

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/LETTERS PATENT APPEAL NO. 568 of 2022****In R/SPECIAL CIVIL APPLICATION NO. 1837 of 2014****With****R/LETTERS PATENT APPEAL NO. 253 of 2022****In****SPECIAL CIVIL APPLICATION NO. 1837 of 2014****With****CIVIL APPLICATION (FOR INTERIM RELIEF) NO. 1 of 2021****In R/LETTERS PATENT APPEAL NO. 253 of 2022****In****SPECIAL CIVIL APPLICATION NO. 1837 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE N.V.ANJARIA****and****HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

RAJESHKUMAR VISHNUPRASAD JOSHI**Versus****STATE OF GUJARAT****Appearance:****MR PH PATHAK(665) for the Appellant(s) No. 1****MR DHAWAN JAYSWAL, AGP for the Respondent(s) No. 1****NOTICE NOT RECD BACK for the Respondent(s) No. 2****CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA**

and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 21/06/2022

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

Both the captioned Letters Patent Appeals preferred under Clause 15 of the Letters Patent by the respective appellants arise from same judgment dated 2.8.2021 of learned single Judge in Special Civil Application No.1837 of 2014, thereby learned single Judge directed that the appellant of Letters Patent Appeal No.568 of 2022- original petitioner would be entitled to be considered for lump-sum amount on compassionate ground under Resolution dated 5.7.2011. The authorities were directed to pay lump-sum amount to the petitioner as per the said Resolution.

2. The prayer in the main Special Civil Application of the petitioner was to grant compassionate appointment. Since the appointment was not directed to be given by the court but compensation was awarded, the petitioner felt aggrieved to prefer this appeal.

2.1 On the other hand, the appellant of the other other Letters Patent Appeal- Patan District Panchayat, through District Development Officer, has sought to challenge the direction of learned single Judge in holding the petitioner entitled to the lump-sum amount under the said Resolution itself.

2.2 Accordingly, the other Letters Patent Appeal has come up for consideration.

3. Noticing the basic facts of the case of the original petitioner, his father late Vishnuprasad Joshi was working as Peon in the Road and Building Department under the Panchayat, Radhanpur. The father of the petitioner stated to be died on 22.11.2007 while on duty leaving behind two sons, one daughter and widow. It appears that on 24.12.2007, the petitioner applied for compassionate appointment on the ground that the condition of family was pitiable at the relevant point of time.

3.1 The application was processed by authorities. On 2.9.2008 the District Development Officer, Patan addressed letter to the Executive Engineer calling upon further details from the petitioner, which details were furnished by the petitioner. On 23.7.2009 the request of the petitioner came to be rejected on the ground that the family of the petitioner could not be said to be in pitiable or indigent condition.

3.2 The aforementioned communication dated 23.7.2009 figures on record which expresses the view that having regard to the retirement benefits received including the lump-sum amount, the financial condition of the family of the petitioner could not be said to be one to treat the case of the petitioner on compassionate ground. It appears that the case of the petitioner somehow came to be recommended again by the Executive Engineer and the same was rejected on the same ground as was done on 27.7.2010. The petitioner went on representing and yet another representation dated 16.6.2010 was submitted. This representation too was rejected.

3.3 It is the case of the petitioner that thereafter he even applied under Right to Information Act and later filed the Special

Civil Application praying to set aside orders dated 23.7.2009 and 16.6.2010 whereby the case of the petitioner was rejected.

4. Learned single Judge considered the decision of the Supreme Court in **Canara Bank and another Vs. Maheshkumar, [2015 (7) SCC 412]** to notice therefrom the principle that mere payment of the retirement benefit could not be a ground to conclude that the family of the deceased employee was put in good financial condition so as to deny the benefit of compassionate appointment to the kith and kin of the deceased employee.

4.1 The other aspect considered by the learned single Judge, as was raised by the respondent District Panchayat was about delay in conferment of the benefit on compassionate ground.

4.2 Admittedly, the petitioner had approached the court by filing Special Civil Application after lapse of almost five years. It appears that in the course of hearing of the petition, further affidavit was filed and the delay was attempted to be explained by the petitioner stating *inter alia* that after the father of the petitioner died due to brain hemorrhage, the family had to spent huge amount towards medical expenses.

4.3 It was then submitted that there had occurred family disputes between the wife of the younger brother of the petitioner and they separated from the family. It was stated, that on that count also sizable expenditure was required to be incurred. Still was the averment that younger brother's marriage ultimately resulted into divorce. It was submitted that all those reasons contributed in passage of time leading to almost five

years before the petitioner could approach the court seeking the benefit of compassionate appointment.

5. We are hardly satisfied with the conclusion on this ground reached by the learned single Judge who accepted the explanation simplicitor to conclude that the delay was explained by the petitioner. Mere family circumstances and that too about the marriage of relatives, divorce and such family disputes could not be said to be good ground which could adequately and satisfactorily explain the long passage of time on part of the petitioner who wanted to enforce his rights under the compassionate scheme to get the benefit on the compassionate basis.

5.1 It is not possible to hold that the circumstances mentioned by the petitioner could have prevented the petitioner from filing the proceedings before the court. If the petitioner was in dire need of compassionate benefit, there was no reason for him to remain indolent on such ground. A litigant who cares little for his right for long time, loses right to relief. This principle has applicability with greater force when it comes to the case of compassionate appointment having regard to the nature of the benefit and the claim to be enforced.

6. Reverting to the facts of the case, the father of the petitioner died on 22.11.2007, the case of the petitioner for compassionate appointment was rejected thrice by the authorities. When the petitioner approached the court to seek the relief, there was passage of further five years from the date of the death, all the time, the family of the petitioner survived.

6.1 Learned single Judge was alive to the law that the compassionate appointment is not a matter of right. He also considered decision in **N.C.Santosh Vs. State of Karnataka and Others, [(2020) 7 SCC 617]** which held that appointment on compassionate appointment to be offered to the dependent of the deceased employee is an exception to norms that all vacancies in the government departments should be filled in in terms of tenets of Articles 14 and 16 of the Constitution.

6.2 Learned single Judge rightly noticed from **N.C.Santosh (supra)** the following paragraphs,

“13. It is well settled that for all government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. In Steel Authority of India Limited vs. Madhusudan Das & Ors. 2 It was remarked accordingly that compassionate appointment is a concession and not a right and the criteria laid down in the Rules must be satisfied by all aspirant.

18. In the most recent judgment in State of Himachal Pradesh & Anr. vs. Shashi Kumar⁸ the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the bench, Dr. Justice D.Y. Chandrachud reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The Dependent of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State’s policy.”

6.3 It is also trite principle that the policy of compassionate appointment is intended to give immediate relief to the family of the deceased upon death of the deceased. It is a one time succor when the family lunges into economic crises upon death of bread earner. While on one hand the compassionate benefit is not a matter of right and would offend the principle of equality in employment, on the other hand the passage of time would further negate the claim of a person to be given a compassionate benefit, for, the belated grant of benefit could not be justified as it would lose the very purpose against the compassionate appointment to be offered and the scheme for such appointments to be implemented. The compassionate appointment is always an immediate consideration and has to be a matter of urgent relief when the family of the deceased employee would have needed it. Element of immediacy has to be a *sine qua non* for such kind of appointment.

6.4 As we held above that the explanation of delay given by the petitioner was not tenable, muchless it was adequate explanation, learned single Judge committed an error in accepting the same and thereafter proceeding to consider the case of the petitioner to grant compassionate benefit. Despite noticing the law laid down in **N.C.Santosh (supra)** in the subsequent paragraph, learned single Judge has held the appellant- petitioner to be entitled to benefit of lump-sum compensation under Resolution dated 5.7.2011.

6.5 The benefit of lump-sum compensation under the said Resolution was a substituted relief for appointment as per the changed policy of the State Government. The principles which apply for grant of appointment would also apply in considering

the case of a claimant under said Resolution for lump-sum compensation. In other words, if the delay was to be the ground to deny the compassionate appointment, the very factor of delay would disentitle the petitioner to be considered for lump-sum compensation, both having the object of providing immediate relief at the relevant point of time to the person and his family. After five years, the grant of benefit of lump-sum compensation was not justified in law.

7. In view of the above discussion, the impugned order of learned single Judge is set aside. The Letters Patent Appeal No.568 of 2022 stands dismissed whereas Special Civil Application No.253 of 2022 filed by the Patan District Panchayat is allowed.

Since the main appeal is dismissed, Civil Application does not survive. Accordingly, it is disposed of.

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(N.V.ANJARIA, J)

THE HIGH COURT
OF GUJARAT

(MAUNA M. BHATT, J)

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