

(2009) 11 GUJ CK 0046

In the Gujarat High Court

Case No : Special Civil Application No. 11268 of 2009

Prakashkumar Vitthalbhai Vankar

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 03-11-2009

Acts Referred:

Citation : (2009) 11 GUJ CK 0046

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : A.S. Supehia and Samir B. Gohil, for the Appellant; Moxa Thakkar, learned AGP for Respondent 1, for the Respondent

Judgement

Jayant Patel, J.—Rule. Ms. Thakkar, learned Assistant Government Pleader waives notice of rule for respondent No. 1. Presence of respondent No. 2 is not required at this stage since the decision is taken by the State Government and the respondent No. 2 has only communicated the decision.

2. The petitioner by this petition is seeking directions to quash and set aside the decision dated 15.12.2008 passed by the respondent authority whereby the compassionate appointment has been denied to the petitioner.

3. Upon hearing the learned Counsel appearing for the petitioner and respondent State Authority, it appears that in the present case the compassionate appointment has been denied on the ground that the family of the deceased employee is receiving pension of Rs. 7168/- per month and the retiral benefits are paid of Rs. 7,16,111/-. The additional aspect in the present case is that the income of the other members of the family is Rs. 84,000/- and the elder brother is earning Rs. 5,500/- basic salary of stenographer. So far as the other adult member of the family is concerned, whether he is staying separately or not is also an aspect which is required to be taken into consideration by the authority and if such member of the family is staying separately and is having his own family, his income may not be required to be considered. If the income of the

family is taken into consideration of pension and the retiral benefits, it appears that the issue on the said aspect is covered by the decision of this Court dated 02.11.2009 in Special Civil Application No. 11243 of 2009 and allied matters wherein this Court has observed at para 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 Gujarat High Court Judgements 1-1043 (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.

13. It appears to this Court that as such in view of the aforesaid decision, the statutory obligation which has been discharged by the State Government on account of the death of the concerned employees cannot be treated as a set off for negating the claim on compassionate ground, but at the same time, the learned AGPs are right in contending, to the extent, that the essential purpose of extending the benefits of compassionate appointment is to see that the family gets financial support for survival, hence, the financial condition of the family may have the relevance to that extent. Therefore, it appears that while considering the financial condition of the family, the State Government can take into consideration the salary or the minimum wage being offered for the post in question for which compassionate appointment is prayed. For example, in a given case, if the qualification of the applicant meets with Class-IV employee, then in that case the State Government has to take into consideration the salary at the entry point of such Class-IV employee and thereafter to consider as to whether the same meets with the quantum of family pension, which is being received by the family members of the deceased employee or not. If minimum scale or salary is available by way of family pension, it may be one of the relevant circumstances to consider as to whether the family has financial support for survival or not. There may be other relevant circumstance to be taken into consideration by the concerned authority, including the availability of the post, policy of the Government for payment of salary, etc. Hence, it appears that such aspects, though were required to be taken into consideration by the State Government, have not been taken into consideration and only by relying upon the income of the pension without taking into consideration the minimum salary for the post in question the compassionate appointment has been denied.

4. In view of the aforesaid, the impugned decision can be said as without proper application of mind, hence, deserves to be quashed and set aside. Therefore, quashed and set aside. It is also directed that the concerned authority shall forward the proposal once again on the basis of the present decision of this Court

to the State Government within a period of four weeks from the date of receipt of the order and the State Government thereafter shall decide the matter afresh and keeping in view all the observations made hereinabove and also in accordance with law, preferably within a period of three months from the date of receipt of the proposal from concerned authority and the decision shall be communicated to the petitioner.

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