

(2014) 11 GUJ CK 0040

In the Gujarat High Court

Case No : Special Civil Application No. 15312 of 2014

Shankarbhai Mohanbhai Patel

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 17-11-2014

Acts Referred:

Citation : (2014) 11 GUJ CK 0040

Hon'ble Judges : S.H. Vora, J

Bench : Single Bench

Advocate : P.H. Pathak, Advocate for the Appellant; Swapneshwar Gautam, AGP, Advocate for the Respondent

Judgement

S.H. Vora, J.—Rule. Learned AGP Mr. Swapneshwar Gautam waives service of copy of Rule for the respondent State on advanced copy. In view of the peculiar facts and circumstances of the case and with the consent of learned advocates for the respective parties, the petition is being heard and decided finally today.

2. Vide present petition, the petitioner has challenged the decision dated 5.6.2009, whereby the services of the petitioner were terminated on the ground that he failed to clear pre-service training examination in three attempts.

3. It is the case of the petitioner that petitioner's father was serving as an Unarmed Head Constable with the Deputy Superintendent of Police, Junagadh and expired on 25.7.1986. Therefore, the petitioner applied for grant of compassionate appointment, which was accepted and the petitioner was appointed as junior clerk-cum-typist in the pay-scale of Rs. 3050-Rs. 4590 vide order dated 28.3.2013. Accordingly, the petitioner joined the services pursuant to the said appointment order. It is the case of the petitioner that as a condition of his service, the petitioner was required to clear pre-service training examination, but has failed in all the three chances. Therefore, petitioner's services were terminated vide order dated 5.6.2009 and was relieved from services on the same date.

4. Learned advocate Ms. Rina Kamani for learned advocate Mr. Pathak for the petitioner submitted that the petitioner was granted appointment on compassionate ground as his family was in dire need of money. Unfortunately, the petitioner could not pass the examination though he was provided three chances. In support of the above submissions, learned advocate for the petitioner has placed reliance upon a judgment dated 18.01.2013, of the Supreme Court in Brijesh Vipin Chandra Shah v. State of Gujarat & Ors. in Civil Appeal No. 735 of 2013. Lastly, it is submitted by the learned advocate for the petitioner, that as the case of the petitioner is covered by the said judgment, directions, in accordance with the observations of the Supreme Court, may be issued.

5. Per contra, learned AGP Mr. Swapneshwar Gautam submits that State cannot run away from the outcome of the case before the Hon"ble Apex Court, but he ventilates a grievance that the petitioner has straightway approached this Court without making any representation.

6. I have heard submissions of learned advocate Ms. Rina Kamani appearing for learned advocate Mr. P.H. Pathak for the petitioner and learned AGP Mr. Gautam for the respondent State and perused the pleadings and also decision rendered in case of Brijesh Vipin Chandra Shah (supra).

7. In case of Brijesh Vipin Chandra Shah (supra), the Supreme Court was dealing with a case wherein the appellant before it was appointed on compassionate grounds as a Junior Clerk as his father had died while in harness. In that case as well, the appellant could not clear the pre-service training examination within three chances and was given an additional chance but was unable to pass the examination in that chance, as well. This led to the termination of the services of the appellant therein. After having considered the entire matter, the Supreme Court held as below:

"7. At this stage, learned counsel for the appellant submits that having worked for about 12 years, the appellant cannot now be rendered jobless. Even though he is not entitled to a Class III post, he would be certainly entitled to a Class IV post on compassionate grounds. He, therefore, prays that the appellant may be permitted to continue on Class IV post. However, this request is vehemently opposed by the learned counsel for the respondents and he submits that once the appellant had been appointed on Class III post, he cannot be considered for regularising his service on a Class IV post.

8. We are of the considered opinion that the stand taken by the respondents is unnecessarily harsh. It must be remembered that the appellant was initially appointed on compassionate grounds as his father had died while he was in service. Compassionate appointment is made by relaxation of the normal service rules for providing immediate financial assistance to the family of the deceased who dies in harness. It is unfortunate that the appellant was unable to pass the in service examination so as to enable him to continue on a Class III post. But

that ought not to result in depriving him of service altogether.

9. In view of the above, we allow this appeal and direct the respondents to appoint the appellant on a Class IV post. The appointment of the appellant on a Class IV post shall be from the date he was initially appointed on Class III post. His seniority shall be reckoned from the date of initial appointment. However, the appellant shall not be entitled to any backwages since he has not worked, on any of the posts, after the date of termination of his services."

(emphasis supplied)

8. The facts of the case before the Supreme Court are similar to the facts obtaining in the present case; therefore, the principles of law enunciated by the Supreme Court in the abovequoted judgment in case of Brijesh Vipin Chandra Shah (supra) would clearly be applicable to the case of the petitioner. The petitioner herein has worked for about six years as a Junior Clerk and has been terminated because he could not clear the pre service training examination in three chances. Considering that the appointment of the petitioner was on compassionate grounds and in view of the observations made by the Supreme Court in the case of Brijesh Vipin Chandra Shah (supra), similar directions can be issued to the respondents.

9. Considering that the appointment of the petitioner was on compassionate grounds and in view of the observations of the Supreme Court quoted hereinabove, the petition is partly allowed. The respondents shall consider the petitioner for appointment to a Class IV post. The said appointment on the Class IV post shall be considered to have been made since the initial date when the petitioner was appointed on a Class III post and his service seniority reckoned, accordingly. It is, however, made clear that the petitioner shall not be entitled to backwages as he has not worked after the date of termination of his services.

10. Rule is made absolute to the above extent. There shall be no orders as to costs. Direct service is permitted.