

(2008) 01 GUJ CK 0061

In the Gujarat High Court

Case No : Special Civil Application No. 16826 of 2007

M.M. Kashyap

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Citation : (2008) 1 GLH 373

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : A.S. Supehia, Petitioner No. 1, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Jayant Patel, J.—Rule. Mr. Dabhi, learned AGP waives notice of Rule for respondent.

2. With the consent of the learned advocate for both the sides, the matter is finally heard.

3. The short facts of the case appear to be that the father of the petitioner was serving as Assistant Sub-Inspector of Police in SRP Group No. 8,

Gondal, had expired on 01.07.2000 while on duty. On 09.02.2001, the petitioner applied for compassionate appointment. The application of the

petitioner was rejected vide order dated 02.06.2007. It is under these circumstances, the present petition.

4. Heard Mr. Supehia, learned Counsel appearing for the petitioner and Mr. Dabhi, learned AGP for the State Authorities.

5. It appears that first ground considered for rejection of the application is the limitation and the second ground is on the aspect of income. It is the

case of the petitioner as stated in para 9 that of the petition that neither the information was given nor any application was forwarded for

appointment on compassionate ground by the Department. In the affidavit in reply, there is no denial to the said aspects. Further, even in the

impugned order, there is no reference to the same. Similar aspect came to be considered by this Court (Coram: A.L. Dave, J.) in Special Civil

Application No. 542/04 decided on 16.04.2004, copy whereof is produced at Annexure-F, wherein, at para 5, it was observed inter alia as

under:

5. In light of above set of circumstances, it is clear that delay cannot be attributed to the petitioner, but, to the Office in which the petitioner's father

was serving, as the personnel concerned has not complied with the requirement of G.R. at Annexure-G. However, since the

application/representation subsequently made by the petitioner is pending before the Government, this petition can be disposed of with a direction

to respondent nos.1 and 2 to consider the application/representation made by the petitioner as early as possible, preferably within three months

from the date of receipt of this order. The above stated respondents shall consider the application of the petitioner on merits and shall not reject the

same only on the ground of delay.

6. Therefore, the ground of delay for rejection of the application cannot be attributed to the petitioner and it was required for the authority to

consider the application on merits.

7. On the aspects of financial position due to payment of the retiral benefits, even otherwise also cannot be considered, in view of the G.R. Dated

10.03.2000 in which it has been inter alia provided that the retiral benefits are not to be considered or there is no income limit to be considered for

consideration of the application for compassionate appointment.

8. In view of the above, the impugned orders passed by the authority can be said as without proper application of mind and on the ground which

cannot be sustained in the eye of law.

9. Hence, the impugned order (Annexure-C) dated 02.06.2007 is quashed and set aside with the direction to the respondent to reconsider the

application of the petitioner on merits and without considering the aspects of delay and all the income based on retiral benefits.

10. The matter shall be reconsidered and the decision shall be taken preferably within three months from the receipt of the order of this Court.

11. Petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs.