

(2014) 10 GUJ CK 0014
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1316 of 2009 in Special Civil Application No. 13615 of 2008

Machhar Babubhai Pratapbhai

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Citation : (2014) 10 GUJ CK 0014

Hon'ble Judges : V.M. Pancholi, J; Jayant M. Patel, J

Bench : Division Bench

Advocate : Dipak R. Dave, Advocate for the Appellant; Sudhanshu S. Patel and Sunil S. Joshi, Advocate for the Respondent

Judgement

Jayant M. Patel, J.—The present appeal is directed against the order dated 18.11.2008 passed by learned Single Judge of this Court in Special Civil Application No. 13615 of 2008, whereby, learned Single Judge, for the reasons recorded in the order, has dismissed the said petition.

2. The short facts of the case appear to be that the father of the petitioner, namely, Machhar Pratapbhai Masurbhai expired on 23.08.1996. As per the petitioner, his father was working as "Work charge"/"Daily Wager", whereas as per the respondents, he was working as "Daily Wager". After the death of the father of the petitioner, the petitioner applied for compassionate appointment vide application dated 10.09.1996. As per the petitioner, attempts were made to get the decision below the application, but decision was not taken well in time, and therefore, the appellant had preferred the petition being Special Civil Application No. 25779 of 2007 before this Court, and in the said petition, this Court vide order dated 17.10.2007 directed the respondents to decide the application of the petitioner for compassionate appointment. Thereafter, vide order dated 02.01.2008, the application of the petitioner came to be rejected on the ground that the father of the petitioner was working as "Rojamdar". Under the circumstances, the appellant-petitioner preferred Special Civil Application No.

13615 of 2008 before this Court. The learned Single Judge found that there was an inordinate delay of about 12 years in pursuing the case for compassionate appointment, and therefore, dismissed the said petition. Under the circumstances, the present appeal.

3. We have heard Mr. Dipak Dave, learned counsel appearing for the appellant, Mr. Sudhanshu Patel, learned counsel appearing for Respondents No. 2 and Mr. P.P. Banaji, learned AGP appearing for Respondent No. 1.

4. It, prima facie, appears that delay had taken place at the hands of the respondents in deciding the application, inasmuch as the father of the petitioner expired in the year 1996, and the application was made in the year 1996, but the same came to be decided only on 02.01.2008 by the authorities, and that too after the direction was issued by this Court in Special Civil Application No. 25779 of 2007. The petitioner, thereafter, preferred the petition in the year 2008, and as such, delay may not operate as a bar in pursuing the matter for compassionate appointment, and to that extent, the view taken by the learned Single Judge may call for interference.

5. However, even if the cause of delay is kept aside and merit is examined, it appears that the father of the petitioner was not in the regular set up of the government as Class III or Class IV employee. Further, he was working as "Daily Wager". Mr. Dave, learned counsel appearing for the appellant, by relying upon the order dated 15.02.1993 (Annexure-"G" to the petition) attempted to contend that since the father of the petitioner had completed five years, he was taken as "Work-charge"/"Daily Wager" on fixed salary of Rs. 750/-, and therefore, he should have been treated as on the regular set up of "Work-charge", and consequently, the appellant-petitioner would be entitled for seeking compassionate appointment.

6. The examination of the said contention shows that earlier, the father of the petitioner was working as "Daily wagger". He completed five years of service, but he was continued on fixed salary of Rs. 750/-, and was not given regular pay scale of "Work-charge", which was made available to other persons after completion of ten years of service, as per the Government Resolution dated 17.10.1988. Once the person is not in the regular pay scale may be minimum pay scale of "Work-charge", he cannot be considered in the regular set up of "Work-charge". All other employees may be as "Work-charged", "Daily wagger" or as "Daily Wager" would remain outside the set up of Class IV. Once the father of petitioner was not in the set up of Class IV of "Work-charge", the policy of offering compassionate appointment cannot be made applicable. Therefore, it cannot be said that the decision taken by authorities for denying compassionate appointment was, in any manner, illegal or arbitrary.

7. Under the circumstances, as even on merits, no case is made out, no useful purpose would be served in remanding the matter to the learned Single Judge since the petition was dismissed on the ground of delay and then to consider the

case again.

8. In view of the aforesaid, ultimate decision taken by the learned Single Judge for dismissal of the petition would not call for interference. Hence, present appeal is dismissed. Considering the facts and circumstances of the case, no order as to costs.