
(2011) 03 GUJ CK 0079

In the Gujarat High Court

Case No : Letters Patent Appeal No. 68 of 2009 in Special Civil Application No. 8074 of 2007

State of Gujarat and Others

APPELLANT

Vs

Hitesh J. Goswami

RESPONDENT

Date of Decision : 24-03-2011

Acts Referred:

Citation : (2011) 03 GUJ CK 0079

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

Bench : Division Bench

Advocate : Government Pleaders 1 and 3, for the Appellant; A.S. Supehia, for Respondents 1, for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai, J.—Heard Mr. N.J. Shah, learned Assistant Government Pleader for the Appellants and Mr. A.S. Supehia, learned Counsel appearing for the Respondent.

2. The brief facts of the case are that the father of the Respondent was working as a Second Grade Head Constable in State Reserve Police Force, Group 9, Vadodara. He died in harness on 17.7.2001. The Respondent made an application on 21.12.2002 for compassionate appointment. The said application was rejected by the Respondents on 28.7.2005 and this fact was informed to the Respondent-Petitioner on 28.7.2005 on the ground that the Respondent was not possessing SSC qualification.

3. In para 7 of the further affidavit filed on behalf of the Respondent, it has been mentioned that the application of the Appellant dated 29.9.2001 was not considered as it was signed by the mother of the Appellant. When the beneficent Scheme for compassionate appointment was framed by the State Government on 10.3.2000, the intent was that it would assist the family of the deceased to cope with unexpected critical financial 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 had been appointed on regular basis and who had 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 workcharged establishment.

4. 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 para 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/ under-taking latest by one month.

(B) For the respective department of Sachivalaya/ department/ office, the knowledge-able 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 schemes 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 department 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.

5. 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.

6. Paragraph 11(E) read with paragraph 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.

7. 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.

8. Had the Appellants complied with para 11 of the Government Resolution dated 10.3.2000, the Respondent would have got the compassionate appointment, but even till date, the Appellants have not complied with para 11 of the Scheme and they have rejected the application of the Respondent on the ground that the Rules which earlier provided qualification of Std.IX had been amended and SSC pass qualification has now been incorporated with effect from 16.3.2005. This Court in Letters Patent Appeal No. 2785 of 2010 relying on the decision of the Apex Court had directed the authorities to consider the claim of the applicant for giving compassionate appointment as the application was made prior to the amended quali-fication SSC pass which came into force on 16.3.2005 and to

treat the application of the applicant dated 21.12.2002 to be well within time. The delay in moving the application for compassionate appointment was due to the inaction and fault of the Appellants in complying with para 11 of the Scheme for compassionate appointment, the Respondent was left with no option but to make an application on 21.12.2002. The Respondent's application was within time and the Appellants were required to consider afresh the application of the Respondent in the light of observations made in this decision and decision dated 9.3.2011 in State of Gujarat and Ors. v. Budhabhai A. Chavda Letters Patent Appeal No. 2785 of 2010 decided on 9.3.2010.

9. For the reasons given in Letters Patent Appeal No. 2785 of 2010 (State of Gujarat and Ors. v. Budhabhai A. Chavda) decided on 9.3.2011, this appeal is allowed on the same terms and conditions as provided in the aforesaid decision dated 9.3.2011 and the Appellants are directed to consider the claim of the Respondent for compassionate appointment as per the qualification which was Std. IX pass at the time when the application made for compassionate appointment made by the Respondent, within a period of two months.

10. With the aforesaid directions, this appeal stands finally disposed of.