

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11009 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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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 concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

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N.P.PRAJAPATI

Versus

STATE OF GUJARAT  
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Appearance:

1. Special Civil Application No. 11009 of 1993  
MS SNEHA A JOSHI for Petitioner  
MR PRADIP D BHATE A.G.P. for Respondent  
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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 31/03/2004

ORAL JUDGEMENT

The petitioner has approached this Court making a grievance that though his father had died while he was in service, the petitioner is not being given benefit under

the scheme of compassionate appointment. It is his say that his father was working in the service of the respondent and was discharging duty as Live Store Inspector in the Panchayat. He expired while in service on 16th July, 1983. At that time, the petitioner was minor as he was born on 28th September, 1971. The petitioner attained majority on 28th September, 1989. According to the petitioner, he submitted an application for being appointed on the post of clerk under the scheme. That application has been made on 24th July, 1990. Ofcourse, this is a disputed fact, as the case of the Government is that for the first time an application was filed by the petitioner for compassionate appointment on 5th March, 1991 i.e. one year and six months after attaining the majority. Be that as it may, the second application was filed on 5th March, 1991. It appears that since no response was received from the Government, third application dated 20th January, 1992 was submitted to the respondent. Vide letter dated 14th February, 1992, the petitioner was intimated that since his application was not in accordance with the Rules for compassionate appointment, it was being rejected. Since no reasons were mentioned in the said application, the petitioner again wrote letter dated 17th September, 1993, requesting the respondent to atleast let him know what were the reasons for rejecting his application. It appears that the said letter has remained unanswered.

1.1. In these circumstances, the petitioner had no other alternative, but to approach this Court by way of this petition.

2. It appears that this Court had after admission of the matter, even directed it to be placed for urgent hearing and that was way back in the year 1994. However, it is still not heard and it is rather unfortunate that no efforts seem to have been made by the petitioner to get the matter heard early. It is further to be noted that this Court had made attempts to see that amicable solution is brought about and, therefore, the matter was referred to the Lok Adalat, permanent as well as general. Efforts have failed as can be seen from the orders dated 18th December, 2003 and 9th November, 2003. The main reason for failure of the conciliation appears to be non co-operative attitude of the Government Officer. It is a matter of regret that when the matter is referred to the Lok Adalat, it is always with the consent of the parties. When such consent was given by both the sides, and the matter was referred to the Lok Adalat, it was the duty of the concerned Officer namely the officer of the rank of the Deputy Secretary of the Home Department or any

officer with authority to settle the matter should have been remained present. But the Presiding Officer of the Lok Adalat had to give up the effort since the concerned Officer had not cared to remain present. Such behaviour of the concerned Officer is required to be deprecated.

2.1. The matter is now referred back to this Court for deciding it on its merits.

3. Ms. Sneha Joshi learned advocate appearing for the petitioner has submitted that despite the fact that within a short time of attaining majority, the petitioner had made an application. It was rejected without assigning any reasons. The Government has advanced reasons that the petitioner's application was filed after one year and six month on his attaining age of majority and hence, it cannot be entertained. According to Miss Joshi, this is nothing but an after thought. She has further submitted that when all the criteria required for compassionate appointment were fulfilled, the respondent was bound to give appointment to the petitioner. But that has not been done. She has, therefore, submitted that the respondent be directed to grant immediate appointment to the petitioner.

3.1. As against that, Mr. Pradip Bhate learned A.G.P. appearing for the respondent has submitted that the application was made at a belated stage by the petitioner and, therefore, the respondent was justified in turning it down. According to him, there is no merit in the petition and it is required to be dismissed.

4. Having carefully gone through the record of the petition and having considered the rival submissions, it appears that after the death of the petitioner's father, he had for the first time made an application on 24th July, 1990. Though, copy of the said application is not annexed to the petition, he has made this averment on oath. This is not controverted by the other side. It may be noted here that this petition is of the year 1993, and the Government i.e. the respondent has till this date not filed affidavit-in-reply. It appears that the concerned Officers are so busy that they don't have time to attend to the proceedings before the Lok Adalat and even to file affidavit-in-reply to the petition. It is their choice and the Government will face the consequences thereof. Therefore, there is no difficulty for me in holding that the first application that was made by the petitioner was on 24th July, 1990. Since the said application was not replied to, the petitioner again made an application on 5th March, 1991. A copy of the

said application is annexed to this petition. Even no response to that application was given. In view thereof, yet another application appears to have been made by the petitioner on 20th January, 1992. It is that application which has been replied to by the respondent by communication dated 14th February, 1992. As stated above, the respondent has rejected the application solely on the ground that it was not in accordance with the Rules for compassionate appointment. Thus, the respondent had for the first time responded to the third application that was filed by the petitioner in the month of January, 1992. It may be noted here, that at that time, no ground of delay on the part of the petitioner was advanced by the respondent. According to the respondent the application deserved to be rejected only because it was not in accordance with the relevant Rules. Thus, it is very clear that the ground of rejection which is now sought to be advanced by the Government is an after thought. Mr. Bhate tried to draw my attention to the communication wherein for the first time, the respondent has said that application was rejected because of the delay on the part of the petitioner. However, the communication that was shown to me was dated 26th November, 2001. Thus, almost after 11 years, this reason has been advanced. As stated above, no affidavit-in-reply has been filed and no such statement has been made on oath. Therefore, I am not prepared to accept the say of the Government that application was rejected on the ground of delay. Communication dated 14th February, 1992, merely shows that the application was rejected because it was not in accordance with the relevant Rules. However, the respondent has not at all pointed out in what manner it was not in accordance with the relevant Rules or which of the Rules were not followed by the petitioner. The order is totally silent on such vital aspects. The decision of respondent cannot be termed as legal. It is, therefore, required to be quashed and set aside and it is hereby, ordered to be quashed and set aside. The respondent is now directed to reconsider the case of the petitioner irrespective the ground of delay. The petitioner's case may be examined by the respondent vis-a-vis Rules meant for compassionate appointment. It may be made clear that if he is found fit, he shall be appointed to the post prayed for in his application. It is also made clear that while deciding the priority amongst the candidates for compassionate appointment, petitioner's claim for it should be decided on the basis of his application dated 24th July, 1990. While considering the case of his appointment, whatever necessary age relaxation permissible under the Rules shall be made by the respondent. This exercise to be

carried out on or before 30th June, 2004.

With the aforesaid direction, the petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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