

(2008) 07 GUJ CK 0064

In the Gujarat High Court

Case No : Letters Patent Appeal No. 682 of 2003 in Special Civil Application No. 10587 of 2002 and Civil Application No. 3270 of 2003

State of Gujarat

APPELLANT

Vs

Dipak Kumar Mohanbhai Jadav and Another

RESPONDENT

Date of Decision : 08-07-2008

Acts Referred:

Constitution of India, 1950 — Article 162, 226, 309

Citation : (2008) 07 GUJ CK 0064

Hon'ble Judges : Abhilasha Kumari, J;A.L. Dave, J

Bench : Division Bench

Advocate : Sangeeta Vishen, AGP 1, for the Appellant; I.S. Supehia, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

A.L. Dave, J.—The appellant-State is aggrieved by an order passed by the learned Single Judge in Special Civil Application No. 10587 of 2002 on 22nd January, 2003. The said petition was preferred by the respondent No. 1 aggrieved by the action on the part of the appellant of not granting compassionate appointment to him.

2. The facts of the case can be stated thus:

The father of respondent No. 1 was serving as a Driver with Taluka Development Officer at Rajkot. He expired on September 20, 1995, while in harness. The respondent No. 1 therefore applied for grant of an appointment on compassionate ground by application dated 6th January, 1999, which was rejected by the appellant-authority considering the relevant Circulars/Resolutions of the Government. He again applied for the post on 8th January, 2001. Since there was no reply, he preferred Special Civil Application No. 10587 of 2002 which came to be allowed by the learned Single Judge by an order dated 22nd January, 2003. This order has aggrieved the appellant-authority and hence

this Appeal.

3. Learned Assistant Government Pleader Ms. Sangeeta Vishen submitted that the case of respondent No. 1 could not be favourably considered by the appellant because his case did not fall within the income criteria fixed by the Government by various Resolutions and Circulars. The learned Single Judge has taken a view that while considering income criteria, income received by way of family pension is required to be excluded from the income of the family and if that was done, the family income of the respondent No. 1 would be below the criteria fixed, making the case of respondent No. 1 fall within the parameters for consideration for grant of appointment on compassionate grounds. However, Ms. Vishen submitted that this aspect has been considered in detail by a Division Bench of this Court (Coram: J.N. Bhatt & Kundan Singh, JJ.) while dealing with Letters Patent Appeal No. 97 of 2002 with allied matters, by judgment dated 31st March, 2003. Ms. Vishen submitted that it is clearly observed in the said decision that it is for the Government to fix the parameters for considering the cases for compassionate appointment and the Court may not interfere in exercise of powers under Article 226 of the Constitution of India in such a situation. She submitted further that the cut-off date fixed by the Government has also been upheld by the Division Bench by the said judgment. It is, therefore, submitted that the Appeal may be allowed and the order of the learned Single Judge may be set aside.

4. Learned advocate Mr. I.S. Supehia for the respondent No. 1 has opposed this Appeal.

5. We have considered rival side submissions. It is clear that the case of respondent No. 1 was rejected on income criteria. The income limit fixed for the family income was Rs. 2,500/- per month with effect from 1st January, 1995, and in the case of respondent No. 1, the family income was more than that, if the amount of family pension received was taken into consideration. Therefore, the question that falls for consideration is whether the view taken by the appellant-authority is correct? We find that the said view is taken on the basis of the Circulars and Resolutions issued by the Government from time to time.

6. We have gone through a copy of the judgment rendered by the Division Bench of this Court in Letters Patent Appeal No. 97 of 2002 dated 31st March, 2002, wherein in paragraphs 21, 22 and 23, it has been observed thus:

21. As it is a question of law, that question of law can be raised at any stage, even before the Supreme Court also. The decisions of the learned Single Judges of this Court are against the instructions, rules and policy framed by the Government regarding the income limit which are against the decisions of the Supreme Court. The learned Single Judges are not entitled to bypass the relevant instructions, rules and policy framed by the State Government regarding employment on the basis of compassionate ground wherein the income of family pension has also been included. It is complete domain of the State Government

over the policies that can be changed, modified and altered from time to time. This Court under Article 226 of the Constitution cannot direct the authorities of the State Government to ignore or relax the family pension under the instructions and to consider the applications for appointments on compassionate ground. If the instructions, rules or policy prescribe certain income limit including the family pension per incuriam that condition cannot be overlooked or ignored by this Court as held by the Supreme Court in the cases referred to above. As such, the income criteria mentioned in the instructions and policy framed by the State Government, this Court cannot interfere with the same and cannot direct the authorities concerned of the State Government contrary to the income criteria mentioned in the instructions and policy framed by the State Government even though those instructions and policy or resolution or circular etc. are not framed under any statutory Rules under Articles 309 and 162 of the Constitution of India as the Supreme Court has directed that those instructions and policy should be adhered and followed. This Court has no jurisdiction even to dispense with the income criteria with retrospective effect prior to 1-1-1996 as provided by the resolution dated 10-3-2000.

22. Considering the facts and circumstances of the case, submissions made by the learned Counsel for the parties, decisions of the Supreme Court and this Court referred to hereinabove and the material on record, we are constrained to hold that this Court cannot ignore or strike down the terms and conditions of the instructions and the policy framed by the State Government from time to time regarding the income criteria for appointment on compassionate ground. As such, all the Letters Patent Appeal are allowed and the impugned judgments and orders of the learned Single Judges rendered in the concerned petitions are hereby quashed and set aside. The above numbered petitions are dismissed and rule issued therein stand discharged subject to our observations hereafter, with no order as to costs.

23. However, in L.P.A. No. 344 of 2002 the learned Counsel for the respondent original petitioners of Special Civil Application No. 11416 of 2000 contended that the appellant authority committed grave error in calculating the family income of the deceased employee, the income of grand father has also been included such income of grand father cannot be included as per any norms or guide lines or terms and conditions of the Policy/instructions as such this Court is required to direct the authority concerned to reconsider the case of the respondent/original petitioner excluding the income of grand father. Such prayer does not appear to be unreasonable. It is also submitted that in some of the cases mentioned above, the respondents have been provided employment in compliance with the orders of the learned Single Judges of this Court, they should not be disturbed even the judgments of the learned Single Judges are not sustained.

7. It is thus clear that the decision by the appellant-authority was well-founded and did not call for any interference by entertaining the petition, as has been done by the learned Single Judge.

8. Compassionate appointment is not a matter of right and the Government may fix criteria for the purpose as a matter of policy and once that is done, judicial review thereof would not be warranted unless policy is not properly followed. In the light of what is observed by earlier Division Bench, with which view we also concur, the Appeal merits acceptance. It is, therefore, allowed. The order dated 22nd January, 2003, passed by the learned Single Judge in Special Civil Application No. 10587 of 2002 is hereby set aside. There shall be no order as to costs.

9. Civil Application No. 3270 of 2003 is disposed of in the light of dismissal of the Appeal. Notice is discharged.