

SUPREME COURT OF INDIA

State of Gujarat

Vs.

Arvindkumar T.Tiwari

C.A.No.6468 of 2012

(B.S.Chauhan and Fakkir Mohamed Ibrahim Kalifulla,JJ.)

14.09.2012

JUDGMENT

B.S. Chauhan,J.

1. This appeal has been preferred against the impugned judgment and order dated 4.2.2008 passed in Letters Patent Appeal No.49/2008 by the High Court of Gujarat at Ahmedabad.

2. Facts and circumstances giving rise to this appeal are as under:-

“a) The father of respondent No.1 who was working in the Police Department, State of Gujarat as the Assistant Sub-Inspector of Police, died in harness on 9.4.1999. Immediately thereafter, respondent No.1 filed an application for employment on compassionate ground, for the post of Peon. As he had completed his education only upto the 8th standard, the said application was rejected vide order dated 13.10.2000, on the ground that the family of the deceased was not suffering from any financial constraints and was getting an adequate amount of pension, which was, in fact, over and above the income limit fixed by the Government for this purpose. The said application was considered by the Additional Director General of Police by way of passing order dated 23.6.2003, directing that the application of respondent No.1 be reconsidered, ignoring the abovementioned issue regarding financial condition. The said application was rejected vide order dated 3.7.2005, on the ground that the applicant did not meet the minimum eligibility requirement for the said post, as he had not passed the 10th standard, which was a necessary pre-requisite for the consideration of the application of respondent No. 1 for a Class IV post on compassionate ground.

b) Aggrieved, respondent No.1 preferred Special Civil Application No.5630/2007, which was disposed of vide judgment and order dated 2.3.2007, considering the fact that there was a subsequent notification dated 16.3.2005, which provided for the

minimum qualification requirement of 10th standard pass, as the eligibility criteria for employment to a Class IV post. However, it was held that, as the said employee had died in the year 1999, the amended provision would not apply to his case. Therefore, direction was issued to consider his case without being influenced by the earlier order, in light of the new policy/circular/rules.

c) Aggrieved, the said order was challenged before the Division Bench, by the appellant, which was rejected vide impugned judgment and order dated 4.2.2008. Hence, this appeal.”

3. Shri Shomil Sanjanwala, learned counsel appearing for the State of Gujarat, has submitted that the High Court erred in observing that the new policy/rules do not apply retrospectively, and that the case of respondent No.1 should be considered in light of the then existing rules, i.e., the rules which were in force prior to 2005. Earlier, employment on compassionate ground in the Department of Police was governed by way of Circular dated 16.12.1991, which provided that employment in Class III or Class IV posts, shall be accorded on compassionate ground to deserving candidates on the basis of their educational qualification.

4. Mrs. Laxmi Arvind, learned Amicus Curiae, appearing for respondent No.1 opposed the appeal, contending that the matter has been considered by the court below in a correct perspective and does not therefore, invite any interference. The father of the respondent died on 9.4.1999, and a period of more than 13 years has lapsed since then. The respondent has been unsuccessful in getting such employment, and has now attained the age of 36 years simply waiting for the said job by approaching one forum or the other, even though the purpose for which compassionate employment was introduced, was to redeem the bereaved family from financial constraints from which it is likely to suffer, owing to the death of its sole bread earner, and thus, should be accorded immediately. The court should, therefore, issue direction to offer employment to the said post of peon, to respondent No.1 under all circumstances on humanitarian grounds. The appeal lacks merit and is liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record. 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. (Vide: *Union of India Ors. v. Shashank Goswami Anr*¹).

6. 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. (Vide: *Dr. Preeti Srivastava Anr. v. State of M.P. Ors*²

7. 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. (Vide: *State of Haryana v. Subhash Chandra Marwah Ors*³*J.C. Yadav v.State of Haryana*⁴and *Ashok Kumar Uppal Ors. v. State of J K Ors*⁵

8. The courts and tribunal do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In *State of M.P. Anr. v. Dharam Bir*⁶ this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under: “The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution.”

9. 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'. (Vide: *State of J K v. Shiv Ram Sharma Ors*⁷ and *Praveen Singh v. State of Punjab Ors*⁸).

10. In *State of Orissa Anr. v. Mamta Mohanty*⁹ this Court has held that any appointment made in contravention of the statutory requirement i.e. eligibility, cannot be approved and once an appointment is bad at its inception, the same cannot be preserved, or protected, merely because a person has been employed for a long time.

11. A person who does not possess the requisite qualification cannot even apply for recruitment for the reason that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegibility and not mere irregularity. Such a person cannot approach the court for any relief for the reason that he does not have a right which can be enforced through court. (See: *Prit Singh v. S.K. Mangal Ors*¹⁰ and *Pramod Kumar v. U.P. Secondary Education Services Commission Ors*¹¹

12. The claim of the respondent was earlier rejected on the ground that, the family had adequate financial status and the amount of pension being given was actually over and above the limit fixed by the appellant issuing the guidelines. Subsequently, when the case was reconsidered upon the direction of the court, it was found that the respondent did not meet the requisite eligibility criteria i.e., 10th standard certificate. Admittedly, the respondent is 8th standard fail, and thus, he can be considered only as 7th standard pass and we must therefore consider, whether he could have been offered appointment to a Class IV post.

13. Clause 9 thereof, provides that no relaxation in educational qualification(s) for the purpose of giving compassionate appointment to the dependant(s) of a deceased employee, would be permissible. However, such relaxation can be granted if there exists some requirement of minimum qualification(s) with respect to the said post. Clause 11 thereof, provides that a dependant can, in fact, be given appointment on compassionate ground, on the basis of the pass marks obtained by him in the new Secondary School Certificate and in view thereof, as respondent No.1 is admittedly only 8th standard (fail), he is therefore, ineligible for the post. Even otherwise, if the direction of the High Court is complied with and the case is considered as per the un-amended provisions in existence prior to 2005, the financial limits

fixed therein, would automatically be applicable. His application dated 11.5.1999 reveals that his date of birth is 1.3.1976, and further that he has studied only upto the 8th standard (fail).

14. In view of the above, we are of the considered opinion that since 1991, the eligibility criteria for a Class IV post was set as, the passing of the 10th standard, and as the said respondent had been unable to pass even the 8th standard, he was most certainly, not eligible to apply for the said post. In view of the law referred to hereinabove, it is neither desirable, nor permissible in law, for this court to issue direction to relax the said eligibility criteria and appoint respondent No. 1 merely on humanitarian grounds.

15. Thus, the question framed by this Court with respect to whether the application for compassionate employment is to be considered as per existing rules, or under the rules as existing on the date of death of the employee, is not required to be considered.

16. In view of the above, the appeal succeeds and is allowed. The judgment and order impugned herein is set aside. No order as to costs.

Judgment Referred

¹AIR 2012 SC 2294

² AIR 1999 SC 2894

³AIR 1973 SC 2216

⁴AIR 1990 SC 0857

⁵AIR 1998 SC 2812

⁶(1998) 6 SCC 0165

⁷AIR 1999 SC 2012

⁸(2000) 8 SCC 0436

⁹(2011) 3 SCC 0436

¹⁰1993(1) SCC (Supp.) 0714

¹¹ AIR 2008 SC 1817