

(2014) 01 GUJ CK 0044
In the Gujarat High Court

Case No : Letters Patent Appeal No. 957 of 2008 in Special Civil Application No. 14313 of 2007

Chief Secretary to Gujarat Administrative Dev. Officer and
Others

APPELLANT

Vs

Ajay Chandrakant Waghela

RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:

Citation : (2014) 01 GUJ CK 0044

Hon'ble Judges : K.S. Jhaveri, J;A.G. Uraizee, J

Bench : Division Bench

Advocate : J.K. Shah, AGP, for the Appellant;

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—The present appeal has been filed under Clause 15 of the Letters Patent by the appellants-original respondents against the order dated 15.06.2007 passed by the learned Single Judge of this Court in Special Civil Application No. 14313 of 2007, whereby the learned Single Judge has disposed of the said petition with an observation to the appellants to reconsider the case of the respondent-original petitioner for his appointment on compassionate ground on the basis of prevailing policy within a period of three months from the date of receipt of a copy of the order. The facts in brief are that the father of the respondent-original petitioner who was serving in the establishment of the respondents expired while in service on 18.6.2003. Thereafter, an application for appointment on compassionate ground was made by the respondent herein. However, the said application was rejected by the appellants herein. Against the said order, the respondent herein approached this Court by way of filing petition being SCA No. 14313 of 2007. The learned Single Judge vide impugned judgment disposed of the said petition as stated hereinabove. Hence, this appeal.

2. Though served none appears for the respondent.

3. Learned AGP appearing for the appellants submitted that the learned Single Judge was not justified in directing the appellants to reconsider the case of the respondent herein for compassionate appointment since the respondent herein does not fulfill the eligibility criteria for the post of Peon.

3.1. In support of his contention, he relied upon the decision of the Apex Court in the case of State of Gujarat and Others Vs. Arvindkumar T. Tiwari and Another, more particularly paras-14 to 17, which reads as under:-

14. 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: Dr Prit Singh Vs. S.K. Mangal and Others, ; and Pramod Kumar Vs. U.P. Secondary Education Services Commission and Others,

15. 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.

16. 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).

17. 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.

4. We have perused the impugned order passed by the learned Single Judge and find that the learned Single Judge has committed error in directing the appellants to reconsider the case of the respondent herein since the respondent does not fulfill the requisite educational qualification to be appointed on class-IV post. As per the Policy of the State Government the educational qualification for class-IV post is that the candidate must have possessed the qualification of Matriculation. However, the respondent herein does not possess the said qualification. Therefore, we are of the opinion that that the learned Single Judge was not justified in directing the appellants herein to reconsider the case of the respondent herein for compassionate appointment.

5. Considering the aforesaid fact and also considering the principle laid down by the Apex Court in the case of Arvindkumar T. Tiwari (*supra*), we are of the considered opinion that the order passed by the learned Single Judge cannot sustain under the eyes of law. For the foregoing reasons, the present appeal is allowed. The impugned order of learned Single Judge is quashed and set aside. Rules is made absolute with no order as to costs.