courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 10/09/2026

(2014) 06 GUJ CK 0009

In the Gujarat High Court

Case No : Special Civil Application No. 8915 of 2009

Bhavesh Kantilal Kadecha — APPELLANT

Vs

State of Gujarat — RESPONDENT

Date of Decision : 10-06-2014

Acts Referred:

Citation : (2014) LabIC 3268

Hon'ble Judges : Abdullah Gulamahmed Uraizee, J

Bench : Single Bench

Advocate : Bipin I. Mehta, Advocate for the Appellant; H.S. Soni, Learned AGP and Khyati P. Hathi, Advocate for the Respondent

Judgement

@

Abdullah Gulamahmed Uraizee, J.—The petitioner has preferred this petition for the following reliefs:--

15(A) Your Lordships may be pleased to allow and admit this petition;

(B) Your Lordships may be pleased to issue appropriate writ, order or direction quashing and setting aside the order dated 28.11.2008 passed by the Deputy Secretary, Panchayat Rural & Housing Department.

(C) Your Lordships may be pleased to direct the respondents to consider the case of the petitioner and appoint the petitioner on compassionate ground in Class-IV from the date of his application i.e. 15.03.2005 and further be pleased to direct the respondents to confer upon the petitioner all consequential service benefits.

(D) Pending admission and final disposal of this petition, Your Lordships may be pleased to direct the respondents to appoint the petitioner on compassionate ground in Class-IV provisionally.

The petition has a chequered history. The petitioner''s father namely Kantilal Narbherambhai Kudecha died in harness on 26.02.2005, while he was working as

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/bhavesh-kantilal-kadecha-appellant-…

Acharya in Dairy Primary School, Kalavad, District-Jamnagar. Thereafter on 15.03.2005 the petitioner made representation/application for compassionate appointment. The representation/application of the petitioner came to be rejected by respondent No. 2 vide communication dated 16.09.2006 on the ground that petitioner did not possess requisite educational qualification. Though the application of the petitioner for compassionate appointment was rejected on 16.09.2006, the petitioner did not take any steps till 2008 when he filed a petition being Special Civil Application No. 12410 of 2008 in this Court to challenge rejection of his application. The said petition came to be decided on 10.10.2008 and the respondents were directed to consider the application of the petitioner within a period of four weeks from the date of receipt of the writ of the order, on the basis of the scheme, which was prevailing on the date of making of the application. Once again the respondents rejected the request of the petitioner for compassionate appointment vide communication dated 28.11.2008 on twin ground viz. lack of requisite educational qualification and economic condition of the family of the petitioner. This decision of the respondents is the subject-matter of challenge in this petition.

2. Mr. Mehta, learned counsel for the petitioner has urged that this Court had directed the respondents to consider the application of the petitioner on the basis of the policy prevailing, when the petitioner made the application for compassionate appointment and as per the said policy i.e. 2004 policy, the requisite educational qualification was IVth pass, while the petitioner is 9th Standard pass. Therefore, according to Mr. Mehta, the respondents have wrongly rejected the application of the petitioner on the ground of requisite educational qualification.

2.1. His further contention is that the respondents have not followed the order dated 10.10.2008 of this Court in its true spirit and have wrongly rejected the application on the ground of economic criteria. Therefore, he has urged that the petition may be allowed and respondents may be directed to give compassionate appointment to the petitioner.

2.2. In alternative, his submission is that in the year 2011 the Government has implemented new policy and has adopted the practice of payment of lump sum compensation to the eligible family member/s of the deceased Government employee in lieu of compassionate appointment. Therefore, he requested this Court to direct the respondents to give lump sum compensation to the petitioner in lieu of compassionate appointment on the line of 2011 Government Policy.

3. On the other hand learned AGP Mr. Soni, has contended that the application of the petitioner for compassionate appointment is twice rejected and now the petitioner cannot be permitted to reagitate the issue since it is finally decided by the authority. He has further contended that the concerned authority has properly followed and implemented the order of this Court and the ground of economic condition of the family of the petitioner is mentioned as an additional reason beside the lack of requisite educational qualification of the petitioner for

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/bhavesh-kantilal-kadecha-appellant-…

not giving compassionate appointment to the petitioner. Therefore, it cannot be said that the respondents have not followed the order of this Court in its true spirit. He would urge that there is no substance in the petition and it may be dismissed.

4. Learned counsel Ms. Hathi, appearing for the respondent No. 2 has urged that the application of the petitioner was rejected for the first time in the year 2006. The petitioner did not take any action till 2008 and thereafter he woke up from slumber and challenged the order of 2006 in the year 2008 by filing writ petition in this Court. According to her submission, the benefit of new policy of 2011 for giving lump sum compensation cannot be extended to the petitioner because as on date no application for compassionate appointment is pending with the respondents and the application of the petitioner for compassionate appointment was rejected way back in the year 2006. Therefore, this new policy will not apply to the facts of the present case. Hence, she has also urged that this petition is devoid of merits and be rejected accordingly.

5. I have heard learned counsel appearing for the respective parties and perused the relevant documents made available from the record of the petition. The contention of Mr. Mehta, learned counsel for the petitioner, is that the application of the petitioner for compassionate appointment needs to be considered on the basis of the policy prevailing at the time of making application cannot be countenanced. It is true that the petitioner challenged 2006 rejection order in the year 2008 by filing a petition before this Court being Special Civil Application No. 12410 of 2008. The said petition came to be decided on 10.10.2008 and direction was made to the respondents to consider the application of the petitioner on the basis of the policy prevailing at the time of making of the application but thereafter, the Supreme Court in the case of MGB Gramin Bank Vs. Chakrawarti Singh, has held that the applicant can not claim for compassionate appointment as per the scheme existing on the date of cause of action as arisen, but such an application is required to be considered as per the scheme existing at the time of consideration.

6. Now therefore, the core issue as to whether the application of the petitioner for compassionate appointment can be said to be pending so as to extend him the benefit of 2011 scheme and whether the respondents can be directed to consider the request of the petitioner to give lump sum compensation in lieu of compassionate appointment. It is submitted on behalf of the respondents that the application of the petitioner for compassionate appointment was rejected way back in the year 2006 and now no application is pending. Therefore, in view of Clause-V of 2011 policy, lump sum compensation is to be paid to those applicants whose applications for compassionate appointment are pending. Since the application of the petitioner is rejected twice and there is no pending application with the respondents, the respondents cannot be permitted to consider the request for payment of lump sum compensation. This argument sounds attractive at the first blush but if this argument is closely examined from

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/bhavesh-kantilal-kadecha-appellant-…

different perspective, then it is clear that this argument lacks merit. The admitted scenario that the application for compassionate appointment was made on 15.03.2005 and was rejected in the year 2006. The petitioner remained indolent for some time but then decided to challenge this rejection order in the year 2008 by filing a petition being Special Civil Application No. 12410 of 2008 in this Court. The direction came to be issued to the respondents in the said writ petition to consider the application of the petitioner on the basis of the policy prevailing at the time of making of the application. The respondents once again reconsidered 2005 application of the petitioner pursuant to the direction of this Court and rejected it on 28.11.2008. This petition challenges the second rejected order. This chronology of events show that the petitioner is pursuing his 2005 application consistently. Though there was a delay of about two years in challenging the first rejected order but since this Court has entertained the writ petition, wherein the petitioner challenged the first rejected order, the delay in my opinion pales into insignificance and the petitioner cannot be shunted out on the ground that he was lethargic in challenging the first rejected order. Thus, it is explicitly clear that the petitioner is pursuing his representation/application dated 15.03.2005 for compassionate appointment vigorously and since the said application is the subject matter of the present petition, the rejection thereof by the authority has not attained finality and it cannot be said that the application for compassionate appointment is not pending.

7. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints. The impugned order dated 28.11.2008 itself demonstrates that the family of the deceased is largely surviving on the family pension of Rs. 6,462/- (inclusive of D.A. and Medical Allowance). It also reflects that the bereaved family has received around Rs. 6,62,204/- as other benefits under different heads. In these days of high inflation, when the prices of all essential commodities have become very dear, it cannot be said that the family can pull on comfortably on the basis of the family pension and other income derived from the investment and other dues.

8. In the backdrop of these peculiar facts, the alternative argument of learned counsel for the petitioner for giving lump sum compensation in lieu of compassionate appointment, as per 2011 policy of the Government, needs to be accepted. The respondents are, therefore, directed to consider the case of the petitioner for making payment of lump sum compensation in lieu of compassionate appointment by treating his application of 2005 as pending, in terms of 2011 policy, in accordance with law and subject to all criteria being fulfilled by the petitioner as contemplated in 2011 policy. The respondents are directed to undertake the exercise of examining the case of the petitioner for making lump sum compensation in lieu of compassionate appointment within a period of four months from today and intimate the result to the petitioner. In the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/bhavesh-kantilal-kadecha-appellant-…

result, the petition is allowed in part. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case no order as to costs. Direct service is permitted.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/bhavesh-kantilal-kadecha-appellant-…