

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 735 OF 2013

(Arising out of SLP(C) No.25586/2010)

BRIJESH VIPIN CHANDRA SHAH

Appellant(s)

:VERSUS:

STATE OF GUJARAT & ORS.

Respondent(s)

O R D E R

1. Leave granted.

2. We have heard the learned counsel for the parties and perused the judgment passed by the High Court.

3. The appellant herein was appointed on compassionate grounds as a Junior Clerk on 25.5.1998 as the father of the appellant died on 11.3.1996 while he was in service. It appears that under the Gujarat Non-Secretariat Clerks, Clerks-cum-Typist (Direct Recruitment Procedure) Rules, 1990, for direct recruitment to Class III post, a candidate is required to undergo in-service training and on

completion of training, is required to appear at the post-training examination and has to pass the same in maximum three chances. Although the appellant has been in service since 25.5.1998, he did not appear in the said examination held for recruitment to the Class III post till 2003. Thereafter, the appellant appeared in the said examination on three occasions and on all the three occasions, he was unable to clear the examination.

4. Since the appellant failed to clear the examination for recruitment to the Class III post, his services were terminated on 20.11.2004. The appellant challenged the order of termination before the High Court of Gujarat and the High Court by its judgment dated 20.2.2009, directed the Government to give one additional chance to the appellant to appear in the examination. The High Court also directed that the services of the appellant shall be regularised on the post of Junior Clerk if he clears the examination in said additional chance. However, even in the additional chance given to the appellant, he was unable to pass the examination. The present appeal, by special leave, is directed

against the aforesaid judgment dated 20<sup>th</sup> February, 2009 of the High Court.

5. Learned counsel for the appellant submits that the decision taken by the respondents not to continue the appellant in service on Class III post is very harsh as in the last attempt, the appellant failed in the examination only by 7 marks. Learned counsel for the appellant, therefore, submits that the High Court ought to have directed the appellant to be taken into a Class IV post. On the other hand, learned counsel for the respondents submits that the qualification contained in the Recruitment Rules is mandatory and no relaxation is permissible in the same.

## JUDGMENT

6. Having considered the entire matter, we are of the opinion that no relaxation could have been granted in favour of the appellant in the qualifications which are said to be mandatory for recruitment to Class III post.

7. At this stage, learned counsel for the appellant submits that having worked for about 12

years, the appellant cannot now be rendered jobless. Even though he is not entitled to a Class III post, he would be certainly entitled to a Class IV post on compassionate grounds. He, therefore, prays that the appellant may be permitted to continue on Class IV post. However, this request is vehemently opposed by the learned counsel for the respondents and he submits that once the appellant had been appointed on Class III post, he cannot be considered for regularising his service on a Class IV post.

8. We are of the considered opinion that the stand taken by the respondents is unnecessarily harsh. It must be remembered that the appellant was initially appointed on compassionate grounds as his father had died while he was in service. Compassionate appointment is made by relaxation of the normal service rules for providing immediate financial assistance to the family of the deceased who dies in harness. It is unfortunate that the appellant was unable to pass the in-service examination so as to enable him to continue on a Class III post. But that ought not to result in depriving him of service altogether.

9. In view of the above, we allow this appeal and direct the respondents to appoint the appellant on a Class IV post. The appointment of the appellant on a Class IV post shall be from the date he was initially appointed on Class III post. His seniority shall be reckoned from the date of initial appointment. However, the appellant shall not be entitled to any back-wages since he has not worked, on any of the posts, after the date of termination of his services.

10. In view of the above, the impugned judgment passed by the High Court cannot be sustained and the same is set aside. The appeal is allowed. No costs.

JUDGMENT

.....J  
(SURINDER SINGH NIJJAR)

.....J  
(ANIL R. DAVE)

New Delhi;  
January 18, 2013.