

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4058 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
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? : NO

DINESHBHAI L RASMIYA

Versus

STATE OF GUJARAT

Appearance:

MR JIVANLAL M PATEL for Petitioner

MR RC KODEKAR, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/01/2001

ORAL JUDGEMENT

#. Heard Shri Jivanlal M.Patel for the petitioner and
Shri RC Kodekar, learned AGP for the respondents.

#. The facts giving rise to this petition are as under :
Petitioner's father was working as a Sales-Tax
Officer. While in service, he expired on 22-10-1980.
The petitioner was accordingly appointed as a Clerk on
compassionate ground in place of his father vide order
dated 28-1-1981 and was posted under the respondent no.3
vide Annexure-'A'. He served for a period about 15 years

but, as he could not pass pre-service examination, his services were terminated on 2-5-1996 vide Annexure-'B'. The petitioner alleges that, he is the only earning member in his family, and termination of his services is a great hardship not only to him but also to his family members. Challenging the aforesaid order of termination, several reliefs have been sought by the petitioner. But, now the controversy is narrowed down in view of the undertaking given by the petitioner vide page no.61 of the paper book. In short, under the said undertaking, the petitioner has undertaken as follows :-

- (1) That the petitioner is willing to work as a Peon in Class-IV post to save his family members from starvation.
- (2) He further undertook that, his service may be continued for all purposes but, he would not claim any salary for the period from the date of termination till he is appointed on Class-IV post.
- (3) He also undertakes that, the said period, namely, the period between the order of termination and his re-employment on Class-IV post may be counted for the purposes of pension.
- (4) Further undertaking is that, if the petitioner is allowed to work as a Peon on Class-IV post, he would not claim any other post in future, even if he passes pre-service training examination.

#. On the last date, learned AGP was required to seek instruction from the respondents. He informs that, till 11:37 a.m. today, nobody has turned up in the Court. Consequently, the Court can not go on accommodating such lethargic employees of the respondents. Needless to say that, the purpose of giving compassionate appointment to the petitioner in place of his father was to enable the petitioner to get employment, so that he can maintain his family and he may not suffer from starvation & undue financial hardships. This is the purpose and policy behind provision for giving compassionate appointment to dependents of the deceased employee, who dies in harness. In compliance of this policy, the petitioner was appointed as a Clerk, namely, to Class-III post. He continued in service for a period of about 15 years. However, unfortunately, he could not pass pre-service training examination, as a result of which, his services were terminated. The order of termination of petitioner's service, contained in Annexure-'B', is prima facie in violation of the principle and policy giving appointment on compassionate ground. Even if, he failed in pre-service training examination, his appointment on

compassionate ground could not be terminated. On account of his failure in pre-service training examination, he could be considered to the lower post, namely, to Class-IV post automatically without any request from the petitioner. However, in this case, the petitioner has given undertaking, which has been quoted in the foregoing portion of this judgment. That undertaking is not only reasonable, but also just, inasmuch as, the petitioner has given-up all his claims for salary during the period from his termination to the period of his re-employment on Class-IV post and has also given-up all his claims for Class-III post, in case in future he remains successful in the said examination. Of course, the petitioner has reserved his claim for pensionary benefits, which does not, in any way, appear to be unjust or unreasonable. The undertaking is quite reasonable and has to be accepted.

#. In view of the aforesaid discussions and considering the counter affidavit of the respondents and the rejoinder affidavit of the petitioner, I find that the order of termination Annexure-'B' dated 2-5-1996 is bad in the eyes of law, which requires to be quashed.

#. The petition, therefore, partly succeeds and is partly allowed. The impugned order of termination Annexure-'B' dated 2-5-1996 is hereby quashed and set aside. The respondents are directed to appoint the petitioner on compassionate ground on Class-IV post in the existing vacancy, or by creating a vacancy for him within a period of two weeks from today. In view of his undertaking, the petitioner shall not be entitled to claim any monetary benefits from the date of termination of service till the date of his re-employment to Class-IV post. But, the entire service period, including break in service on account of termination order, shall be counted towards his pensionary benefits. The petitioner shall not be entitled to claim any post in Class-III in future, even if he passes pre-service training examination. No order as to costs.

January 25, 2001. [D.C. Srivastava, J.]

/sakka