

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5241 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

Sd/-

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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 ?

1 to 5 NO

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RAKESHKUMAR S PAGI - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR KB PUJARA for Petitioner(s) : 1,

MS DS PANDIT ASSTT GOVERNMENT PLEADER for Respondents.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 29/04/2006

ORAL JUDGMENT

1. RULE. The learned A.G.P. waives service of Rule for the respondents.

2. The petitioner has made the grievance that, after the death of his father on 5.12.1997 while working as a forester under the respondent, he had applied for compassionate appointment as beat guard or peon by making an application as early as on 25.12.1997. However, his case under the scheme of the Government for compassionate appointment was not favourably considered on one or the other grounds which were not tenable. Ultimately, when his application was considered, it was rejected on the ground of absence of approval by the Gujarat Subordinate Services Selection Board. The disapproval of the Board was conveyed by the letter dated 5.8.2005 in which the notification dated 16.3.2005 of the General Administration Department was referred to state that the petitioner was not possessing the requisite qualification of having passed SSC examination.

3. It was submitted by learned counsel Mr.Pujara, appearing for the petitioner, and conceded by the learned A.G.P. that, in the peculiar facts of the present case, the petitioner's case was required to be considered on the basis of his application made in the year 1997 when the aforesaid notification was not in force and, even otherwise, under the scheme, exception could have been made as far as the recommendation of the Subordinate Services Selection Board was concerned. It was, however, submitted that

such exception cannot be made a rule but, on account of delay of about eight years in consideration of the petitioner's application, there were sufficient grounds to accord special consideration to the case of the petitioner.

4. Accordingly, the case of the petitioner for appointment on compassionate ground shall be considered by respondents No.1, 2 and 3 disregarding the absence of approval by respondent No.4 and, subject to fulfillment of other conditions, appropriate orders for appointment shall be issued to the petitioner within a period of two months, as suggested by the learned A.G.P. The prayer for appointment with retrospective effect cannot be granted. It would, however, be open for the petitioner to apply for fixation of seniority on the basis of his application fulfilling all the necessary conditions for appointment on compassionate ground, if and after the petitioner is appointed in the service of the respondent. It is clarified, as suggested by the learned A.G.P., that this order having been made in the peculiar facts of this case, it will not be a precedent for any other case. Rule is made absolute accordingly with no order as to costs. Direct Service is permitted.

Sd/-

(**D.H.WAGHELA, J.**)

(KMG Thilake)