

(2015) 05 GUJ CK 0034

In the Gujarat High Court

Case No : L.P.A. No. 879 of 2015 in Spl. C. Appn. No. 12888 of 2014 and Civil Application No. 5444 of 2015

State of Gujarat and Others

APPELLANT

Vs

Imrankhan Abbaskhan Pathan

RESPONDENT

Date of Decision : 04-05-2015

Acts Referred:

Citation : (2015) 2 LLJ 652

Hon'ble Judges : K.S. Jhaveri, J;Abdullah Gulamahmed Uraizee, J

Bench : Division Bench

Advocate : Harsheel Shukla, Asst. Government Pleader, for the Appellant

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—The present appeal is filed challenging the order dated 16.10.2014 passed by the learned Single Judge in Special Civil Application No. 12888 of 2014 whereby the learned Single Judge allowed the writ petition and directed the appellants to pay lumpsum compensation to the petitioner as per the policy of the State Government Resolution. The original petitioner - present respondent's father was serving with appellant No. 2 as a Watchman on ad hoc basis and he passed away while in service on 21.5.2014. About two months and so i.e. on or around 15.7.2014, the respondent made an application for appointment on compassionate ground. It appears that as the respondent was not possessing minimum qualification of SSC as per notification dated 16.3.2005, the appellant authority rejected the application by order dated 17.5.2005.

1.1. Feeling aggrieved with the said order, the respondent preferred Special Civil Application No. 30187 of 2007 before this Court. Vide order dated 9.9.2008, learned single Judge by observing that authority should have complied with rules and regulations prevailing at the time when the application was made by the respondent directed the appellants to reconsider the respondent's case. The State took the matter before the higher forum by filing LPA No. 2369 of 2009. Vide order dated 9.10.2013, the Division Bench confirmed the order of the

learned single Judge, whereby the appellant authorities were directed to reconsider the respondent's case.

1.2 In pursuance of the directions issued by the learned single Judge in Special Civil Application No. 30187 of 2007, the appellant authority rejected respondent's application vide order dated 20.3.2014. The respondent therefore filed the writ petition. The learned Single Judge passed the aforesaid order which is being challenged by way of the present appeal.

2. Learned AGP appearing for the appellants submitted that the learned Single Judge by way of the impugned order has committed an error in not appreciating the fact that as on date of considering the application of the respondent - original petitioner the minimum eligibility criteria was 10th standard and therefore the respondent was not entitled to be appointed on Class IV post and therefore he was not entitled to be given the benefit of 05.07.2011 resolution.

3. We have considered the submissions advanced by the learned counsel for the parties. The learned Single Judge in paras 10 to 12 observed as under:

"10. Now, coming to the order passed by the respondents on 20.3.2014, it is observed therein that as the petitioner's application to appoint him on compassionate ground for non-fulfillment of minimum criteria of passing SSC examination has been rejected and therefore, considering para 6 of the said Government Resolution dated 5.7.2011, the respondents refused to reconsider the petitioner's case though there is an order in the above Special Civil Application to reconsider the case of the petitioner. There is no disagreement that now only new policy prevails w.e.f. 5.7.2011, as the earlier policy of giving compassionate appointment ceased to exist. In para 5 of the Government Resolution dated 5.7.2011, it is clearly stated that all pending applications will be decided under new policy. Once the decision of the respondents rejecting the petitioner's application is no more in existence and also quashed and set aside by this Court in the abovementioned proceedings, it is not legal and valid and also proper on the part of the respondents to deny the financial aid to the petitioner on the basis of para 6 of the new policy. In other words, the respondents authority cannot refuse to consider the case of the petitioner for financial aid, as the decision of the respondents rejecting the petitioner's claim came to be quashed by this Court and further the respondents were directed to reconsider the petitioner's case. Pending such disputes, the new policy came into existence, whereby the earlier policy has been abolished.

11. It is one of the contentions of learned AGP Mr. Rahul Dave that the petitioner's application seeking lumpsum compensation was not pending on the date when new policy came into existence on 5.7.2011 and therefore, the petitioner is not even entitled for the financial aid. This contention is devoid of any merits for the simple reason that the decision of the respondents rejecting the petitioner's case for compassionate appointment was subject matter of litigation before this Court and in the abovementioned proceedings, the decision

of rejecting the petitioner's application was quashed and set aside by this Court and therefore, it cannot be said that petitioner's application was rejected and therefore, in view of para 6 of the said resolution dated 5.7.2011, the petitioner is not entitled for the financial aid. In other words, once the respondents' decision has been quashed and set aside by this Court and the respondents authority is further directed to reconsider the petitioner's case and pending reconsideration of the decision, new policy of 2011 came into existence, petitioner's case is required to be considered for grant of financial aid.

12. Under the circumstances, the petition is partly allowed and the impugned order dated 20.3.2014 passed by the respondents authority to the extent of refusing to grant lumpsum compensation requires to be quashed and set aside and accordingly, it is quashed and set aside with a direction to the respondents authority to reconsider the decision refusing to release benefit of financial aid to the petitioner as per Government Resolution dated 5.7.2011. The respondents authority is directed to decide and reconsider the said issue to grant of lumpsum compensation as per the policy of 2011 within three months from the date of receipt of order of this Court. The respondents authority shall communicate the decision to the petitioner. Direct service is permitted."

We are in complete agreement with the order passed by the learned Single Judge. The learned Single Judge has rightly directed the appellant to grant lumpsum compensation to the respondent as per 2011 policy. The Apex Court in the 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 observed that compassionate appointment cannot be claimed as a matter of right as it is not vested right and that the person claiming such appointment must possess required eligibility for the post. The appeal is, therefore, devoid of any merits and is accordingly dismissed. Civil Application also stands disposed of accordingly.