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STATE OF GUJARAT & ORS.  
v.  
ARVINDKUMAR T. TIWARI & ANR.  
(Civil Appeal No. 6468 of 2012)

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SEPTEMBER 14, 2012  
**[DR. B.S. CHAUHAN AND FAKKIR MOHAMED  
IBRAHIM KALIFULLA, JJ.]**

SERVICE LAW:

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*Appointment on compassionate ground - Eligibility - Relaxation - Held: Compassionate appointment cannot be claimed as a matter of right - A claim to be appointed on such a ground has to be considered in accordance with rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of family of deceased - Eligibility criteria for a class IV post being 10th standard, and the applicant being 8th fail, was not eligible to apply for the post - The income of the family was also above the financial limit - In view of the settled position, it is neither desirable, nor permissible in law, for the Court to issue direction to relax the eligibility criteria and appoint the applicant merely on humanitarian grounds.*

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*Service Law - 'Eligibility' - Connotation of - Explained - Held: Fixing the eligibility for a particular post 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 - 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.*

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**Respondent No. 1, applied for the post of Peon on compassionate ground as his father, an ASI of Police,**

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died in harness on 9.4.1999. His application was first rejected on the ground that the family had an income over and above the limit fixed for the purpose and, subsequently, on the ground that he did not meet the examinations minimum eligibility for the post as he had not passed 10th standard examinations which was a necessary pre-requisite for a class IV post. On a Special Civil Application, being filed by respondent no. 1, it was held that since his father died in 1999, the subsequent provision prescribing 10th pass for class IV post was not applicable and his case was directed to be considered afresh accordingly. The Division Bench of the High Court declined to interfere.

Allowing the appeal, filed by the department, the Court

HELD: 1.1 It is a settled legal proposition that the 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. The objective of providing 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. [para 5] [1078-E-G]

*Union of India & Ors. v. Shashank Goswami & Anr.*, AIR 2012 SC 2294 - relied on.

1.2 The eligibility for the post may at times is 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

A connote any additional norms laid down by the authorities. Before a candidate is considered for a post or even for admission to the institution, he must fulfill the eligibility criteria. Lacking eligibility for the post cannot be cured at any stage and appointing such a person would amount to serious illegality and not mere irregularity. [para 6 and 11] [1078-H; 1079-A-B; 1081-B]

*Dr. Preeti Srivastava & Anr. v. State of M.P. & Ors.*, 1999 (1) Suppl. SCR 249 = AIR 1999 SC 2894; *State of Haryana v. Subhash Chandra Marwah & Ors.*, 1974 (1) SCR 165 = AIR 1973 SC 2216; *J.C. Yadav v. State of Haryana*, 1990 (2) SCR 470 = AIR 1990 SC 857; and *Ashok Kumar Uppal & Ors. v. State of J & K & Ors.*, 1998 (1) SCR 164 = AIR 1998 SC 2812 - referred to

D 2.1 Fixing the eligibility for a particular post 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. 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. [para 8 and 9] [1079-G; 1080-C-D]

*State of J & K v. Shiv Ram Sharma & Ors.*, AIR 1999 SC 2012; *Praveen Singh v. State of Punjab & Ors.*, (2000) 8 SCC 436; *State of Orissa & Anr. v. Mamta Mohanty*, (2011) 3 SCC 436; *State of Orissa & Anr. v. Mamta Mohanty*, 2011 (2) SCR 704 = (2011) 3 SCC 436, *State of M.P. & Anr. v. Dharam Bir*, 1998 (3) SCR 511 = (1998) 6 SCC 165 - relied on.

*Prit Singh v. S.K. Mangal & Ors.* 1992 (1) Suppl. SCR

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337 = 1993(1) SCC (Supp.) 714; and *Pramod Kumar v. U.P. Secondary Education Services Commission & Ors.*, 2008 (4) SCR 559 = AIR 2008 SC 1817 - referred to A

2.2 This Court is, therefore, of the considered opinion that since 1991, the eligibility criteria for a Class IV post was set as the passing of the 10th standard examinations, and as respondent no. 1 had been unable to pass even the 8th standard examinations, he was not eligible to apply for the said 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 limit fixed therein, would automatically be applicable. 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. [Para 13, 14] [1082-A-D] B C D

Case Law Reference:

AIR 2012 SC 2294	relied on	para 5	E
1999 (1) Suppl. SCR 249	referred to	para 6	
1974 (1) SCR 165	referred to	para 7	
1990 (2) SCR 470	referred to	para 7	
1998 (1) SCR 164	relied on	para 7	F
1998 (3) SCR 511	relied on	para 8	
AIR 1999 SC 2012	relied on	para 9	
(2000) 8 SCC 436	relied on	para 9	G
2011 (2) SCR 704	relied on	para 10	
1992 (1) Suppl. SCR 337	referred to	para 11	
2008 (4) SCR 559	referred to	para 11	H

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6468 of 2012.

From the Judgment and Order dated 04.02.2008 of the High Court of Gujarat at Ahmedabad in Letters Patent Appeal No. 49 of 2008.

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Shomil Sanjanwala, Hemantika Wahi, Jesal for the Appellants.

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Laxmi Arvind, Poonam Prasad, Pradeep Kumar Mathur, Amardeep Sharma for the Respondents.

The Judgment of the Court was delivered by

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**DR. 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:-

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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

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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

A 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.

D 5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

E 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.*, AIR 2012 SC 2294).

H 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

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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.*, AIR 1999 SC 2894).

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.*, AIR 1973 SC 2216; *J.C. Yadav v. State of Haryana*, AIR 1990 SC 857; and *Ashok Kumar Uppal & Ors. v. State of J & K & Ors.*, AIR 1998 SC 2812).

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*, (1998) 6 SCC 165, 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

A 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  
 B 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  
 C 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  
 D 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  
 E 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.*, AIR 1999 SC 2012; and  
 F *Praveen Singh v. State of Punjab & Ors.*, (2000) 8 SCC 436).

10. In *State of Orissa & Anr. v. Mamta Mohanty*, (2011)  
 3 SCC 436, 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,  
 G 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  
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that his appointment would be contrary to the statutory rules is, and would therefore, be void in law. A

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. B

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.*, 1993(1) SCC (Supp.) 714; and *Pramod Kumar v. U.P. Secondary Education Services Commission & Ors.*, AIR 2008 SC 1817). C

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. D E

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. F

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. G H

A Even otherwise, if the direction of the High Court is  
compplied 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  
B 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  
C 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  
D 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  
E 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.  
F No order as to costs.

R.P.

Appeal allowed.