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Special Civil Application No 12034 of 94

Date of decision: 22/12/95

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

JAYANTI MAVJIBHAI GOHEL vs GOVT OF GUJARAT & 3

Appearance: None present for Petitioners

Mr. D.A.Bambhania for the respondents.

Coram : MR.JUSTICE S.K.KESHOTE

ORAL JUDGEMENT

The prayer of the petitioner is to the extent that the respondents be directed to give appointment to the petitioner on compassionate ground. The further prayer which has been added by the amendment is to the extent that clause 6 of the guidelines of the circular dated 1.3.84 be declared ultravires of the articles 14 and 16 of the Constitution in so far as it does not include brother for compassionate appointment. The petitioner is the brother of Ranjit Mavjibhai Gohel who was a permanent employee of respondent no.4. Late Shri Ranjit Mavjibhai Gohel entered in the Government service in November 1978 and he died on 28.9.92 and at the time when he died he was a Jr. Clerk. The petitioner claims the appointment on compassionate ground in place of his deceased brother. It is not in dispute that Ranjit left behind him, his wife Smt. Kalpana. The petitioner contended that the wife of late Shri Ranjit has given a declaration to the effect that she has given up her claim for appointment on compassionate ground as being legal heir of the deceased. Guideline no.6 of the circular referred to above provides that not more than one person in the family of a deceased Government servant should be given such compassionate appointment, such person should be a son, daughter, wife husband(as the case may be) of the deceased Government servant. The brother of the deceased Government servant was not included in the family of the deceased Government servant and rightly so. This circular regulate the appointment on compassionate ground. Compassionate appointment is not a mode of recruitment. But in order to provide financial assistance to a family whose earning member has died while in service, this provision has been made. Though otherwise, such appointment may be in violation of the provisions of articles 14 and 16 of the Constitution but looking to the nature of appointment and the purpose for which the appointment is given, it can be said to be a reasonable restriction on the fundamental right. The object sought to be achieved by making this definition is that the family which suddenly comes under stress because of the death of the earning member thereof, may not face financial crisis. But this benefit cannot be extended or stretched to the extent to provide this appointment to the brother of the deceased ; otherwise the very object and purpose of making such a provision will be defeated or it may be misused or the very purpose of such provision may be defeated by the persons who are otherwise not entitled to the same. I fail to see how guideline no. 6 of the circular which excludes the brother for the purpose of appointment on compassionate ground is arbitrary and ultra vires articles 14 and 16 of the Constitution. Heirs of the deceased who are in class-1 have been provided the benefits of the circular. Mainly because the heirs of class-1 of deceased Government servant survives declares or otherwise giving a declaration in favour of the brother, he does not become entitled for or eligible for appointment on compassionate ground. It is very easy to get such a declaration from the wife of deceased more so when in the present case the deceased was married just few months

before his death. In the presence of class-1 heir, the restriction of the benefit of compassionate appointment to class-1 heir seems to be very reasonable and in consonance with the scheme of the compassionate appointment. In the circumstances, the petitioner has failed to make out a case in his favour. In the circumstances guideline 6 of the said circular is perfectly legal and does not suffer from viceany discrimination. The brother of the petitioner does not fall within the eligibility criteria as provided in the guidelines for giving compassionate appointment. The writ petition therefore, fails and is dismissed.

Rule discharged. No order as to costs.
for correction pl.see original.