, it is relevant to record a pertinent fact viz. until the date on which the petitioner reached age of 18 years and became major, the application (which was submitted on 20-12-2008) was not rejected by the respondents and any order-much less the order dated 19-3-2011 - was not passed.

The order-impugned in present petition whereby the petitioner's application came to be rejected was passed almost 7 months after the petitioner attained the age of 18 years, i.e. after he became major.

The above mentioned facts establish that the petitioner had attained age of 18 years and he became major on 7-8-2010, i.e. almost 7 months before the authority passed the order in question i.e. impugned order dated 19-3-2011.

9.4. In this view of the matter, the observation by Hon"ble Apex Court in the above referred decision in case of Syed Khadim Hussain, [2006 (9) SCC 195] are

relevant and squarely applicable. It would be profitable to recall the observations by Hon''ble Apex Court where it is observed that :

"5.....When the appellant submitted the application he was 13 years" old and the application was rejected after a period of six years and that too without giving any reason and the reason given by the authorities was incorrect as at the time of rejection of me application he must have crossed 18 years and he could have been very well considered for appointment....."

10. In this view of the matter, the respondents ought to have taken into consideration the petitioner's application at the time when the order came to be passed and that the respondents are not justified in ignoring, while passing the impugned order, the fact that the petitioner had already attained age of 18 years. The respondents are also not justified in claiming that the petitioner had not attained age of 18 years within 6 months after me death of his father, and therefore, the application cannot be granted.

11. When me relevant policy is taken into account, any provision expressly prescribing a condition that the heir should have attained age of 18 years within six months after death of the employee and any application by an heir who attained age of 18 years and became major after period of six months from the death of the employee will not be considered, is not found in the policy.

11.1. Further, there is no provision in the policy which would establish that me Director General of Police has any authority to improvise the scheme framed by, and brought in force by, the respondent-State.

11.2. There is also no provision in the policy on record to establish that the Director General of Police has any power or authority to issue instructions contrary to, or to add anything to, the provisions under the scheme.

11.3. When such restriction is not found in the policy, the respondents could not have relied on the instructions issued by the Director General of Police.

12. Now, the questions which arise are related to, and they arise from, the fact that when the petitioner attained age of 18 years, i.e. on 7-8-2010, me policy allowing appointment on compassionate ground was in force. The said policy came to be cancelled/withdrawn by me respondent State and new policy is brought in force w.e.f. 5-7-2011.

13. Thus, the policy allowing appointment on compassionate ground was in force at me time when the father of the petitioner died and at the time when the petitioner attained age of 18 years and also at the time when the authority passed the impugned order i.e. order dated 19-3-2011. New policy, i.e. to grant lump-sum payment came to be introduced after about four months, i.e. w.e.f. 5-7-2011.

14. In this view of the matter and having regard to me fact that when the petitioner filed present petition and when the Court considered the grievance of

the petitioner, the policy of 2010 was not in force, the Court had inquired from the respondents as to whether the respondents would consider the petitioner's case in light of the policy which was in force at the time when the decision was taken or the policy which is presently in force. However, the respondents came up with the reply that the petitioner's case cannot be considered under present policy or erstwhile policy.

15. The impugned order dated 19-3-2011 reads thus :

"In connection with the aforesaid subject and reference, it is respectfully submitted that your proposal to get compassionate employment in Class-IV was sent to the Government and on examining the said proposal, the prescribed six months time-limit for making application to get compassionate employment as per prevailing recruitment rules for the post of Class-IV is 23-2-2009. As your date of birth is 7-8-1992 and you have not attained the majority on 7-8-2010 (sic), your proposal has been rejected." (free translation from vernacular)

16. On examination of the impugned order, it has emerged that the competent authority has not taken into consideration the above-mentioned fact situation and the decision by Hon''ble Apex Court in case of Syed Khadim Hussain, [2006 (9) SCC 195] or the order dated 14-12-2012 by the Division Bench in L.P.A. No. 2615 of 2010.

17. In this view of the matter and in the facts and circumstances of the case, the case of the petitioner requires reconsideration by the respondents.

17.1. This Court is of the considered view that the respondents should reconsider the case of the petitioner in light of the decision by Hon''ble Apex Court and Division Bench of this Court and in light of foregoing discussion and the facts of the case.

18. At this stage, it is relevant to mention that learned Advocate for the petitioner has stipulated and declared that since the policy allowing appointment on compassionate ground is not in force since 5-7-2011, the petitioner will not insist for appointment and the petitioner will be satisfied if appropriate amount in accordance with the policy dated 5-7-2011 is paid to the petitioner and he would accept the said amount in lieu of appointment on compassionate ground since the said policy is in force as of now. In this view of the matter, following order is passed:

18.1. The impugned order dated 19-3-2011 is set aside. The matter is remitted to the respondents for reconsideration.

18.2. It would be open to the respondents to consider the petitioner's case either under the policy which was prevailing at the time when the petitioner attained the age of 18 years and the order dated 19-3-2011 came to be passed or the policy which is presently in force (i.e. for payment of lump-sum amount/compensation). The competent authority will consider the petitioner's case and pass appropriate reasoned order as expeditiously as possible and preferably

within two months."

With the aforesaid observations and directions, present petition is partly allowed and accordingly stands disposed of.

Rule is made absolute to the aforesaid extent.

Direct Service is permitted.