

(2011) 04 GUJ CK 0154
In the Gujarat High Court

Case No : Letters Patent Appeal No. 625 of 2011 in Special Civil Application No. 5087 of 2010 and Civil Application No. 4575 of 2011 in Letters Patent Appeal No. 625 of 2011

Siraj Hussainbhai Jesani

APPELLANT

Vs

The Dist. Development Officer and Others

RESPONDENT

Date of Decision : 25-04-2011

Acts Referred:

Citation : (2011) 04 GUJ CK 0154

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : V.B. Malik, for the Appellant; H.S. Munshaw, for Respondents 1 - 2, Anand B Gogia and R.B. Gogia for Respondent 3, for the Respondent

Judgement

V.M. Sahai, J.—We have heard Mr. V.B. Malik, learned Counsel for the Appellant, Mr. H.S. Munshaw, learned Counsel for Respondent Nos. 1 and 2 and Mr. R.B. Gogia, learned Counsel appearing for Respondent No. 3.

2. Appeal is admitted. Mr. H.S. Munshaw, learned Counsel for Respondent Nos. 1 and 2 and Mr. R.B. Gogia, learned Counsel appearing for Respondent No. 3, respectively waives service of notice of admission.

3. With the consent of the learned Counsel for the parties, we have taken up this Letters Patent Appeal for final hearing, at the admission stage itself.

4. This Letters Patent Appeal has been filed challenging the judgment and order of the learned Single Judge dated 26.4.2010 passed in Special Civil Application No. 5087 OF 2010.

5. The father of the Appellant - orig. Petitioner was working with the Respondent as a Valveman. He died in harness on 17.10.2003 and he was to retire on 30.11.2003. An application was made by the Appellant on 13.11.2003 claiming appointment on compassionate ground. The application for compassionate ground was rejected by the Respondent - Padhdhari Gram Panchayat Office by

order dated 27.2.2009 on the ground that the Gram Panchayat is not competent to give appointment to the Petitioner on compassionate ground only and if the Government directs the Gram Panchayat to appoint the Appellant on compassionate ground, then only the Appellant could be appointed. Hence, the Gram Panchayat has nothing to do with the application filed by the Appellant for compassionate appointment. Moreover, since the father of the Appellant expired almost at the end of superannuation period, the Appellant was not entitled for compassionate appointment.

6. The learned Single Judge has observed that the father of the Appellant had died on 17.10.2003 whereas the order was passed by Respondent authority on 29.8.2003. Merely passing an advanced order would not retire the father of the Appellant from service prior to 30.11.2003. Admittedly, after the father of the Appellant died in the month of October 2003 whereas he was to superannuate in November 2003. Therefore, the Appellant could not be denied appointment on compassionate ground on the ground that his father had died just one month before his date of superannuation. The other reason given by the learned Single Judge is that at the time of death of the father of the Appellant, the Appellant was aged 27 years and he was not a dependent. So far as compassionate appointments are concerned, the Appellant was a dependent who was living on the salary of his father. It is not disputed that the Appellant was not employed and therefore, he was living life on the salary of his father. Therefore, he would be a dependent of the deceased and due to the contrary view taken by learned Single Judge that since the Appellant was aged 27 years, he would not be a dependent, cannot be accepted.

7. Mr. H.S. Munshaw, learned Counsel appearing for Respondent Nos. 1 and 2 and Mr. Gogia, learned Counsel appearing for Respondent No. 3 heavily relied on the order passed by the Gram Panchayat dated 27.2.2009 by which the claim of the Appellant has been refused and further it is urged that the father of the Appellant was not employed by District Gram Panchayat or the State Government, but he was employed by Gram Panchayat. Therefore, rules of compassionate appointment would not apply to him. In State of Gujarat, the maximum age limit for Class-IV employees is 25 years, but as per the revised scheme of giving compassionate appointment to the member of the dependent family of the class-III and class-IV employee who died during service, paragraph 6(B)(1) and (2) provides the maximum age limit could be provided as 20 years. The said paragraph is extracted below:

6.(B) Relaxations:

(1) Possessing upper or minimum age limit shall be decided with reference to the date of application for compassionate appointment and not with reference to the date of appointments.

(2) The relaxation may be given in upper age limit wherever required, provided that no more relaxation can be given i.e. maximum 20 years than the upper age

limit prescribed in the Recruitment Rules of the respective post or 45 years of age whichever is less, however, in cases where the deceased employee is childless, there are no unmarried daughters, son or daughter is minor or no other person is having eligibility of compassionate appointment except widow or widower, upper age limit may be relaxed for widow or widower upto the age of 48 years, whereas no relaxation can be given in the minimum age limit prescribed in the Recruitment Rules of the relevant post.

Therefore, the Appellant's claim might have been considered as he has filed the application in the year 2003 under the rules which were existing in the year 2003. But, this important aspect of the matter has not been considered by the learned Single Judge. In the interest of justice, we remand this matter to the learned Single Judge for taking a fresh decision in accordance with law.

8. In the result, this Letters Patent Appeal succeeds and is allowed. The order of the learned Single Judge dated 26.4.2010 passed in Special Civil Application No. 5087 of 2010 is set aside. The matter is remanded back to the learned Single Judge to take a fresh decision in accordance with law preferably within a period of three months subject to His Lordship's convenience.

9. In view of the order passed in the main Letters Patent Appeal, no orders are required to be passed on Civil Application for stay and the same is disposed of.