
(2011) 03 GUJ CK 0149

In the Gujarat High Court

Case No : Letters Patent Appeal No's. 2785 of 2010

State of Gujarat and Others

APPELLANT

Vs

Budhabhai A. Chavda

RESPONDENT

Date of Decision : 09-03-2011

Acts Referred:

Citation : (2011) 52 GLR 1236

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Nirag Pathak, A.G.P. Nos. 1 to 3, for the Appellant; G.R. Vijayalakshmi, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Sahai, J.—Admit. With the consent of the learned Counsel for the parties, this appeal is taken up today for final disposal.

2. This Letters Patent Appeal has been filed by the Appellants challenging the judgment and order dated 19-4-2010 passed by the learned Single Judge, in Special Civil Application No. 17541 of 2007, by which, the learned Single Judge has allowed the writ petition and directed the Respondent authorities to consider the case of Respondent afresh for giving appointment on compassionate ground on the basis of the policy prevailing on the date when application for compassionate appointment was made by the Appellants. It was further directed that the authority shall take a fresh decision within a period of four weeks.

3. The facts of the case in brief are that, the father of Respondent was working as a Watchman (Chowkidar) and he died in harness on 29-12-2001. On the next day of death, the Respondent on 30-12-2001 moved an application before the authorities to grant him appointment on compassionate ground. The application dated 30-12-2001 was on a plain paper, even then the Appellants on 28-1-2002 asked the Respondent to submit documents as mentioned in the letter. The Respondent submitted the required documents on 13-8-2002 to the Section

Officer who forwarded it on 22-11-2002 to the Executive Engineer who in turn forwarded the application on 11-7-2003 to the Respondent No. 1. On receipt of the application and documents, the Respondent No. 1 rejected the said application on 13-1-2004 on the ground that the application has been made after six months of the death of the deceased and was time-barred as per Government Resolution dated 10-3-2004. The Respondent made another request for appointment on compassionate ground which was rejected by order dated 18-8-2005 on the ground that the Respondent did not possess the minimum qualification, i.e. S.S.C. as per the Notification dated 16-3-2005.

4. The Respondent challenged the orders of rejection by means of Special Civil Application No. 5994 of 2007. The learned Single Judge by judgment and order dated 5-3-2007 remanded the matter back to the authorities with a direction to the Appellants to consider the matter of the Respondent for compassionate appointment afresh without being influenced by earlier decisions dated 13-1-2004 and 18-8-2005 after considering Government Resolution dated 10-3-2000 within a period of two months, after considering the policy which was applicable at the time when the Respondent had made the application for compassionate appointment. This order of the learned Single Judge dated 5-3-2007 became final and binding between the parties and it was not challenged by the Appellants by filing Letters Patent Appeal.

5. The Appellants have again, in spite of the directions given by order dated 5-3-2007, rejected the application of the Respondent for compassionate appointment by order dated 20-6-2007 on the same grounds, namely, that the Respondent has not made the application within the prescribed time-limit and that he had not passed S.S.C. Examination.

6. We have heard Mr. Nirag Pathak, learned Assistant Government Pleader for the Appellant and Ms. Vijayalakshmi, learned Counsel for the Respondent. Counsel for the Respondent has placed before us the Scheme for compassionate appointment dated 10-3-2000.

7. Learned Assistant Government Pleader has vehemently urged that compassionate appointments are provided to meet the immediate exigency in the family of the deceased who died on 29-12-2001 and after more than 9 years, the appointment should not be granted. He urged that the application was time-barred and the Respondent did not possess S.S.C. qualification notified on 16-3-2005.

8. On the other hand, Ms. Vijayalakshmi, learned Counsel for the Respondent has urged that the Petitioner had made the application for compassionate appointment immediately after the death of his father and due to the fault on the part of the Appellants, compassionate appointment was not provided and the family is still in very bad financial condition as retirement dues of Rs. 1,25,000/- was paid to the family and only Rs. 1,600/- family pension is provided. Therefore, for the fault of the Appellants, the Respondent cannot be penalised

and made to suffer.

9. The first contention of Mr. Nirag Pathak, learned A.G.P. is that the Respondent did not apply for compassionate appointment within the prescribed period of limitation and after more than 9 years, compassionate appointment cannot be provided. For considering this question we need to examine the Scheme of the Government for compassionate appointment. The Government of Gujarat took a policy decision and has framed a Scheme for compassionate appointment on 13-10-1975. This Scheme was revised, which is known as "Revised Scheme of giving compassionate appointment to the member of the dependent family of the Class-III and Class-IV employee who died during service" (Government Resolution, General Administration Department, No. BHRT/219/K, dated 10-3-2000). The object of the Scheme was to give relief in financial stringency and to assist the family to cope with unexpected critical situation by giving compassionate appointment to one member of the dependent family of the employee who died during service leaving the family in helpless condition without any means of livelihood. No income limit was applicable for securing compassionate appointment under the Scheme. The Scheme was applicable only to the member of dependent family of Class-III and Class-IV employees who were appointed on regular basis and who have put in at least five years of service and died during service. The Scheme was also applicable to the employees who were employed in the work-charged establishment.

10. The Scheme provided the eligibility criteria wherein it was provided that for the post of Class-IV, candidate who possesses educational qualification of Std. IV to IX were eligible for compassionate appointment. Para 7(A) of the Scheme provided that compassionate appointment shall be made on regular vacancies available on permanent basis. Para 8(A) of the Scheme provided that, an application for compassionate appointment shall be made immediately after the death of the employee concerned and the application was required to be made within three months from the date of the death of the employee. Any application made after the period of three months was not to be considered in any circumstances. Since time-limit was fixed by the Scheme, the Scheme took care that the family of the deceased which is in penury should not suffer for indefinite period and that is why in the Scheme, the procedure was mentioned as to how compassionate appointment would be provided. It is relevant to extract the procedure provided in Paras 11(A) to 11(N) of the Scheme dated 10-3-2000, which reads as under:

11. (A) For considering the case of compassionate appointment, full responsibility is entrusted to the Additional Chief Secretary/Principal Secretary/Secretary in the case of the respective department of Sachivalaya and respective Heads of departments in case of other employee that as soon as the employee concerned dies, the application form prescribed for securing compassionate appointment as per Appendix-2 appended herewith is sent by the department of Sachivalaya/department/office in which the deceased employee had been serving

at the time of death, to the responsible member of the dependent family and get completely complied and filled with necessary declaration/ undertaking latest by one month.

(B) For the respective department of Sachivalaya/department/office, the knowledgeable responsible officer/employee should be deputed immediately to take personal visit of the dependent family for this or the applicant member of the family eligible for compassionate appointment along with the responsible member of the dependent family should be called immediately in person and elucidation and guidance about this Scheme of giving compassionate appointments should be given and the requirements and formalities for that should be shown and advice should be given for its compliance, the application of one member of the eligible dependent family along with full compliance for securing compassionate appointment as per this Scheme shall invariably be obtained within the above time-limit by the respective department of Sachivalaya in case of Sachivalaya and the Head of the department in case of other offices.

(C) The application from one eligible member of the dependent family obtained for compassionate appointment according to this Scheme should be scrutinized on priority basis by the respective department in the case of Sachivalaya and by Head of the Department in the case of other offices and missing things should be got complied promptly, and the application with full compliance and necessary documents, shall be sent directly to the Gujarat Subordinate Services Selection Board latest by two months from the date of death of the employee concerned by the respective department of Sachivalaya and the Head of the Department along with their opinions. This time-limit shall be strictly complied with.

(D) On receipt of the application by the Gujarat Subordinate Services Selection Board for compassionate appointment as above, the Board shall scrutinize/ consider the same in the light of this revised Scheme of giving compassionate appointment as well the orders/instructions issued by the General Administration Department of the Government on this subject. For this, one meeting of all members of the Board shall be called in second week of every month for scrutiny/ consideration of applications received by the Board during the preceding month. The candidate of compassionate appointment may be called to hear in person in this meeting of the Board, if found necessary for better assessment of the facts of the case.

(E) After scrutiny/consideration of the candidates of the compassionate appointment in this way by the Board, the Board shall, without delay, recommend/allot the candidates selected/found fit for compassionate appointment, to the department of Sachivalaya/Department/office in which suitable vacancy is available for compassionate appointment in the respective department of Sachivalaya/department/office, after following the norms mentioned in above 7(E) and (F).

(F) On recommendation/allotment of such candidates by the Board, in pursuance

of the existing policy rules of the Government, all procedure of recruitment like securing medical certificate of physical fitness shall be completed on priority basis, the appointing authority, the Additional Chief Secretary/Principal Secretary/Secretary in the case of the departments of Sachivalaya and Heads of departments/offices in the case of other offices shall give them appointments immediately.

(G) The Gujarat Subordinate Services Selection Board shall do the work of selection, recommendation and allotment of candidates of compassionate appointment on the posts of Class IV besides Class III.

(H) In the cases of deceased employee of the Panchayat Service, for considering compassionate appointment the full responsibility is entrusted to the District Development Officer concerned that as soon as the employee concerned dies, the application form prescribed for securing compassionate appointment as per Appendix-2 appended herewith is sent by the office in which the deceased employee had been serving under the various Panchayats, to the responsible member of the dependent family and get completely complied and filled with necessary declaration/undertaking.

(I) The respective District Development Officer/Taluka Development Officer should depute any knowledgeable responsible officer/employee immediately to take personal visit of the dependent family for this or should call in person the applicant member of the family" eligible for compassionate appointment along with the responsible member of the dependent family, give elucidation and guidance about this Scheme of giving compassionate appointment and show the requirements and formalities for that and give advice in person for its compliance and the District Development Officer concerned shall invariably obtain in any circumstances within above time-limit, the application of one member of the eligible dependent family along with full compliance for securing compassionate appointment as per this Scheme.

(J) The District Development Officer concerned shall scrutinize on top priority basis, the application obtained as above from one member of the dependent family for compassionate appointment according to this Scheme, get missing things complied immediately, and shall send the application along with full compliance and necessary documents with his necessary opinion to the Panchayats, Rural Housing and Rural Development Department of the Government latest by two months from the date of the death of the employee concerned. This time-limit shall be strictly complied with.

(K) In order to scrutinize/consider the application of compassionate appointment on posts under the Panchayat Services, the Additional Chief Secretary/Principal Secretary/Secretary of Panchayats, Rural Housing Department and Rural Development Department of the Government shall constitute one Standing Committee consisting of one Chairman and two members from the Additional Secretary/Joint Secretary/Deputy Secretary, thus three ex-officio members.

(L) On receipt of the application by the Panchayats, Rural Housing and Rural Development Department of the Government from one eligible member of the dependent family of the deceased employee under Panchayat Service as above, the Standing Committee of that department constituted as above shall scrutinize/consider the same in the light of this revised Scheme of giving Compassionate appointments as well as the orders/instructions issued by the General Administration Department of the Government on this subject. For this, one meeting of all members of the Committee shall be called in second week of every month for scrutiny/consideration of applications received by the Department during the preceding month. The candidate of the compassionate appointment may be called to hear in person in this meeting of the committee, if found necessary for better assessment of the facts of the case.

(M) After scrutiny/consideration of the candidates of the compassionate appointments in this way, the committee shall submit its recommendation to the Additional Chief Secretary/Principal Secretary/Secretary of the department for approval. After the approval of the Additional Chief Secretary/ Principal Secretary/ Secretary is secured on the recommendation of the committee the department shall, in pursuance of the norms mentioned in above 7(G) of the candidates selected/found fit for compassionate appointment, make allotment without delay to the office of the respective District Development Officer under whose control the vacancy suitable for compassionate appointment is available.

(N) On allotment of such candidates by the Panchayats, Rural Housing and Rural Development Department, in pursuance of the existing policy rules, all procedure of recruitment like securing medical certificate of physical fitness shall be completed on priority basis and the District Development Officer concerned shall give them appointment immediately.

11. From the bare perusal of the procedure, it is clear that it was the responsibility and duty of the Officer or Head of Department as soon as the employee died in harness to immediately depute a person from his office to go and meet the dependent family. And depute a responsible officer/ employee to make a personal visit to the deceased's family and get the application form for compassionate appointment filled on the prescribed form by guiding the depending family as to how the application form is to be filled. A further duty had been cast upon the Officer concerned to get the formalities completed within a period of two months from the date of death of the employee and send it to the concerned authority empowered to grant compassionate appointment. The Scheme further mandates that the time-limit of two months had to be strictly complied.

12. Paragraph 11(E) read with Paragraphs 7(E) and (F) further secures the interest of the dependent of the deceased when it in unequivocal terms lays down that if there was no vacancy in the office or department where the deceased was serving then compassionate appointment be provided on available vacancy for compassionate appointment falling in any department of Sachivalaya/

department/office under the State Government.

13. How the laudable object of a beneficent Scheme framed by the State Government is defeated by the inaction and lacklustre approach of the officers/employees of the State Government is demonstrated by the facts of this case.

14. In the instant case, we find that Anupsinh Dajibhai Baraia (Chavda) died in harness on 29-12-2001. His elder son, Budhabhai A. Chavda, Respondent herein filed an application on 30-12-2001 for compassionate appointment. This application of the Respondent was on a plain paper sent to the concerned authority. The Deputy Engineer, Thasra Peta Vibhag informed the Respondent on 28-1-2002 that in connection with the application dated 30-12-2001, the Respondent was required to submit some documents as mentioned in letter dated 28-1-2001. It was not stated in this letter dated 28-1-2001 that the application has to be made by the Respondent in any prescribed form. Nor it was the case of the Appellants at any stage that submission of application on plain paper was fatal to the claim. As a matter of fact, the Appellants always treated the application to be a valid application. Though, under the Scheme of compassionate appointment, it was the duty of the Appellants to have informed the Respondent that the application has to be made in the prescribed form as provided in Appendix-II to the Scheme and further a duty was cast upon them to go to the residence of the deceased and get the application filled in the prescribed form so that the application may be made well within the time-limit fixed under the Scheme. This was not done. The authorities were thoroughly negligent and they acted in violation of the Scheme framed by the State Government just to deprive the Respondent from getting appointment on compassionate ground. This fact is not disputed that on the next day immediately after the death of the deceased, the Respondent had made an application on a plain paper. Even the Appellants did not inform the Respondent or his family members that the application was required to be filled, in a prescribed form. As per the Scheme, the Respondent had made an application well within the period as prescribed by the Scheme, but the view taken by the authorities that the application was not made within the prescribed period of limitation is not correct and against the material on record.

15. The other ground taken for rejecting the claim of compassionate appointment is that the Rules with regard to educational qualification of Std. IV to Class-IX mentioned in the Scheme had changed. Mr. Nirag Pathak, learned A.G.P. has urged that as per the Rule, known as "Class-IV post (inferior services) in the Gujarat Secretariat and non-Secretariat Officers Recruitment Rules, 2005, which came into force on 16-3-2005, the educational qualification for Class-IV stood amended by notification dated 16-3-2005 to S.S.C. pass. Since, the Respondent was not a S.S.C. pass and only I Xth Std. pass, therefore, he was not eligible for compassionate appointment on a Class-IV post. Mr. Nirag Pathak, learned Assistant Government Pleader has placed reliance on the decision of the Apex Court, in State Bank of India and Another Vs. Raj Kumar, which has been

followed by a Division Bench in *State of Gujarat v. Patel Sunilkumar Arvindbhai*, in Letters Patent Appeal No. 1054 of 2010, decided on 16-9-2010.

16. We have carefully examined the decisions of the Apex Court in *State Bank of India and Another Vs. Raj Kumar*, In this case, the State Bank of India had a Scheme for granting compassionate appointment to the dependents of the employees who died in harness. This Scheme was abolished by the State Bank of India and new Scheme was framed which came into force on 4-8-2005 which was known as "S.B.I. Scheme for payment of ex-gratia Lumpsum Amount". Therefore, in lieu of compassionate appointment, the Bank decided to give lumpsum payment to the dependent of the deceased. The entire Scheme for compassionate appointment was changed and the earlier Scheme was abolished. In view of the fact that earlier Scheme had been abolished and new Scheme was framed, the Apex Court held that an appointment under the Scheme can be made only if the Scheme was in force and not after it is abolished/withdrawn. When a Scheme is abolished, any pending application seeking appointment under the Scheme will also cease to exist, unless saved.

17. In the instant case, the Scheme for compassionate appointment framed by Government of Gujarat on 10-3-2000 is still in existence and it has not been abolished or withdrawn. All the provisions of the Scheme are in force. Only the educational qualification with regard to appointment of Class-IV employees has been changed in the year 2005 from Std. IX pass to S.S.C. The Respondent had applied under the Scheme of the Government on 30-12-2001, on the next day after the death of his father on 29-12-2001. The mandate of the Scheme was not followed by the Officers/employees of the Appellants. They did not adhere to the time-limit fixed under the Scheme. There is no explanation furnished by the Appellants as to why the Scheme was not followed in letter and spirit. This gives rise to the question that whether this Court should remain a mute spectator. In our opinion, the answer is No. There was no delay by Respondent in moving the application for compassionate appointment. The delay was on the part of the Appellants in following the mandate of the Scheme. Had the authorities considered the application of the Respondent within the time frame fixed by the Scheme the appointment of the Respondent would not have been delayed. The application of the Respondent is liable to be considered under the Scheme on the educational qualification prescribed under the Scheme at the time the Respondent made an application on 30-12-2001 after the death of his father. The Appellants ought to have considered and provided compassionate appointment to the Respondent within a period of three months or a little later as per the procedure prescribed by the Scheme. The argument of learned A.G.P. that the changed educational qualifications would amount to change in the Scheme, is rejected. The notification dated 16-3-2005 was not retrospective. When the Respondent had made the application on 30-12-2001, he was fully eligible for compassionate appointment on a Class-IV post as he had passed Std. IX examination and the Scheme and educational qualification which was prevailing at the time would apply to the Respondent. It has been held by the Apex Court in

Abhishek Kumar v. State of Haryana, 2006 (12) SCC 44. Para 5 of the said decision reads as under:

5. The Appellant herein had sought for appointment on compassionate grounds at a point of time when the 2003 Rules were not in existence. His case, therefore, was required to be considered in terms of the Rules which were in existence in the year 2001. Evidently, in the State of Haryana a Statewise 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 came in the way and refused to provide for the post.

18. In another decision in State of Gujarat v. Jagdish Savji, SLP (Civil) No. 31057 of 2010 (CC 15498 of 2010), decided on 19-10-2010, the Apex Court has held as under:

ORDER

Delay condoned.

These petitions are directed against order dated 11-5-2010 passed by the Division Bench of the Gujarat High Court whereby the Letters Patent Appeals preferred by the Petitioners against the orders of the learned Single Judge directing consideration of the cases of the private Respondents for appointment on compassionate grounds as per the policy prevailing on the date of application were dismissed.

It is not in dispute that the applications/representations made by the private Respondents for appointment on compassionate ground as per the extant policy were kept pending for years together and were rejected on the ground that in terms of circular dated 29-3-2007, the minimum revised qualification is S.S.C. pass, which qualification the private Respondents did not possess.

The learned Single Judge allowed the writ petitions and directed consideration of the case of the Respondents for appointment on compassionate ground as per the policy prevalent on the date of application. The Division Bench dismissed the Letters Patent Appeal filed by the Petitioners and declared that the private Respondents are entitled to have their cases considered in accordance with the extant policy and the decision contained in circular dated 29-3-2007 cannot be applied to their cases.

The Division Bench referred to the judgments of this Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, Abhishek Kumar v. State of Haryana, 2006 (12) SCC 44 , State Bank of India and Others Vs. Jaspal Kaur, V. Sivaramurthy v. State of Andhra Pradesh, 2008 (13) SCC 730 and State Bank of India v. Raj Kumar, 2010 (1) CLR 1027 and held that in the absence of any explanation by the Petitioners as to why the applications of Respondents were not considered for years together, the directions given by the learned Single Judge do not call for interference.

We have heard Ms. Hemantika Wahi, learned Counsel for the Petitioners and are in complete agreement with the Division Bench that the concerned competent authority was required to decide the applications for compassionate appointment within a reasonable time and the fact that no decision was taken for years together cannot operate to the disadvantage of the dependents of the deceased employee.

With the above observations, the Special Leave Petitions are dismissed. The Petitioners are allowed two months time from today to complete the exercise for consideration of the cases of the private Respondents for compassionate appointment and pass appropriate orders.

In order to curb further litigation in such matters, we direct the Government of Gujarat to issue instructions to all the competent authorities to dispose of the applications for compassionate appointment within a maximum period of 6 months.

19. From the aforesaid decision, it is clear that the law laid down by the Apex Court is that earlier application for compassionate appointment has to be decided as per the Scheme and educational qualification which was applicable at the time the application was made by the Respondent, claiming appointment on compassionate ground, if the authorities were guilty of unreasonable delay. The decision of the Apex Court in Jagdish Savji Padaya applies with full force to the instant case.

20. We are of the considered opinion that the decisions relied by the learned Counsel for the Appellants in Raj Kumar (supra) and Patel Sunilkumar Arvindbhai (supra) are of no help to the Appellants. The application of the Respondent for seeking compassionate appointment was made well within the period of three months prescribed for making application for compassionate appointment and it was not barred by time-limit prescribed by the Scheme and educational qualification of Std. IX pass which was prescribed under the Scheme at the time when the application was made by the Respondent for compassionate appointment would be applicable. Therefore, the Respondent is entitled for compassionate appointment and the delay in considering the application for compassionate appointment of the Respondent by the Appellants was due to inaction of the officers/employees of the Appellants who did not act with responsibility though a legal duty was entrusted on them under the Scheme but they violated the procedure as prescribed under the Scheme for years together. The delay of nine years would not defeat the genuine claim of the Respondent and the Respondent is entitled for appointment on compassionate ground.

21. This Letters Patent Appeal filed by the Appellants is dismissed. The Appellants are allowed two months" time to complete the exercise for granting compassionate appointment to the Respondent by considering the case of the Respondent afresh.

22. In view of the order passed in the main appeal, the Civil Application for stay

does not survive and it is also dismissed. Ad-interim relief shall stand vacated. Notice is discharged, with no order as to costs.