
(2010) 12 GUJ CK 0264

In the Gujarat High Court

Case No : Special Civil Application No. 14913 of 2010

Vikas Vithoba Chindarkar C/o Nayanbhai Chindarkar

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 12 GUJ CK 0264

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : A.S. Supehia and Samir B. Gohil, for the Appellant; Moxa Thakkar, Asst. Government Pleader, for the Respondent

Judgement

Abhilasha Kumari, J.—Rule. Ms. Moxa Thakkar, learned Assistant Government Pleader waives service of notice of Rule on behalf of Respondents. On the facts and in the circumstances of the case, and with the consent of the learned Counsel for the respective parties, the petition is being heard and finally decided, today.

2. This petition, under Article 226 of the Constitution of India has been filed, with the following prayers:

A) Quashing and setting aside the letter dated 2.11.2010 and directing the Respondents to reconsider the case of the Petitioner for compassionate appointment as per law.

B) During the pendency and final disposal of this petition, the Respondents may be directed to reconsider the case of the Petitioner.

C) To grant such and further relief as may be deemed fit and proper.

3. The brief facts of the case are that, the father of the Petitioner, who was serving as Cook under Respondent No. 3, expired on 28.5.2009, while in service. The mother of the Petitioner wrote letter dated 4.8.2009 to the Respondents,

informing them that the Petitioner would apply for grant of compassionate appointment after he passes the Secondary School Certificate ("SSC", for short) examination. However, by letter dated 7.8.2009, Respondent No. 3 rejected the request of the mother of the Petitioner, on the ground that there is no such provision of waiting for compassionate appointment in the Scheme. The Petitioner, thereafter, appeared in the SSC examination and passed the same, in July, 2010. He again requested the Respondents to reconsider his case for compassionate appointment, now that he had obtained the requisite qualification of SSC. This undated letter is annexed as Annexure-C to the petition. By letter dated 2.11.2010, Respondent No. 2 refused to reconsider the case of the Petitioner for grant of appointment on compassionate grounds, as he had cleared the SSC examination only in July, 2010, instead of passing the same within six months from the date of death of his father, on 28.5.2009.

4. Mr. A.S. Supehia, learned advocate for Mr. Samir B. Gohil, learned Counsel for the Petitioner has submitted that, the refusal by Respondent No. 2 to reconsider the case of the Petitioner is arbitrary, as the Petitioner now possesses the requisite qualifications. It is further submitted that the embargo of six months contained in Government Resolution dated 10.3.2000 is not realistic, as it is not in the hands of the dependent of the deceased employee, to clear the examination within the stipulated period of six months, as the date of death of the employee cannot be known.

5. The learned Counsel for the Petitioner has brought to the notice of this Court, order dated 15.10.2010, passed in Special Civil Application No. 8553/2010 wherein the Court had directed the Respondents to consider the case of the Petitioner therein for appointment on compassionate grounds, in similar circumstances. It is stated by the learned advocate for the Petitioner that the Respondents may be directed to consider the case of the Petitioner in the light of the observations of the Court made in this judgment.

6. Ms. Moxa Thakkar, learned Assistant Government Pleader submits that the Petitioner did not obtain the requisite qualifications of SSC within a period of six months from the date of death of his father, therefore, his request has been rightly rejected.

7. I have heard the learned Counsel for respective parties and perused the averments made in the petition and other documents on record.

8. In Special Civil Application No. 8553/2010, decided by order dated 15.10.2010, the Petitioner therein had made an application seeking appointment on compassionate grounds within the time limit of six months. However, he did not possess the minimum educational qualifications of new SSC on the date of filing his application, therefore, such appointment was denied to him. In such a situation, the observations made in the said order are reproduced hereinbelow:

3. Any insistence for a particular qualification that too for giving appointment in Class-IV category while considering the case for appointment on compassionate

ground is nothing but indirectly frustrating the object of giving appointment on compassionate ground, more so, when the candidate is not possessing qualification of new SSC on the date of his filing the application and the result is declared thereafter. In the present case, the result was declared on 31.5.2007. The action of the authority, rejecting the application on this ground is not only unjust, but arbitrary as it frustrates the entire object of providing the scheme for giving appointment on compassionate ground.

3.1 Taking into consideration the fact that the father of the Petitioner was serving as Peon in the office of the Collector, Porbandar, what is claimed by the Petitioner is only appointment on compassionate ground and the object of floating the scheme for giving appointment on compassionate ground is to see that the family is not pushed into pitiable condition on sad demise of bread earner. In the present case, the Petitioner was not holding the new SSC examination qualification is not something which was within the control of the Petitioner and more particularly unfateful event of the death of the Petitioner's father was certainly not within the control of anybody. It cannot be foreseen by the Petitioner to expedite the getting of required qualification only because his father is going to expire on a particular day similarly it is not possible for the father of the Petitioner to postpone the death until his son gets the qualification of new SSC so as to enable him to get appointment on compassionate ground.

4. In view of the aforesaid discussion, this Court finds that the decision of the authority of denying the appointment on compassionate ground to the Petitioner is unjust, arbitrary and is required to be quashed and set aside. It is accordingly quashed and set aside. The authorities are directed to consider and appoint the Petitioner on compassionate ground within six weeks from the date of receipt of this order. Rule is made absolute to the aforesaid extent. No costs.

9. In the present case, the impugned order dated 2.11.2010 reveals that the case of the Petitioner for appointment on compassionate grounds has been rejected, as he did not acquire the qualification of SSC within a period of six months from the date of death of his father. In view of the observations made in order dated 15.10.2010 reproduced hereinabove and the statement of the learned advocate of the Petitioner, the case of the Petitioner requires reconsideration at the hands of the Respondents.

10. It is stated by Mr. A.S. Supedia, learned advocate for Mr. Samir B. Gohil, learned Counsel for the Petitioner that order dated 15.10.2010 in Special Civil Application No. 8553/2010 has not been challenged by the Respondents. Considering the above facts and circumstances and as the Petitioner has now passed the requisite examination, the interest of justice would be met, if the Respondents are directed to reconsider the case of the Petitioner in right perspective, keeping in view the observations made in order dated 15.10.2010 passed in Special Civil Application No. 8553/2010. It is so directed. The decision, after reconsideration, may be conveyed to the Petitioner at the earliest. The Petitioner shall be at liberty to approach this Court, if aggrieved.

The petition is disposed of, in the above terms, without entering into the merits of the case. Rule is made absolute to the above extent only.

Direct Service is permitted.