

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SECOND APPEAL NO. 138 of 2007****With****CIVIL APPLICATION (FOR STAY) NO. 1 of 2007****In R/SECOND APPEAL NO. 138 of 2007****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J. SHELAT**

|                        |     |    |
|------------------------|-----|----|
| =====                  |     |    |
| Approved for Reporting | Yes | No |
|                        | ✓   |    |
| =====                  |     |    |

THE CHAIRMAN GUJARAT STATE COOPERATIVE LAND

Versus

MEENABEN HARSHADBHAI RANA

Appearance:

MR PALAK H THAKKAR(3455) for the Appellant(s) No. 1

MR NILESH A PANDYA(549) for the Respondent(s) No. 1

**CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT****Date : 29/07/2026****JUDGMENT**

1. Heard Mr. Palak H. Thakkar, learned Advocate for the appellant and Mr. Nilesh A. Pandya, learned Advocate for the respondent.
2. The present second appeal is filed under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as "*the*

*CPC*”), arising from the judgment and decree dated 26.07.2006, passed by the Presiding Officer, Fast Track Court No. 15, Vadodara in Regular Civil Appeal No. 13 of 2003, whereby, it has confirmed the judgment and decree dated 18.01.2003 passed by the 5th Joint Civil Judge (S.D.), Vadodara in Regular Civil Suit No. 1608 of 1992.

3. This Court, vide its order dated 12.07.2007, while admitting the present second appeal, framed the following substantial questions of law:

- [1] *Whether the lower Appellate Court has materially erred in directing the appellant-Bank to offer compassionate employment to the plaintiff in absence of any existing policy for compassionate employment on the date of the cause of action;*
- [2] *Whether the lower Appellate Court has committed material irregularity in allowing the claim for compassionate employment made by the plaintiff in absence of such an application made by the plaintiff; and,*
- [3] *Whether the lower Appellate Court has committed material irregularity in directing the appellant-Bank to offer compassionate employment to the son of the plaintiff though he has not made any claim for compassionate employment and without ascertaining his eligibility for such compassionate employment.*

4. The appellant is the original defendant and the respondent is the original plaintiff.

5. For the sake of convenience, the parties will hereinafter be referred to by their original positions in the suit.

6. **SHORT FACTS:**

6.1. The husband of the plaintiff was serving as a driver with the defendant-bank and died during the course of his service on 20.02.1984. At the relevant point of time, the service benefits available to the family of the deceased employee was paid by the defendant.

6.2. The plaintiff appears to have sent a legal notice dated 01.01.1990, whereby, she called upon the defendant to give her compassionate appointment as given to others. The defendant, vide its reply dated 31.03.1990, informed the plaintiff that there was no such policy of bank to offer any compassionate appointment.

6.3. The plaintiff appears to have first filed a civil suit on 23.04.1990, before the Civil Court, Bharuch, which was returned to be presented before the appropriate court having the jurisdiction to decide *lis* between the parties. Accordingly,

the plaintiff instituted Regular Civil Suit No. 1608 of 1992 before the Civil Court, Vadodara seeking mandatory relief that the defendant should give her appointment.

**6.4.** The defendant objected the aforesaid suit contending inter alia that there was no policy of the bank to offer compassionate appointment to the plaintiff and/or any like person.

**6.5.** The Trial Court framed the issues and after appreciating the evidence on record, found that the plaintiff is entitled to get compassionate appointment as in other similar cases, the defendant offered compassionate appointments to the family members of deceased employees.

**6.6.** Feeling aggrieved and dissatisfied with the judgment and decree passed by the Civil Court, the defendant approached the Appellate Court by way of the aforesaid appeal, which also came to be dismissed. Hence, the present second appeal.

**7. SUBMISSIONS OF THE APPELLANT:**

**7.1.** Mr. Thakkar, learned Advocate, would submit that the Courts below have committed serious errors in law by granting the claim of the plaintiff in regards to compassionate appointment and in the absence of any policy of the defendant bank to offer

compassionate appointment, the claim of the plaintiff ought to have been rejected.

**7.2.** Mr. Thakkar, learned Advocate, would submit that there is no civil right of the plaintiff breached by the defendant, inasmuch as there was no privity of contract between the plaintiff and the defendant and in the absence of any policy to offer compassionate appointment to family members of deceased employees, the Civil Court has no jurisdiction to pass any decree in favour of the plaintiff.

**7.3.** Mr. Thakkar, learned Advocate, would further submit that the Appellate Court has further committed a serious error in law by directing the defendant bank to offer/give compassionate appointment to the son of the plaintiff, which in fact, even not prayed in the suit and in fact not granted by the Trial Court.

**7.4.** Mr. Thakkar, learned Advocate, would further submit that the claim of the plaintiff is also hopelessly time-barred, as the plaintiff's husband died on 20.02.1984, whereas, the plaintiff for the first time lodged her claim to get compassionate appointment vide legal notice on 01.01.1990 and the suit instituted in the year 1992. It was hopelessly time-barred. It is

submitted that though the issue of limitation was never pressed into service before the Courts below and/or at the time of admission of this appeal, but being a pure question of law, this Court is required to examine the aspect of limitation as per Section 3 of the Indian Limitation Act, 1963 (hereinafter referred to as "*the Act, 1963*").

- 7.5. Mr. Thakkar, learned Advocate, would further submit that the findings of fact recorded by the Courts below is not only perverse but grossly erroneous, inasmuch as documents referred by the Trial Court produced below Exhibits 33 and 34 are not remotely suggesting that the persons concerned were granted any compassionate appointment by the defendant bank. It is submitted that as per the resolution of the bank dated 14.11.1988 produced on record, it would also show that after resolution any death occurred and any application in regards to compassionate appointment will be received or any applications pending, then as per the norms of the bank, the same shall be considered. It is further submitted that the plaintiff has not submitted any application seeking compassionate appointment just after the death of her husband, but only issued a legal notice in the year 1990,

whereby, she is not entitled to receive compassionate appointment.

7.6. Lastly, Mr. Thakkar, learned Advocate, would submit that as per the settled position of law, compassionate appointment cannot be claimed as a matter of right by the applicant. It is well settled that to give immediate succour to the family of the deceased employee, if any policy framed by the employer, the family members of the deceased employee can submit their claim for compassionate appointment, otherwise not.

7.7. To buttress his arguments, Mr. Thakkar, learned Advocate, would rely upon the following decisions:

(i) ***Workmen, Represented by the C.M.C. Harijan Mazdoor Sangha V/s. The VIII Industrial Tribunal, W.B. & Ors., reported in 1994 II CLR 155;***

(ii) ***Delhi Development Authority V/s. Sudesh Kumar, reported in 2009 (2) LLJ 641.***

7.8. Making the above submissions, learned Advocate, would request this Court to allow the present second appeal.

## **8. SUBMISSIONS OF THE RESPONDENT:**

8.1. *Per contra*, Mr. Pandya, learned Advocate, would submit that

since there is a concurrent finding of fact recorded by the Courts below against the defendant, this Court, while exercising its power under Section 100 of the CPC, should not entertain this appeal.

**8.2.** Mr. Pandya, learned Advocate, would further submit that the plaintiff has brought on record few instances, whereby it was established on record that in the cases of other similarly situated persons like the plaintiff, the defendant has given compassionate appointments. It is submitted that once it has come on record that there is a policy of the respondent-bank to offer compassionate appointment and having not granted the benefit in favour of the plaintiff, the plaintiff is well within her rights to get compassionate appointment by way of a civil suit.

**8.3.** Mr. Pandya, learned Advocate, would further submit that the Civil Court has the jurisdiction to decide the *lis* between the parties, inasmuch as the husband of the plaintiff was a permanent employee of the defendant bank and died during the course of service in harness, whereby, the plaintiff, being the widow, is entitled to receive compassionate appointment. It is submitted that neither the Trial Court nor the Appellate Court

has committed any gross error of law by allowing the suit in favour of the plaintiff and or her son, as the case may be.

**8.4.** Mr. Pandya, learned Advocate, would also submit that the issue of limitation was never pressed into service by the defendant before the Courts below and this Court while admitting the appeal also not framed any substantial question of law as regards the issue of limitation. At this stage, this Court should not accept such plea of the defendant, and as such, the suit cannot be said to be time-barred. It is submitted that the issue of limitation is always considered a mixed question of law and fact and this Court, having limited jurisdiction under Section 100 of the CPC, should not enter into such issue which involves facts and law.

**8.5.** Making the above submissions, Mr. Pandya, learned Advocate, would request this Court to reject the present second appeal.

**9.** No other and further submissions are being made by the respective learned advocates.

**ANALYSIS :**

**10.** The present second appeal is filed against concurrent findings of fact recorded by the Courts below, whereby, the claim of the

plaintiff was accepted. The defendant bank was directed to give the plaintiff and/or her son a compassionate appointment due to the sad demise of the husband of the plaintiff on 20.02.1984. This Court is conscious of the fact that it has no power to re-appreciate the evidence on record. It is now well-settled position of law that unless and until the findings of fact recorded by the Courts below is perverse or grossly erroneous or runs contrary to law, this Court should not disturb the findings of fact while exercising its power under Section 100 of the CPC. At the same time, it is also a settled position of law that in a case of any perverse and grossly erroneous findings recorded by the Courts below, this Court is not powerless to correct such egregious errors committed by the Courts below while deciding the *lis* between the parties. ***[See: Tharammel Peethambaran and Ors. Vs. T. Ushakrishnan and Ors. - AIR 2026 SC 938: 2026 INSC 134]***

11. Before advertng to the substantial questions of law framed by this Court at the time of admission of this appeal, I would like to observe that upon appreciation of the submissions canvassed by the respective learned Advocates, according to me, the issue of limitation, which is now pressed into service by Mr.

Thakkar, learned Advocate for the appellant-defendant, during the course of his arguments, requires to be considered by this Court. As per Section 3 of the Act, 1963, it is the bounden duty of the Court to see whether the suit instituted by the plaintiff was within the period of limitation or not. As per said provision, irrespective of any defence set up by the defendant in this regard, it is a duty of the Court to examine the issue of limitation. It is undisputed fact that the plaintiff's husband died on 20.02.1984 and the claim in regards to compassionate appointment was made for the first time by the plaintiff vide her legal notice dated 01.01.1990, whereas, the suit came to be filed on 20.11.1992. Thus, in light of the aforesaid undisputed facts evident from the record, the issue of limitation also requires to be decided by this Court as one of the substantial questions of law, inasmuch as it is a pure question of law which can be decided by this Court upon the aforesaid undisputed facts on record. Accordingly, I would like to frame an additional substantial question of law as follows:

***"Whether the suit filed by the plaintiff was within the period of limitation?"***

**12.** Now adverting to the substantial questions of law already framed by this Court, it is undisputed fact that the plaintiff's husband died on 20.02.1984 and the claim for compassionate appointment made by the plaintiff on 01.01.1990. The plaintiff failed to prove on record that there was any express policy of the defendant bank, whereby, as a matter of right, she could claim compassionate appointment. The claim of the plaintiff to get compassionate appointment was based upon few appointments given by the defendant to family members of deceased employees. The Trial Court appears to have carried away with the fact that since the defendant bank offered compassionate appointment to others in cases where the death of the employee had taken place prior to 02.05.1987, denying such benefit to the plaintiff amounts to discrimination, thereby, the plaintiff is entitled to receive the benefit of compassionate appointment.

**13.** To arrive at the aforesaid finding, the Trial Court has placed reliance upon two documents produced at Exhibits 33 and 34. Of course, this Court cannot re-appreciate the aforesaid evidence but can always look into the evidence. A bare reading of the aforesaid documents produced at Exhibits 33 and 34

would show that in none of the instances, any appointment was given by the defendant to the respective persons by way of compassionate appointment. It appears that in the case of Alkesh Amrutlal Pandit (Exhibit 33), his case was only recommended by the local office of the defendant bank to the head office and the head office of the defendant bank, vide its letter dated 18/21.07.1990, only suggested that if, due to leave, any post fall vacant, Mr. Pandit can be given priority as a daily wager. Whereas, the document produced at Exhibit 34, being an appointment order of Dipak Babulal Devre, does not remotely suggest that he was given an appointment on compassionate grounds.

14. Thus, it is evident from reading of the aforesaid evidence which were relied upon by the Trial Court that in none of the cases, the defendant-bank offered any compassionate appointment to the respective persons. These findings of fact recorded by the Trial Court as confirmed by the Appellate Court is totally perverse and contrary to the evidence on record.
15. Furthermore, the resolution of the defendant bank produced at Exhibit 35 would also suggest that in the years 1987-88, it was

only decided by the defendant that any application pending or received in future for death after passing of the resolution as regards compassionate appointment by the family of a deceased employee, as per the norms of the bank, such applications will be decided. It is undisputed on record that the plaintiff did not submit any application to receive compassionate appointment, rather issued a legal notice on 01.01.1990. Thus, there is no policy of defendant-bank on record which entitled the plaintiff to claim compassionate appointment.

16. Be that as it may, in absence of any express policy of the defendant bank produced on record by the plaintiff which can throw light on the fact that there is an indefeasible right of the plaintiff to get compassionate appointment, the claim of the plaintiff to seek mandatory relief is not maintainable. According to my considered view, in the absence of any express policy of the defendant bank to offer compassionate appointment to family members of deceased employees, the plaintiff has no legal right to claim compassionate appointment. When no such right exists, there is hardly any scope or power available with the Civil Court to direct the

defendant to offer/give compassionate appointment to the plaintiff.

17. Moreover, the Appellate Court, while dismissing the appeal of the defendant, directed the defendant to give compassionate appointment either to the plaintiff or to her son if he was a major, which is not only exceeding jurisdiction but also beyond the prayer made by the plaintiff in the suit. The Civil Court is not clothed with the same power as this Court under the Constitution of India.
18. It is now well settled position of law that compassionate appointment is not vested right. It can be claimed only in a case where any policy or statutory rules framed by the employer. It is a mode of appointment intended to give immediate relief to the family who lost the sole breadwinner; due to sudden death, the deceased's family has been put in great financial difficulty. **[See – *Canara Bank Vs. Ajithkumar G K*, reported in AIR 2025 SC 1232].**
19. Thus, according to my considered view, the plaintiff is not entitled to get mandatory relief as prayed to get compassionate appointment and the impugned judgment and decree passed by

the Courts below suffer from gross illegality, irregularity and the findings of fact recorded by them is also perverse and grossly erroneous. The substantial questions of law framed by this Court while admitting the appeal are answered accordingly.

- 20.** Now coming to the substantial question of law framed by this Court as aforesaid, i.e., the issue of limitation, it is an undisputed fact that the plaintiff's husband died on 20.02.1984 and for the first time, she claimed compassionate appointment on 01.01.1990. The plaintiff first filed a suit on 23.04.1990, *albeit* before the wrong court, i.e., the Civil Court, Bharuch. Upon return of plaint, the suit in question came to be instituted on 20.11.1992 before the Civil Court, Vadodara. The plaintiff sought a mandatory injunction without seeking any declaration in the suit. It is only prayed that the defendant shall be directed to give appointment to the plaintiff, being the widow of deceased, Harshadbhai Mohanbhai Rana. There is no express period of limitation prescribed under the Act, 1963, for filing a suit seeking only a mandatory injunction. In such situation, the residuary article, i.e., Article 113 of the Act, 1963, requires to be taken into account, which reads as follows:

|                                                                           |                                                                                    |             |                                |
|---------------------------------------------------------------------------|------------------------------------------------------------------------------------|-------------|--------------------------------|
| PART X--<br>SUITS FOR<br>WHICH<br>THERE IS<br>NO<br>PRESCRIBE<br>D PERIOD |                                                                                    |             |                                |
| 113                                                                       | Any suit for which no period of limitation is provided elsewhere in this Schedule. | Three years | When the right to sue accrues, |

21. As per Article 113 of the Act, 1963, when the right to sue accrues in favour of the plaintiff, within three years from such time, she ought to have filed the suit against the defendant. The cause of action to get compassionate appointment arose in favour of the plaintiff upon the death of her husband, i.e., 20.02.1984, and not when she issued the legal notice on 01.01.1990. The right to sue accrued in favour of the plaintiff soon after the death of her husband as aforesaid. The plaintiff ought to have filed the suit within three years from the aforesaid period, indisputably, the suit was first wrongly instituted in the year 1990 and thereafter presented-instituted before the Civil Court, Vadodara, on 20.11.1992. Having regard to Article 113 of the Act, 1963, I am of the considered view, the suit in question is hopelessly time-barred. Thus, the substantial question of law framed by this Court, as aforesaid, is answered accordingly.

- 22.** In view of the foregoing discussion and reasons, it leads to only one conclusion that there is no merit in the claim of the plaintiff and even if any right to sue accrued in favour of the plaintiff, then the suit was not instituted within the period of limitation from such accrual.
- 23.** In view of the foregoing conclusion, the present second appeal is required to be allowed, which is hereby allowed. The judgment and decree dated 26.07.2006 passed by the Presiding Officer, Fast Track Court No. 15, Vadodara in Regular Civil Appeal No. 13 of 2003, and judgment and decree dated 18.01.2003 passed by the 5th Joint Civil Judge (S.D.), Vadodara in Regular Civil Suit No. 1608 of 1992, are hereby quashed and set aside.
- 24.** Consequently, the Regular Civil Suit No. 1608 of 1992 filed by the plaintiff is hereby dismissed.
- 25.** The decree shall be drawn accordingly. No order as to costs.
- 26.** Record and proceedings be sent back forthwith.

**(MAULIK J.SHELAT,J)**

NILESH