

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11520 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  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? : NO
  5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

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KAPILABEN CHIMANBHAI RATHOD

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 11520 of 2003  
MR KETAN A DAVE for Petitioner No. 1  
MR PRADIP BHATE A.G.P. for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 07/05/2004

ORAL JUDGEMENT

The petitioner is a widow of one Chimanbhai Rathod, who died on 20th November, 2002. He was serving with the Police Department. Upon death of her husband,

the petitioner made an application to the concerned authorities for compassionate appointment on the ground that her husband Chimanbhai Rathod who was serving as Armed Police Constable for 17 years had expired, while he was in service and he had left behind him the petitioner and two minor children namely, Kiran aged 12 years and Suraj aged 14 years. According to her, the entire family was dependent on the income of her deceased husband.

1.1. With his death the source of income was lost and the entire responsibility of bringing up the children and maintaining the family had come upon the shoulders of the petitioner. According to her, she did not have any means of livelihood. She, therefore, prayed for compassionate appointment. The application was made on 18th September, 2001 i.e. almost ten months after the death of her husband.

1.2. The said application was turned down by the respondent authorities on the ground that as per the Government Resolution dated 10th March, 2000, the time prescribed for making application for compassionate appointment was three months from the death of the earning member of the family. Since, she had made the application after a stipulated period, her request to appoint her on the post of peon was not accepted by the Secretary, Gujarat Sub-ordinate Services Selection Board i.e. respondent no.3. The said decision of respondent no. 3 was intimated to her by the Additional Inspector General of Police by letter dated 17th October, 2002.

2. The petitioner has, therefore, approached this Court for appropriate relief i.e. to quash and set aside the communication dated 17th October, 2002 and to direct the respondents to consider the application on compassionate ground without being influenced by the fact that it was submitted after the expiry of three months.

3. Mr. Ketan Dave learned advocate appearing for the petitioner has submitted that the period of three months originally prescribed under the Scheme has been subsequently increased to six months by amendment to the Scheme. He has further submitted that as per the Scheme, the respondents are under obligation to properly inform the petitioner about her right to make the application to seek employment on compassionate ground by making proper application and for that purpose, the respondents are also under the obligation to forward to the dependent of the deceased employee, the necessary application form. According to him, the respondents have failed on both these counts. Therefore, even whatever delay that is

caused cannot be taken into consideration. For that purpose, he has placed reliance on the judgment delivered by the learned Single Judge of this Court [Coram : M.S. Shah, J.]

3.1. As against that Mr. Pradip Bhate learned A.G.P. has submitted that considering the fact that the petitioner's application dated 18th September, 2001 shows that the petitioner was not only informed about her right but was also supplied with necessary application form. He, therefore, submitted that there is no merit in the submission that delay was caused on account of default on the part of the respondents.

4. Having carefully gone through the record of this petition and in particular regarding the Scheme and the amendment thereto, and having considered the submissions of the both the learned counsel, it clearly appears that the petitioner's husband expired while he was serving as Armed Police Constable, in the Police Department. He had rendered about 17 years service. It also appears that the petitioner and her two minor children were completely dependent upon his income. In view of the aforesaid, the petitioner was entitled to make application for compassionate appointment in accordance with the provisions of the Scheme introduced by the Government, for that purpose. It further appears that originally in accordance with sub-clause (1) of Clause (8) of the Scheme, the application was to be made within three months of the date of the expiry of the concerned employee and any application made after the expiry of the said period, could not be taken into consideration. A conjoint reading of clause (a) (b) & (c) of Clause 11 shows that upon the death of the concerned employee, it was the duty of the Head of the concerned department or the Secretary to inform about the right to have compassionate appointment and to give proper guidance to the said person to avail the right, and also furnish all the relevant materials including the application form to the dependent so as to facilitate him/her to make appropriate application within stipulated time. It may be noted here, that subsequently by Resolution dated 7th September, 2002, time limit prescribed earlier i.e. three months was increased to six months, meaning thereby, further increase of three months was introduced by Clause (3) of the said Resolution. Thus, this amended provision was made applicable to the cases where the deceased employee had expired after 10th March, 2000. Admittedly, in the present case, the deceased employee had expired after the said date namely on 20th November, 2000. Therefore, in the case of the petitioner, for

compassionate appointment, time limit for filing application stands extended by further three months. However, considering the fact that the application was made on 18th September, 2001, there was delay of about four months to be explained by the applicant i.e. the present petitioner. For that purpose, it is submitted by Mr. Dave that she was never informed about her right to make application for compassionate appointment. This aspect has not been controverted by the respondents by filing any affidavit-in-reply. She was neither given any guidance by the Superior officers of the deceased husband nor she was supplied with necessary application form and other material. When these facts are not controverted, I have to take them to be true and undisputed one. When that is the position, whether it would protect the petitioner and whether her application would be considered in time. When the respondents have not acted upon the Scheme evolved by them for that purpose, it is obvious that no fault can be found with the petitioner. This Court [Coram : M.S. Shah, J.] has categorically held in the decision rendered in the case of Ganpathbhai Nanjibhai Wagehla v. State of Gujarat in Special Civil Application No. 6861 of 2003, whereby it has been held as under :-

"5. In view of the above, it is clear that since the respondent - authorities themselves had not informed the heirs of the deceased about the Scheme contained in the Government Resolution dated 10.3.2002, the time limit of three months (subsequently extended to six months) from the date of death of the deceased cannot be invoked by the respondents and, therefore, applying the test of reasonable time limit, it can be said that the application made by the petitioner on 5.3.2001, was made within a period of one year from the date of death of the petitioner's father on 20.4.2000. Under the circumstances, the rejection of the petitioner's application for compassionate appointment on the ground of delay must be held to be illegal and arbitrary and, therefore, the impugned communication dated 27.3.2002 at annexure-B to the petition is quashed and set aside and the respondents are directed to reconsider the petitioner's application for compassionate appointment without raising any objection about delay

in making this application. This shall be done within two months from the date of receipt of writ of this Court or certified copy of this order."

4.1. Thus, this Court has very clearly held that when the concerned dependent is not informed about his/her right to make necessary application for compassionate appointment, time limit prescribed to the Scheme will not come into play. I am in total agreement with the ratio laid down by the learned Single Judge in this behalf. In view thereof, no fault can be found with the petitioner. When there was some delay on her part to make necessary application, the said delay may not put reliance vis-a-vis, the Scheme, because according to the learned Judge, the same will not come into play. The petitioner's application, therefore, ought not to have been thrown out on the ground of delay. No other reasons have been advanced by the respondents for not considering the case of the petitioner for compassionate appointment.

5. In view of the aforesaid, communication dated 17th October, 2002 at Annexure-A is hereby ordered to be quashed and set aside. The respondents are directed to reconsider the application of the petitioner for the post of peon on compassionate ground, notwithstanding delay that has been caused and to decide the same on its merits, if the petitioner is otherwise found eligible, she may be given appointment on compassionate ground in accordance with law on or before 31st August, 2004.

This petition is, therefore, allowed. Rule is made absolute with no order as to costs.

[AKSHAY H. MEHTA, J.]

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