

Gujarat High Court

Ajitsinh Chandrasinh Gohil vs Additional Director General Of ... on 2 August, 2007

Author: H Rathod

Bench: H Rathod

JUDGMENT H.K. Rathod, J.

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1. The aforesaid civil application has been filed by the original petitioner praying for fixing aforesaid main matter for final hearing in the near future because the matter is relating to compassionate appointment. Respondent authorities have rejected the application for compassionate appointment. Said order is under challenge in the main matter.

2. I have considered the submissions made by the learned Advocate Mr. Mitul K. Shelat on behalf of the petitioner and Ms. Sandhya Natani, learned AGP for State.

3. Considering the question involved in the main matter being SCA No. 603 of 2004, the matter relating to compassionate appointment of the petitioner wherein directions are required to be issued by this Court to the respondents to reconsider the case of the petitioner for compassionate appointment as per policy of the State Government dated 10th March, 2000. Respondent authority has rejected the claim of the petitioner for such appointment only on the ground that the petitioner has not attained the age of 18 years at the time of death of father of the petitioner and, therefore, considering the peculiar facts and circumstances of the main matter, and with the consent of both the learned Advocates, main matter itself has been taken up for final hearing.

4. As per the case of the petitioner, his father was working as Head Constable in the office of the ACB, Ahmedabad who expired while in service on 1.7.2000 when the petitioner was minor. His father had completed 30 years of service in the establishment. He was survived by his widow, two unmarried daughters and the petitioner. Petitioner is claiming such appointment on the basis of the policy of the State Government dated 10.3.2000. Petitioner applied for such appointment on 17.7.2000. His application came to be rejected on 9.5.2003 on the ground that at the time of death of his father, petitioner had not attained the age of 18 years and hence could not be considered for appointment on compassionate ground. Subsequent representations of the petitioner have also been rejected. At the time of consideration of his application, petitioner had attained the age of 18 years and hence was eligible for appointment on compassionate ground.

5. Learned Advocate Mr. MK Shelat for the petitioner submits that at the time of death of father, petitioner was minor. When the application for Page 1202 compassionate appointment was made, at that time, petitioner was minor but when his application was considered, he had attained the age of majority. According to the policy dated 10th March, 2000, respondent ought to have waited till the petitioner attains the age of majority. Therefore, as per his submission, as per Clause 8(B) of the policy dated 10th March, 2000, respondents are not justified in rejecting the application of the petitioner on the said ground. He submits that Clause 8(B) of the said policy, respondents shall have to wait while considering the application for such appointment till the minor becomes major and

cannot reject the application on the ground that petitioner was not major at the time of death of his father. Such answer is contrary to Clause 8(B). He also submits that according to the clarification made by the State Government itself in the year 2000 itself, at the time of death, if the dependent is minor, then, such minor dependent has to file such application within two years from the date on which he become major. As per the submission of the learned Advocate Mr. Mitul K. Shelat for the petitioner, application was made by the petitioner within two years from the date of his attaining the age of majority and, therefore, on both the ground, the petitioner is entitled for consideration of his case on merits according to the policy dated 10th March, 2000. Learned Advocate Mr. Shelat submits that the family has no any independent source of income to survive. He submits that the prime object of the scheme is to grant immediate relief to the family of the deceased employee so that the family can survive with the help of compassionate appointment to any one of the dependent in the family. As per his submission, answer given by the respondent authority while rejecting his application is frustrating the object of the scheme itself and it is also contrary to the scheme.

6. Learned AGP Ms. Natani appearing for the respondent State Authority has submitted that the case of the petitioner will be reconsidered as per the Policy dated 10th March, 2000 on merits as expeditiously as possible.

7. I have considered the submissions made by the learned Advocate Mr. Shelat for the petitioner and Ms. Sandhya Natani, learned AGP for the State Authority. I have also considered the Policy of the State Government for appointment on compassionate ground dated 10th March, 2000. I have also considered the reply of the respondent authority dated 9.5.2003 rejecting the application of the petitioner on the ground that at the time of death of father, petitioner had not attained 18 years age and hence could not be considered for appointment on compassionate ground. Policy dated 10.3.2000 does not incorporate any such condition that the dependent must be major on the date of death of the concerned Government employee, father in this case. Said policy does not provide that if the dependent was minor at the time of death of his father, then, his case cannot be considered for such appointment, therefore, the answer which is given by the State Authority for rejecting the claim of petitioner for such appointment is contrary to the scheme as per policy dated 10th March, 2000. Item 8 of the said policy is prescribing period of limitation for making such limitation. Clause (A) of item No. 8 of the policy dated 10.3.2000 is providing Page 1203 that such application has to be made within three months from the date of death of concerned government employee whereas Clause (B) which is relevant for the purpose of resolving controversy involved in this petition is providing that the prime object of the scheme is to provide immediate relief to the dependent family for bringing it out from the emergency situation, therefore, after waiting till the minor member of the dependent family becomes major attains the age of majority, who was minor at the time of death of government employee, compassionate appointment will not be given in any circumstances. It also provides that widow or widower or any eligible major member of the dependent family shall make application within time limit for compassionate appointment on the lowest category of Class III or Class IV post in accordance with his educational qualification at the time of death of the employee and shall have to accept the appointment admissible as per educational qualification. It also provides that the eligibility of securing compassionate appointment by widow widower or any member of the dependent family shall be considered suo motu cancelled who fails to make application in prescribed time limit or who rejects the appointment offered to him/her according to

his/her educational qualification at the relevant time and no claim can be made regarding that subsequently.

8. Therefore, in view of these provisions of item No. 8 Clause (B) referred to above, in case if the member of the dependent family is minor at the time of death of concerned Government employee, then, it is necessary for the authority to wait till such minor member of dependent family becomes major and in view of that, rejection of application on the ground that the petitioner was not major at the time of death of his father is not sustainable as per the provisions of the policy dated 10.3.2000. It is not the case of the respondent authority that the case of the petitioner is not covered by policy dated 10.3.2000. Clarification made by the State Government in 2000 itself is providing that if the member of the dependent family was minor at the time of death of his father or mother or as the case may be, then, it is necessary for such dependent to make such application within the period of two years from the date on which he attains majority. In this case, respondents have not pointed out before this Court that such application was made by the petitioner beyond two years from the date of his attaining the age of majority. In view of the aforesaid provisions of item 8 Clause (B) of the policy dated 10.3.2000, respondents are not justified in rejecting the case of the petitioner on the ground that he had not become major at the time of death of his father but the respondents shall have to consider the case of such dependent who become major at the relevant time when his application was being considered. Looking to the facts of this case, when the application was being considered, petitioner was aged 18 years and yet he is answered that his case cannot be considered as he was not major at the time of death of his father and therefore, in view of the aforesaid provisions, reply/communication of the respondent authority dated 9.5.2003 rejecting his case is contrary to the provisions of the policy dated 10.3.2000. Therefore, in view of the aforesaid facts, it is directed to Page 1204 the respondent State Authority to reconsider the case of the petitioner according to the policy dated 10.3.2000 item 8B and to decide whether at the time of consideration of the application, he was major or not and then to pass appropriate reasoned orders in accordance with law within the period of three months from the date of receipt of copy of this order and to communicate their decision to the petitioner immediately thereafter.

9. This petition is allowed accordingly. Rule is made absolute in terms indicated herein above. There shall be no order as to costs.

10. In view of the orders passed by this Court today in the main matter, civil application No. 10298 of 2007 shall not survive and the same is disposed of as not surviving. No order as to costs.