

(2009) 11 GUJ CK 0063

In the Gujarat High Court

Case No : Special Civil Application No. 5283 of 2009

Atulkumar Haribhai Thakkar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

Citation : (2009) 11 GUJ CK 0063

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : K.G. Pandit, for the Appellant; Moxa Thakkar, A.G.P. for Respondent No. 1, HS Munshaw and Manish J. Patel, for the Respondent

Judgement

Jayant Patel, J.—With the consent of the learned advocates appearing for both the sides, the matter is finally heard.

2. Upon hearing the learned advocate appearing for the petitioner and the learned AGP for the respondent authority, and the perusal of the impugned order dated 04.07.2008, it appears that the application of the petitioner for compassionate appointment has been denied on the ground that there is income of pension of Rs. 5307/- + other allowances to the family of the deceased employee and the family of the deceased employee has been paid retiral benefits of Rs. 6,63,774/-.

3. It appears that the issue in the present case is covered by the decision of this Court dated 02.11.2009 in Special Civil Application No. 11243/09 and allied matters. In the said decision, this Court inter alia observed at paras 8 to 13 as under:

8. As such certain issues, which arise for consideration in the present petitions, are covered by the decision of this Court in the case of Jayesh J. Puwar v. General Manager reported at 2003 1 GHCI 1043 (SCA No. 8675 of 2002), as well as the decision of this Court in the case of Diptiben D. Jadhav v. State of Gujarat, reported at 2007(0) GLHEL-HC 219783 (SCA No. 4729 of 2007). In the decision

of this Court in the case of Jayesh J. Puwar (supra), the proposal for compassionate appointment was denied on the ground of pension being paid and the retiral benefits paid to the concerned Government employee. This Court, after considering the submission, observed at paragraph 8 as under:

8. Considering the above, I am of the view that so far as the payment of terminal benefits are concerned, the same is on account of statutory obligation on the part of the employer and it cannot be a set off for negating the claim for appointment on compassionate ground. It may be that after excluding the amount of family pension and after excluding the amount of terminal benefits, the employer may consider the case for appointment on compassionate ground, keeping in view the availability of post, qualification of the dependent, etc., who applied for appointment on compassionate ground but the appointment on compassionate ground cannot be denied merely on the ground that the family of the deceased is receiving income of family pension and or that it has received the amount by way of terminal benefits.

9. In the decision of this Court in the case of Diptiben D. Jadhav(supra), it was, inter alia, observed at paragraph 5 as under:

5. Concerning the second ground of financial condition, due to the payment of retiral benefits is concerned, such was provided in the earlier resolution and ultimately vide resolution dated 10.3.2000 the income limit is deleted and fresh instructions are issued. Therefore, the ground mentioned by the State Government for rejecting the application due to payment of retiral benefits is extraneous to the Government Policy and the resolution and, therefore, cannot be sustained.

10. This Court further observed at paragraph 7 as under:

7. It deserves to be recorded that the essential purpose of compassionate appointment is to give benefit to the family members of the deceased government employee at the earliest for financial support to the family. Therefore, such application is required to be decided as early as possible. Otherwise, the very purpose of giving compassionate appointment would be frustrated.

11. It is the aforesaid findings and observations made by this Court in the above referred decisions pressed in service by the learned Counsel for the petitioners. It was submitted, that the retiral benefits including the family pension is not at all required to be considered and the matter deserves to be examined from the other aspects, which have not been done in the present case, therefore, this Court may quash the decision and may direct the State Government to reconsider the matter, excluding the income of family pension and the retiral benefits.

12. Whereas, the learned AGPs contended that even if the income limit is excluded for consideration the cause of compassionate appointment, the

essential purpose is to provide financial support for survival of the family and the income of the family is required to be considered and such would include the family pension and the retiral benefits. Therefore, the learned AGPs have supported the order passed by the State Government, whereby the compassionate appointment have been denied.

4. Same direction deserves to be issued as was given in the present case. Hence, the impugned decision is without proper application of mind and deserves to be quashed and set aside. Therefore, the same is quashed and set aside.

5. It is directed that the concerned authority of the State Government shall reconsider the matter within a period of 3 months from the receipt of the order of this Court afresh keeping in view the observations made hereinabove and also in accordance with law and the decision shall be communicated to the petitioner.

6. Petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. Direct Service is permitted.