

Gujarat High Court

Ms Krina Calla Agp For ... vs 3 on 9 September, 2008

Bench: Ks Jhaveri

SCA/6027/2008 4/ 4 JUDGMENT

IN
THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL
CIVIL APPLICATION No. 6027 of 2008

For
Approval and Signature:

HONOURABLE
MR.JUSTICE KS JHAVERI

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1

Whether

Reporters of Local Papers may be allowed to see the judgment ?

2

To

be referred to the Reporter or not ?

3

Whether

their Lordships wish to see the fair copy of the judgment ?

4

Whether

this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether

it is to be circulated to the civil judge ?

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HASMUKHBHAI
MOHANBHAI PATEL

Versus

STATE
OF GUJARAT & ORS

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Appearance
:
MR NK MAJMUDAR for
Petitioner:1
MS KRINA CALLA AGP for Respondent:1-3
DS AFF.NOT

FILED (N) for Respondent:2

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CORAM

:

HONOURABLE

MR.JUSTICE KS JHAVERI

Date

: 09/09/2008

ORAL JUDGMENT

By way of this petition, the petitioner has challenged the decision of the State Government-respondent authorities, whereby the application of the petitioner for compassionate appointment has rejected on the ground that he was not holding requisite qualification i.e. having passed S.S.C. Examination.

The short facts of the case are as under:-

The father of the petitioner Mohanbhai Patel who was serving with respondent No.2, expired on 5th October, 2003.

The petitioner thereafter on 26th December, 2003 made an application for compassionate appointment along with all necessary documents pursuant to death of his father.

The petitioner was informed by respondent authority vide its communication dated 29.9.2005 that his application for compassionate appointment is rejected since he was not having requisite qualification of S.S.C. Examination. On 16.2.2006 Gujarat Subordinate Services Selection

Committee communicated the petitioner intimating about rejection of his application for compassionate appointment.

Being aggrieved by the decision of the respondent authorities the petitioner has approached this Court by filing the present petition.

The learned Counsel for the petitioner has submitted that there is no delay in preferring the application for compassionate appointment by the petitioner. The respondent authorities have committed grave error rejecting the application of the applicant for compassionate appointment on the ground that the petitioner was not having passed S.S.C. Examination. The learned counsel for the petitioner has submitted that the respondent authorities could not reject the application applying the policy of Government Resolution dated 16.3.2005 since the petitioner has preferred application for compassionate appointment on 26.12.2003 and, therefore, the policy which prevailed at the time of making application for compassionate appointment can only be applicable to the case of the petitioner. In support of his submission, the learned counsel for the petitioner has relied upon the decision of the Hon'ble the Supreme Court reported in (2007) 9 SCC 571 in the case of State Bank of India and Others v. Jaspal Kaur. Relying on the aforesaid decision, the learned counsel for the petitioner has further submitted that the petitioner has applied for compassionate appointment on 26th December, 2003 and in view of the above decision, the respondent authorities are required to consider the case of the petitioner as per the policy prevailing at the time of petitioner made application for compassionate appointment and as per earlier prevailing policy the requisite qualification for compassionate appointment was from Standard IV to Std.IX. The learned Counsel for the petitioner has submitted that at that relevant point of time the petitioner was having S.S.C mark-sheet but he failed in S.S.C. Exam. and as such he was possessing requisite qualification as per policy prevailed at that point of time.

I have gone through the averments made in the petition and the submissions made by the learned counsel for the petitioner. This Court is in complete agreement with the submissions made by the learned counsel for the petitioner regarding the decision of the Hon'ble the Supreme Court in the case of State Bank of India and Others v. Jaspal Kaur (supra). This Court is fully abide by the decision of the Hon'ble the Supreme Court and in view of the same the previous policy prevailing at the time of making application by the petitioner for compassionate appointment can only be applicable to the case of the petitioner instead of the policy followed by Government Resolution dated 16.3.2005 relying on which the respondent authorities have rejected the application of the applicant-present petitioner.

In view of the above, the present petition is allowed. The order passed by the respondent authorities is quashed and set aside. The respondent authorities are directed to reconsider the case of the petitioner in view of the policy prevailing at the relevant point of time when the petitioner has applied for compassionate appointment immediately after the death of his father.

The petition is entertained only on the aspect following the decision of the Hon'ble the Supreme Court that the petitioner is entitled for compassionate appointment as per the policy prevailing at the time when the petitioner made application for compassionate appointment. Rule is made

absolute.

Direct Service is permitted.

(K.S.JHAVERI, J.) Amit/-