

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 465 OF 2013

KALYANJI SOMCHAND MAHESHWARI **APPELLANT**

VERSUS

PASCHIM GUJARAT VIJ COMPANY LTD. **RESPONDENT**
THROUGH SUPERINTENDENT ENGINEER

O R D E R

1. The appellant is aggrieved by an order dated 26th April, 2011, passed by the Division Bench of the High Court of Gujarat at Ahmedabad, whereby the order of reinstatement passed in his favour *vide* Award dated 29th November, 2008 and the order of the learned Single Judge dated 19th July, 2010, has been set aside and the appeal filed by him has been dismissed.

2. The brief facts of the case are that the father of the appellant was working as a linesman in the respondent-company (erstwhile Gujarat Electricity Board). While in service, he passed away on 07th May, 1999. Claiming that the deceased was the only bread earner for a family of six, the appellant's mother submitted an application to the respondent-Board praying *inter alia* that her son, the appellant herein, be given compassionate appointment. The appellant's mother submitted two applications. In her first application, she disclosed the fact

that her elder son, Budharam Somchand, was employed elsewhere and that he had separated from the family and possessed a separate ration card. Simultaneously, she moved another application before the Superintending Engineer, seeking compassionate appointment for the appellant, wherein she kept silent about the aforesaid information furnished in the first application.

3. Based on the second application, the request for compassionate appointment was granted in favour of the appellant. He was appointed as a Junior Assistant in the office of the Deputy Engineer of the respondent-Board. After serving for almost seven years in the respondent-Board, the appellant was served with a show cause notice on 26th November, 1999, stating *inter alia* that he had suppressed material facts from his employer to the effect that his elder brother was already serving in a Government Sector Undertaking, Bharat Petroleum. The appellant gave a reply to the aforesaid show cause notice on 18th December, 1999, denying the allegation that he had got the job by suppression of material facts and stated that his brother had legally separated from the family and therefore, could not be treated as a part of the family of the deceased.

4. After considering the submissions made by the appellant, *vide* order dated 13th January, 2000, the respondent-Board dismissed him from service on the ground that he had misrepresented and suppressed vital facts to obtain appointment on compassionate grounds. At the same time a FIR¹ was also

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registered against him on the ground of cheating the respondent-Board.

5. On 11th April, 2000, the appellant raised an industrial dispute, which was placed before the Labour Court *vide* a reference² forwarded by the Central Government. *Vide* Award dated 29th November, 2008, the Labour Court held that the appellant deserved to be reinstated with 15% back wages.

6. Aggrieved by the aforesaid Award, the respondent-Board filed a writ petition³ before the High Court, which was partly allowed. The learned Single Judge noted the fact that pursuant to an interim order passed by the Court on 30th October, 2009, the appellant had been reinstated in service w.e.f. 18th December, 2009, and since he stood reinstated, the only question that was left to be considered was in respect of back wages. The Court proceeded to quash the Award and confirmed the reinstatement of the appellant. At the same time, it was clarified that the interregnum period shall be considered *dies-non* for the purposes of calculating the retiral benefits of the appellant and that he shall be paid the last drawn wages w.e.f. 01st January, 2009, till his reinstatement.

7. The order passed by the learned Single Judge was assailed by the respondent-Board before the Division Bench of the High Court. The impugned judgment was passed, allowing the appeal filed by the respondent-Board and quashing & setting aside the order dated 19th July, 2010, passed by the learned Single Judge as also the Award dated 29th November, 2008, passed by the

Labour Court.

8. The Division Bench observed that since one of the sons of the deceased was already in employment with Bharat Petroleum Corporation, the appellant could not be appointed on compassionate grounds. As regards the plea taken by the appellant that his brother was residing separately and had a separate ration card, it has been observed in the impugned judgment that this aspect would be an internal matter of the family and fact remains that one son of the deceased was already employed, which was sufficient reason to have rejected the application filed by the appellant seeking appointment on compassionate grounds.

9. We may note that the General Standing Order no. 295, dated 19th December, 1981, issued by the predecessor-in-interest of the respondent-Board that laid down the conditions for employment of dependents, states as follows:

"9. EMPLOYMENT OF DEPENDENTS:

1. In case of deceased employees. In case an employee dies during service in the Board, one dependent (child or spouse) would be employed by the Board on any vacant post for which such dependent holds the necessary qualifications/experience. This benefit would not be available in cases where one or more members of the family of the deceased employee is/are already employed within or outside the Board.

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EXPLANATION:

Family member means a child only.
Such employments will be made with the prior approval of the Head Office."

10. It is apparent from a perusal of the aforesaid Standing Order that in case an employee dies in harness, a dependent member who could either be a child or spouse would be entitled to apply to the respondent-Board for appointment on

compassionate grounds. The Standing Order further clarified that such benefit could not be extended in case where one or more member of the family of the deceased is already employed.

11. In the instant case, it is not in dispute that the appellant's elder brother was already employed outside the respondent-Board and was serving in Bharat Petroleum. The High Court is right in observing that the internal arrangement between the family members of the deceased whereby his older son was staying elsewhere with him family, could not be a ground to accommodate the appellant. In view of the above, we see no reason to interfere in the impugned judgment passed by the Division Bench of the High Court. The said order is upheld and the present appeal is dismissed, with no orders as to costs.

.....J.
(HIMA KOHLI)

.....J.
(AHSANUDDIN

AMANULLAH)
NEW DELHI;
OCTOBER 12, 2023.
PS

ITEM NO.110

COURT NO.12

SECTION III

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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VERSUS

PASCHIM GUJARAT VIJ COMPANY LTD.
THROUGH SUPERINTENDENT ENGINEER

RESPONDENT

Date : 12-10-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Appellant(s)

Mr. K. L. Janjani, AOR
Mr. Pankaj Kumar Singh, Adv.
Mr. Kailash J.kashyap, Adv.

For Respondent(s)

Ms. Hemantika Wahi, AOR
Mr. Kabir Hathi, Adv.
Ms. Jesal Wahi, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order, which is placed on
the file.

(POOJA SHARMA)
COURT MASTER (SH)

(NAND KISHOR)
COURT MASTER (NSH)