

(2014) 09 GUJ CK 0003
In the Gujarat High Court

Case No : Letters Patent Appeal No. 2385 of 2009 in Special Civil Application No. 16039 of 2007, Civil Application No. 13005 of 2009 in Letters Patent Appeal No. 2385 of 2009, Letters Patent Appeal No. 2476 of 2009 in Special Civil Application No. 3980 of 2008, Civ

State of Gujarat	Vs	APPELLANT
Harjibhai Babubhai Parmar		RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16

Citation : (2015) 2 GLH 655 : (2015) LabIC 363

Hon'ble Judges : Jayant M. Patel, J;C.L. Soni, J

Bench : Division Bench

Advocate : P.P. Banaji and Rutvij Oza, Asstt. Government Pleaders, Advocate for the Appellant; Rajesh O. Gidiya, N.K. Majmudar and I.S. Supehia, Advocate for the Respondent

Judgement

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C.L. Soni, J.—All these appeals filed under Clause 15 of the Letters Patent are against the oral order passed by learned Single Judge allowing the petitions filed by the respondents and directing the appellants to decide the applications for compassionate appointment as per the policy prevailing when such applications were made.

2. Learned Single Judge has held that the policy prevailing at the time of making applications by the respondents (original petitioners) in the respective appeals for compassionate appointment can be applicable to their cases instead of the policy prevailing at the time of taking decision on such application.

3. In Letters Patent Appeal No. 2385 of 2009, the respondent made application for compassionate appointment in the month of April 2000. Proposal in respect of such application was not accepted under the impugned communication dated 13.4.2007 issued by the State Government through its Home Department as well

as the communication dated 24.5.2007 issued by the Superintendent of Police on the ground that the rules for recruitment for Class-IV post required the qualification of SSC. It is the case of the respondent that his application was required to be considered as per the rules prevailing for Class-IV post when the application for compassionate appointment was made and if so considered, the respondent was eligible to be appointed on Class-IV post.

4. In Letters Patent Appeal No. 2476 of 2009, the respondent applied for compassionate appointment on 8.3.2001. In respect of such application, the appellant No. 1 State did not accept the proposal for compassionate appointment under the impugned order dated 27.10.2005 by relying on the Recruitment Rules dated 16.3.2005 which required the qualification of SSC. It is the case of the respondent that his application was required to be considered as per the rules prevailing for Class-IV post when the application for compassionate appointment was made and if so considered, the respondent was eligible to be appointed on Class-IV post.

5. In Letters Patent Appeal No. 1376 of 2009, the respondent made application for compassionate appointment on 11.11.2003. Proposal in respect of such application was not accepted under the impugned decision dated 27.1.2006 by the Additional Police Commissioner, Vadodara City on the ground that the rules for recruitment for Class-IV post required the qualification of SSC. It is the case of the respondent that his application was required to be considered as per the rules prevailing for Class-IV post when the application for compassionate appointment was made and if so considered, the respondent was eligible to be appointed on Class-IV post.

6. In Letters Patent Appeal No. 2475 of 2009, the respondent made application for compassionate appointment on 11.9.2003. Proposal in respect of such application was not accepted under the impugned order dated 22.5.2008 passed by the Deputy Secretary, Education Department on two grounds, viz. that the rules for recruitment for Class-IV post required the qualification of SSC and that as per the policy for compassionate appointment prevailing as on the date of application, the financial condition of the family of the respondent was not pitiable, meaning thereby that the respondent's case was not meeting the income criteria. It is the case of the respondent that his application was required to be considered as per the rules prevailing for Class-IV post when the application for compassionate appointment was made and if so considered, the respondent was eligible to be appointed on Class-IV post.

7. In Letters Patent Appeal No. 2506 of 2009, the respondent made application for compassionate appointment on 1.9.2001. The appellant No. 2 did not accept the proposal for compassionate appointment relying on the Recruitment Rules for Class-IV post which required the qualification of SSC. It is the case of the respondent that his application was required to be considered as per the rules prevailing for Class-IV post when the application for compassionate appointment was made and if so considered, the respondent was eligible to be appointed on

Class-IV post.

8. We have heard learned advocates for the parties.

9. Learned Assistant Government Pleaders submitted that the issue involved in these appeals is no longer *res integra* inasmuch as the Rules prevailing for the criteria of qualification at the time of deciding the application for compassionate appointment are to be applied and not the rules for qualification for the post in question prevailing when the application is made for compassionate appointment. Learned Assistant Government Pleaders submitted that the compassionate appointment is not a matter of right but is governed by the policy in this regard and the rules prevailing as regards the qualification criteria are to be applied when decision on such application for compassionate appointment is to be taken. Learned Assistant Government Pleaders submitted that if there is change in qualification required for the post in question before the decision is taken on the application for compassionate appointment and if such application is decided according to the old Rules providing for lesser qualification, the same will hamper the administration and therefore, the relevant Rules to be applied for giving compassionate appointment are the Rules prevailing when the decision is to be taken on such application. Mr. Banaji submitted that now since the Government has introduced a policy by Government Resolution dated 5.7.2011 which provides for grant of ex-gratia amount of compensation in lieu of compassionate appointment, there is no question of giving compassionate appointment. Learned Assistant Government Pleaders have relied on the decision of the Hon'ble Supreme Court in the case of MGB Gramin Bank Vs. Chakrawarti Singh, so as to point out that Hon'ble Supreme Court has held that the policy prevailing at the time when decision is taken on application for compassionate appointment is to be applied and such application cannot be decided on the basis of the old Rules.

10. As against the above arguments, learned advocates for the respondents submitted that the learned Single Judge has committed no error in holding that the policy prevailing when the application for compassionate appointment was made is to be applied. Learned advocates submitted that for delay in taking decision on the application for compassionate appointment, the persons applying for such appointment cannot be put to prejudice. They submitted that the relevant policy to be applied is the one prevailing on the date of making application for compassionate appointment, otherwise the very purpose of the policy for compassionate appointment gets frustrated. They submitted that the rights available to the respondents under the policy for compassionate appointment cannot be allowed to be frustrated on account of inaction on the part of the appellants in not dealing with the application for compassionate appointment at the right time. They submitted that when the respondents made application under the policy prevailing at the relevant time for compassionate appointment, the right had accrued to them at least for consideration of their application in accordance with the Rules for appointment on the post in question

prevailing then and therefore, there is no question of applying the rules brought into force later on.

11. Having heard learned advocates for the parties, it appears that when the applications made by the respondents for compassionate appointment were decided by the appellants, the requisite qualification for Class-IV post was minimum 10th Std. (SSC) which undisputedly the respondents were not possessing when their applications were decided. However, the learned Judge took the view that the applications for compassionate appointment made by the respondents were required to be decided as per the policy prevailing as on the date of the applications.

12. In the case of State Bank of India and Another Vs. Raj Kumar, , the Hon''ble Supreme Court has held and observed in para 11 and 12 as under:-

11. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a selection committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies.

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. Learned counsel for the petitioners however relied on the decision of the Hon''ble Supreme Court dated 19.10.2010 in Special Leave to Appeal (Civil) (CC) No. 15498 of 2010, in the case of State of Gujarat and Others Vs. Jagdish Savjibhai Padaya and Another, wherein the Hon''ble Supreme Court agreed with the view taken by the Division Bench of this Court in the group of Letters Patent Appeals that the applications for compassionate appointment were to be decided as per the policy prevailing at the time of application and directed the concerned competent authority of the State Government to decide the applications for compassionate appointment within reasonable time.

14. The Division Bench of this Court in Letters Patent Appeal No. 22 of 2010 and allied matters after considering the judgment of the Hon''ble supreme Court in

the case of State Bank of India (supra), held that not to take decision for long time on the applications for compassionate appointment and to rely on the subsequent Government Resolutions to deal with such applications would defeat the claims for compassionate appointment. The Division Bench, therefore, directed the concerned authorities to examine the case of each of the applicant in terms of the policy prevailing at the time of submitting applications for compassionate appointment.

15. However, there is further development in the law. In the case of State of Gujarat and Others Vs. Arvindkumar T. Tiwari and Another, , the Hon''ble Supreme Court examined the issue of eligibility criteria while considering the applications for appointment on compassionate ground. The Hon''ble Supreme Court held and observed in para 8 to 10 and 12 as under:-

8. It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Articles 14 and 16, which provide that there can be no discrimination in public employment. The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crisis it finds itself facing, and not to confer any status upon it.

9. The eligibility for the post may at times be misunderstood to mean qualification. In fact, eligibility connotes the minimum criteria for selection, that may be laid down by the executive authority/legislature by way of any statute or rules, while the term qualification, may connote any additional norms laid down by the authorities. However, before a candidate is considered for a post or even for admission to the institution, he must fulfill the eligibility criteria.

10. The appointing authority is competent to fix a higher score for selection, than the one required to be attained for mere eligibility, but by way of its natural corollary, it cannot be taken to mean that eligibility/norms fixed by the statute or rules can be relaxed for this purpose to the extent that, the same may be lower than the ones fixed by the statute. In a particular case, where it is so required, relaxation of even educational qualification(s) may be permissible, provided that the rules empower the authority to relax such eligibility in general, or with regard to an individual case or class of cases of undue hardship. However, the said power should be exercised for justifiable reasons and it must not be exercised arbitrarily, only to favour an individual. The power to relax the recruitment rules or any other rule made by the State Government/Authority is conferred upon the Government/Authority to meet any emergent situation where injustice might have been caused or, is likely to be caused to any person or class of persons or, where the working of the said rules might have become impossible.

12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of "fair play", "good conscious" and "equity".

(Emphasis Supplied)

However, since in the facts of the case, Hon"ble Supreme Court found that as on the date of the applications for compassionate appointment, the eligibility criteria was 10th Std. and the applicant was unable to pass 8th Std., he was certainly not eligible to apply for the post and it was not desirable nor even permissible to issue direction to relax the said eligibility criteria and to appoint him on merely humanitarian ground. In such facts of the case, the Hon"ble Supreme Court further observed that the question framed as to whether application for compassionate appointment was to be considered as per the existing rules or under the rules as existing on the date of death of the employee was not required to be considered.

16. Hon"ble Supreme Court has further considered the issue about the applicability of the Scheme for compassionate appointment in the recent decision in the case of MGB Gramin Bank (supra). In this judgment, Hon"ble Supreme Court has considered its earlier judgment in the case of State Bank of India (supra) and has held and observed in para 8 to 15 as under:-

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.

9. In A. Umarani Vs. Registrar, Cooperative Societies and Others, , while dealing with the issue, this Court held that even the Supreme Court should not exercise the extraordinary jurisdiction under Article 142 issuing a direction to give compassionate appointment in contravention of the provisions of the Scheme/ Rules etc., as the provisions have to be complied with mandatorily and any appointment given or ordered to be given in violation of the scheme would be illegal.

10. The word "vested" is defined in Black"s Law Dictionary (6th Edition) at page

1563, as "vested", Fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are "vested" when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights

11. In Webster's Comprehensive Dictionary (International Edition) at page 1397, "vested" is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide: Masammat Bibi Sayeeda and Others etc. Vs. State of Bihar and Others, ; and J.S. Yadav Vs. State of U.P. and Another, .

Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/scheme could be changed. (Vide: Kuldeep Singh Vs. Govt. of NCT of Delhi, .

12. A scheme containing an in pari materia clause, as is involved in this case was considered by this Court in State Bank of India and Another Vs. Raj Kumar, . Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:

"14. Date of effect of the scheme and disposal of pending applications:

The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme."

13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered.

14. In view of the above position, the reasoning given by the learned Single Judge as well as by the Division Bench is not sustainable in the eyes of law. The appeal is allowed and the impugned judgments of the High Court are set aside.

15. The respondent may apply for consideration of his case under the new

Scheme and the appellant shall consider his case strictly in accordance with clause 14 of the said new Scheme within a period of three months from the date of receiving of application.

With these observations, appeal stands disposed of.

17. The Government has now introduced the policy dated 5.7.2011 which provides for payment of ex-gratia amount of compensation in lieu of compassionate appointment. We had an occasion to go through the said policy, copy of which was produced in another appeal which was also heard on the same day when these appeals were heard by us.

18. Thus, considering the observations made in para 8 to 10 and 12 by the Hon''ble Supreme Court in the case of Arvindkumar T. Tiwari (supra) and in light of recent decision of Hon''ble Supreme Court in the case of MGB Gramin Bank (supra) and also on account of change in the policy for compassionate appointment, the view expressed by the Hon''ble Division Bench in the above group of appeals cannot be now followed.

19. In light of such development and as held by the Hon''ble Supreme Court in the case of Raj Kumar (supra) and MGB Gramin Bank (supra), the compassionate appointment cannot be claimed as a matter of right but it should be strictly in accordance with the rules, regulations and administrative instructions governing the subject.

20. In view of above, even while considering that delay in deciding the application would defeat the purpose of compassionate appointment, as observed by the Division Bench of this Court in the above-referred group of Letters Patent Appeals, the impugned orders cannot be now allowed to be operated. If it is permissible to the original petitioners, they may apply under the new scheme and the appellants may take decision thereon in accordance with law.

21. For the reasons stated above, the appeals are allowed. Impugned orders passed by the learned Single Judge are quashed and set aside. The respondents-original petitioners may apply under the new Scheme, if permissible, and when they apply, the appellants may take decision in accordance with law. The Appeals are disposed of accordingly with no order as to costs.

22. In view of the order passed in the appeals, no orders are passed on the Civil Applications. The Civil Applications stand disposed of accordingly.