(2007) 10 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 683 of 2005

Santaben and Another APPELLANT

Vs

Chief Manager, O.N.G.C. Ltd. and Others RESPONDENT

Date of Decision : 25-10-2007

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2008) 117 FLR 339

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Mukul Sinha and Utpala S. Bora, for Petitioners Nos. 1-2, for the Appellant; Trivedi and Gupta, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned Advocate Ms. Utpala S. Bora for the petitioner and Mr. Joshi for M/s. Trivedi & Gupta for the respondent ONGC.

2. Through this writ petition, the petitioner has challenged the order passed by the respondent ONGC dated 15.10.2004 whereby application made by Petitioner No. 2 for appointment on compassionate ground has been rejected on the ground that according to the policy at the time when the husband died, he had crossed the age of 55 years, 5 months and 13 days and, therefore, according to the policy less than 55 years is necessary and, therefore, petitioner is not covered by the policy of ONGC.

3. Learned Advocate Ms. Bora for the petitioner submitted that husband of the petitioner was working in respondent ONGC as Khalasi Grade-I and the age of retirement of her husband was 60 years and that has not been disputed by the respondents. She relied upon Clause (b) of Item No. 2.4 of policy and submits that as per Clause (b) thereof, the deceased/disabled employee should have more than 3 years to left for superannuation i.e. less than 55 years of age. Clause (b) reads as under:

(b) the deceased/disabled employee should have more than 3 year left for superannuation i.e. less than 55 years of age.

4.She submits that aforesaid Clause (b) has been incorporated while keeping in mind the age of retirement or superartnuation 58 years whereas in case of deceased employee in this case, his age of superannuation was 60 years and, therefore, naturally, husband of the petitioner, at the time of his death, must have left more than three years for superannuation considering his age of retirement as 60 years and, therefore, respondent corporation has erred in rejecting the claim of petitioner on the said ground. She further submitted that according to the aforesaid clause, petitioner is entitled for appointment on compassionate ground according to policy which was prevailing at the relevant time when husband of the petitioner dies while in service. She submits that recently also, one representation was made by the petitioner to the respondent corporation on 22.1.2007 and instances were cited therein about those deceased employees who had crossed 55 years age and yet their cases were considered. However, while replying said representation, respondents have not considered the instances cited by the petitioner in her representation dated 22.1.2007 Ms. Bora submitted that respondent corporation has considered the cases of deceased employees who were having more than 55 years age at the time of death contrary to the old policy as under:

Name of employee: Late Smt Lailben P. (CPF No. (8182), Designation: Khalasi Gr. Gd. I posted at DBC Ahmedabad Asset, date of birth 15.4.1933; expired on 28.11.1991, age at demise 58 years, 7 months, employment provided to son Shri PB Parmar (CPF No. 60707) as Jr. Sanitary Cleaner w.e.f. 7.6.2001 and posted at Cambay Asset.

(b) Late KC Pillai (CPF No. 2377)

Security Guard,

Posted at Mehsana Asset

Date of Birth 23.3.1934

Expired on 25.5.1989

Age of demise 55 years 2 months

Employment provided to son Shri Sunil Kumar (CPF No. 80919) as Sr. Security Guard w.e.f 24.11.1998 posted at Mehsana Asset.

5. Relying upon the aforesaid two instances, she submitted that if respondents have considered cases of those employees who had crossed age of 55 years of age at the time of their death and granted appointment to their dependent on compassionate ground, then, case of the petitioner ought to have been considered by the respondent corporation on the basis of same footing by giving same treatment to the petitioner and therefore, denial of appointment on compassionate ground is volatile of Article 14 of the Constitution of India and respondents have also discriminated petitioner by not considering her case as

per old policy. This being one additional factor, respondents are required to be directed to reconsider the case of the petitioner for compassionate appointment on the basis of old policy as the dependents of similarly situated other employees were given benefit and, therefore, if the age of the husband of the petitioner was above 55 years, respondent corporation has examined case of the petitioner on the basis of old policy and relied upon it and rejected it and, therefore, now corporation has to reconsider the case of the petitioner on the basis of old policy alone and looking to the fact that the age of 60 years is the age of superannuation for Khalasi Grade-I which is not disputed by the learned Advocate Mr. Joshi for the respondent, therefore, aforesaid Clause (b) would stands satisfied by petitioner considering the language thereof and age of retirement of husband of the petitioner and, therefore, that would satisfy the requirement of Clause (b) and also considering object behind, husband of the petitioner was having the age of more than three years at the time of his death in his credit for completing the age of superannuation. Respondent Corporation being an authority of the State has to act fairly and reasonably and such cases of compassionate appointment have to be considered with sympathetic approach and not to decide such cases by merely raising technical objection. According to my opinion, case of the petitioner is squarely covered by old policy and respondents have wrongly interpreted Clause (b). Petitioner is entitled lor compassionate appointment as per the old policy. While rejecting the case of the petitioner, respondents have considered it on the basis of old policy and therefore, now question does not arise to consider case of petitioner as per new policy because earlier his case was considered as per old policy and therefore, it has to be reconsidered only as per the old policy and not new policy otherwise it amounts to a new ground fcr rejecting the case of the petitioner which is not permissible in law to switch over old policy without any jurisdiction and to consider the case on the basis of the new policy and such type of contention suggests arbitrariness and unfair approach on the part of the respondent corporation which is a State authority and therefore, respondents are required to be directed to reconsider case of petitioner for such compassionate appointment on the basis of old policy while keeping & view the fact that the age of superannuation of the husband of the petitioner was 60" years and not 58 years and, therefore more than 3 years were remaining in his credit for approaching the age of superannuation at the time of his death. She relied upon the case of State Bank of India v. Akeel Ahmad Ktian,1 reported in para 2 of said decision, it has been observed as under:

2. This is a case of compassionate appointment. The High Court has directed reconsideration of the case of the respondent in the light of the three instances namely the instances of the Chief Manager Mr. P.K. Nath, Mr. K.J. Rajgopalan, Assistant Manager and Mr. Javed Akhtar, General Manager, Delhi Circle where the relatives of these persons have been given compassionate appointment. The fact that the compassionate appointments were given in these three cases is not disputed by the appellants. However, they say that these are distinguishing

factors between the compassionate appointment given in that case and the appellants case we are not prepared to carry out the inquiry ourselves but the matter must be considered in depth by the authority concerned. It is being made clear that whatever principle was followed in granting compassionate appointment in respect of the aforesaid three employees must also be followed as far as the appellant is concerned.

6. Learned Advocate Ms. Bora submits that recently also, the Apex Court has in two decisions namely (1.) Abkishck Kumar v. State of Haryana and Ors. 2007 (11) FLR 700 (SC) and (2) State Bank of India and Others Vs. Jaspal Kaur, held that the case of appointment on compassionate ground has to be decided only on the basis of the policy which was prevailing at the time of death of concerned Government employee or the date on which such application was made by the dependent and not on the basis of subsequent change or amendment In the policy.

7. In the matter of the State Bank of India and Others Vs. Jaspal Kaur, in para 5 the Apex Court has held as urder:

Appellant herein has sought for appointment on compassionate grounds at a point of time when 2003 Rules were not in existence. His case, therefore, was required to be considered in terms of the rules which were in existence m the year 2001. Evidently, in the State of Haryana a State wise list is maintained, In terms of the said list so maintained by the State of Haryana, the appellant was entitled to obtain an appointment on compassionate grounds. He was offered such an appointment by the state. It was the District Magistrate who come on the way and refused to provide for the post.

8.The Apex Court has also taken view in case of State Bank of India and Others Vs. Jaspal Kaur, wherein the Apex Court in Para 30 held as under:

30.Finally in the fact situation of this case, Sri Sukhbir Inder Singh (Late). Record Assistant (Cash & Accounts) on 1.8.1999. in the Dhab Wasti Ram. Amritsar branch, passed away. The respondent, widovy of Sri Sukhbir Inder Singh applied for Compassionate Appointment in the appellant Bank on 5.2.2000 under the scheme which was formulated in 2005. The High Court also erred in deciding the matter in favour of the respondent applying the scheme "formulated on 4.8.2005, when her application was made in 2000. A dispute arising in 2000 cannot be decided on the basis of 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, 5,855/- only which is less than 40% of the salary last drawn by Late Shri Sukhbir Inder Sipgh, in contradiction to the 2005 does not hold water.

9.Relying upon the aforesaid decisions, she submits that at the tune of death of husband of the petitioner, policy annexed to Annexure ''C dated 20.7.1987 office memorandum page 11 was in existence and this aspect has not been disputed by the learned advocate Mr. Joshi who is appearing for the respondent corporation.

However, contention has been raised that subsequently said policy has been totally changed and therefore, in view of such change petitioner is not entitled for appointment on compassionate ground. Learned Advocate Ms, Bora submits that even according to the new policy also, privilege has been given to the dependent of the deceased employee who died while in service before retirement for appointment on compassionate ground.

10. Considering the aforesaid submissions made by both the learned advocates as well as averments made in petition and affidavit in reply and documents which are annexed to reply as well as with the petition. T have perused entire records of petition and also keeping in mind old policy which was in existence at the time of death of husband of the petitioner and also considering the decision and reply given by the respondents wherein her application has been rejected only on the ground that according to old policy/policy existed at the relevant time, husband of the petitioner has not left 3 years service because he crossed the age of 55 years, in light of that ground and considering the age of retirement of husband of the petitioner, of 60 years and considering the object behind, incorporating the condition that at least 3 years must have to be left before the death of concerned employee is to be maintained in case of the petitioner and, therefore, according to my opinion, this case would require reconsideration by the respondent corporation only according to the old policy and the respondents shall have to pass fresh orders as per item 2/4(b) as referred to above within some reasonable period.

11. Learned Advocate Mr. Joshi submits that this old policy dated 20.7.1987 has been abolished and new policy has come into operation w.e.f. 1.6.1998. First dependent of the deceased employee applied in the year 1991 as per the statement made by Ms. Bora which was rejected by respondent on the ground that the first dependent was not qualified as per the old policy and. thereafter, second dependent made an application which was decided on 15.10.2004. important thing is that though decision has been taken by the respondents on 1.5.1.0.2004 while examining case of the second dependent by the lespondent corporation had considered old policy which was prevailing at the relevant time when the concerned employee died and, therefore, now the respondent corporation cannot take stand or raise contention that in view of the new policy which came into effect on 1.6.1998 petitioner is not entitled for such appointment because their decision is based on old policy which was prevailing at the relevant time when the concerned employee expired.

12. In view of the aforesaid facts and circumstances and considering the kind of case being special case wherein concerned employee died in the year 1990, dependent remained without job because of wrong interpretation of the. policy by the corporation and, therefore, following order is passed which may not be considered to be precedent in any other cases.

ORDER

Order of the respondent corporation dated 15,10.2004 is hereby quashed and set aside with a direction to the respondent corporation to reconsider the case of Petitioner Mo. 2 dependent as per the policy dated 20.7.1987 and also to consider that the of superannuation of the deceased employee Khalasi Grade-I is 60 years and looking to item 2/4(b) which is having purpose/object behind that at the time when the concerned employee died, he must have left more than three years age before superannuation. Practically that object has been achieved in this case or maintained looking to the age of retirement 60 years when concerned employee died to that time more than three years service was remaining for superannuation and, therefore, respondent corporation must have to reconsider the matter of Petitioner No. 2 with sympathetic approach and positive consideration and pass appropriate "reasoned orders only and strictly in accordance with the old policy while considering that the age of superannuation of the deceased employee was 60 years and then to pass appropriate reasoned orders as per the old policy within three months from the date of receipt of copy of this order and communicate same to the petitioner immediately thereafter.

Rule is made absolute in terms indicates herein above with no order as to costs. However, it is open for the petitioner to file appropriate proceedings before the appropriate forum in accordance with law if fresh orders that may be made by respondents are adverse to the petitioner.

It is clarified that these directions have been issued by this Court in view of peculiar facts and circumstances of this case and, therefore, same shall not be riled as precedent.