

**Reserved On : 07/01/2026
Pronounced On : 21/01/2026**

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 121 of 2005

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

Sd/-

Approved for Reporting	Yes	No
	Yes	

STATE OF GUJARAT & ANR.

Versus

SUJATHA CHANDRASEKHAR PILLAI

Appearance:

MS. HEMALI D. SONI, AGP for the Appellant(s) No. 1,2
MR VISHWAS S DAVE(5861) for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

1. This Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') has been admitted by the coordinate Bench on 06.07.2010, formulating following substantial question of law:-

"(i) Whether in the facts and circumstances of the case and the latest Government Resolution passed by the State of Gujarat in respect of making appointment on compassionate grounds, the respondent plaintiff is entitled to appointment on compassionate appointment?"

(ii) Whether a dependent of a government employee who is minor at the time of the death of such government employee is entitled to the benefit of government employment on compassionate ground after obtaining age of majority even after lapse of number of years and does there exist any compassionate ground for appointment of such minor on his attaining majority and is she entitled to the benefit of the provisions contained in the G.R. Applicable to such case?

(iii) Whether the judgement and decree passed by the lower appellate court is in consonance with the provisions contained in the latest G.R. which regulate such appointment?"

2. Challenge by way of this appeal is made to the judgment and decree dated 28.01.2005 delivered by the 3rd Extra Assistant Judge, Junagadh in Regular Civil Appeal No. 50 of 2002, whereby in exercise of jurisdiction under Section 96 of 'the Code', the learned Extra Assistant Judge reversed the judgment and decree dated 23.04.2002 passed by the 4th Joint Civil Judge (Senior Division), Junagadh in Regular Civil Suit No. 485 of 2000, whereby the plaintiff's suit was dismissed. By allowing the appeal, the appellate Court decreed the suit and directed that within 3 months from the date of the judgment, the plaintiff be appointed on the service on compassionate ground, pursuant to the plaintiff's application dated 21.07.1999.

3. For convenience and brevity, parties are referred to as per their original status before the learned trial Court.

4. The factual matrix, which are essential to decide the Second Appeal are as under:-

4.1 That the plaintiff's mother, Mrs. Nani Kutti T., was working as a staff nurse at Civil Hospital, Junagadh. During her employment, she died on 04.04.1987. At that time, the plaintiff was a minor. The plaintiff, having attained the age of majority, applied for compassionate appointment on 21.07.1999.

4.2 That the said application was not accepted by the authority and thereafter, plaintiff had filed the suit being Regular Civil Suit No. 485 of 2000 claiming compassionate appointment.

4.3 That the learned trial Court, vide judgment and decree dated 23.04.2002 dismissed the suit of the plaintiff on the ground that the plaintiff was taken care of by her father, who was in Government service and therefore, even for the fact that the plaintiff's father remarried cannot relieve him of his responsibility and even when the plaintiff was obtaining the family pension of the deceased, she was not in harness, and need of service to survive and maintain herself.

4.4 That being aggrieved, plaintiff preferred the first appeal being Regular Civil Appeal No. 50 of 2002, whereby the 3rd Extra Assistant Judge, Junagadh reversed the judgment and decree dated 23.04.2002 passed by the 4th Joint Civil Judge (Senior Division), Junagadh in Regular Civil Suit No. 485 of 2000 and directed the plaintiff be appointed on the service on compassionate ground.

4.5 That being aggrieved, the appellant is before this Court by way of this Second Appeal.

5. Heard learned AGP Ms. Hemali D. Soni and learned advocate Mr. Vishwas S. Dave for the original plaintiff.

5.1 In a short submission, learned AGP Ms. Hemali D. Soni submitted that the learned appellate Court has committed serious mistake by allowing the appeal.

5.2 She would further submit that the plaintiff claimed the compassionate appointment on the ground that her mother - Late Smt. Nanikutty T. was serving as Staff Nurse in the Civil Hospital, Junagadh, who was expired on 04.04.1987 during the service. She would submit that, however, at the time of the death of the mother of the plaintiff, her father was already in Government service. Her father - Chandrasekhar V. Narayan Pillai was serving as a Driver in the Central Government. Therefore, very object of compassionate appointment, that too, to save the family from the harness, is not attracted in the matter. Yet the learned appellate Court, without referring to the very foundational principle, passed the order of compassionate appointment, which is otherwise an exception and not the right of the party.

5.3 She would further submit that, even the plaintiff was obtaining the family pension of the deceased and she was living with her father, and looking to these aspects, she would submit that the learned appellate Court has committed serious error in decreeing the appeal, on belief that, plaintiff was in need of service to save herself from facing penury.

5.4 She would further submit that the learned appellate Court has not referred the latest Government Resolution, which sets the guideline and policy in regards to the appointment made under the Principle of Compassionate Appointment, which was elaborately discussed by the learned trial Court while dismissing the suit of the plaintiff.

5.5 In the aforesaid argument, learned AGP Ms. Hemali D. Soni submitted to allow this appeal and to quash and set aside the judgment and decree passed by the first appellate Court and to confirm the judgment and decree passed by the learned trial Court.

6. As against the aforesaid submission, learned advocate Mr. Vishwas S. Dave for the original plaintiff submitted that, father of the plaintiff immediately on death of his wife, i.e. mother of the plaintiff, contracted a second marriage, which forced the plaintiff to live separately and survive on the family pension of the mother. The family pension cannot be considered as an income criteria. Plaintiff was minor at the time of her mother's death, and therefore, as soon as she attained the age of majority, she applied for the job on the compassionate ground.

6.1 He would further submit that, looking to these factual aspects, which are undeniable, it cannot be denied that the plaintiff was in harness and she was in requirement of the job to survive. Therefore, the learned appellate Court rightly treated the issue of compassionate appointment and passed the decree, which is not required to be interfered with in this Second Appeal.

7. In reply, the learned AGP would submit that, the plaintiff has made a submission on 03.12.2025 to the Medical Superintendent, Civil Hospital, Junagadh that she has already joined the Government service as a Teacher in the year 2016, so she is not pressing for her claim for compassionate appointment, but she is seeking some monetary compensation to be granted to her, with interest. Looking to this aspect, she would submit that this appeal deserves consideration, more particularly when the plaintiff is not requiring the compassionate appointment as she has already obtained the Government service as a Teacher and serving since 2016.

8. Regard being held to the rival submissions of the learned advocates, let me refer to some Judicial precedents on the issue of compassionate appointment.

8.1 In the recent judgment in the case of **Canara Bank v. Ajithkumar G.K.**, reported in **AIR 2025 (SC) 1232**, the Supreme Court in regards to policy to appoint the dependent/family member of an employee, who died in harness, referred to the earlier judgment and held as under:-

“10. The policy to appoint a dependant family member of an employee who has died-in-harness or has been medically rendered unfit to perform further job, thereby leaving the family in utter penury, is not of too distant an origin. Going by law reports, the policy seems to have originated during the seventies of the last century and gained momentum in the following decades with this Court laying down guidelines from time to time for grant of compassionate appointment. The rationale for such appointment has been explained in Haryana State Electricity Board v. Hakim Singh, (1997) 8 SCC 8514 in the following words:

'8. The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.'"

8.2 It is no more *res-integra* that the appointment on compassionate ground is offered on the humanitarian ground is an exception to the general rule of equality in the matter of public employment. (See **General Manager, State Bank of India v Anju Jain**, reported in **(2008) 8 SCC 475**).

8.3 Compassionate appointment is ordinarily offered in two contingencies carved out as exceptions to the general rule, viz. to meet the sudden crisis occurring in a family either on account of death or of medical invalidation of the breadwinner while in service. (See **V. Sivamurthy v. Union of India**, reported in **(2008) 13 SCC 730**)

8.4 While narrating the object of granting compassionate employment, it is said by the Supreme Court in the case of **Sushma Gosain v. Union of India**, reported in **(1989) 4 SCC 468**, that the whole object of granting compassionate employment by an employer being intended to enable the family

members of a deceased or an incapacitated employee to tide over the sudden financial crisis, appointments on compassionate ground should be made immediately to redeem the family in distress.

8.5 In ***Union of India v. Amrita Sinha*** reported in **(2021) 20 SCC 695**, the Supreme Court held that none can claim compassionate appointment, on the occurrence of death/medical incapacitation of the concerned employee (the sole bread earner of the family), as if it were a vested right, and any appointment without considering the financial condition of the family of the deceased is legally impermissible

8.6 Supreme Court in ***I.G. (Karmik) v. Prahalad Mani Tripathi***, reported in **(2007) 6 SCC 162**, says that, the idea of compassionate appointment is not to provide for endless compassion.

8.7 Thus, the compassionate appointment is neither a vested right of the plaintiff, nor it is an endless compensation, but it is wholly based upon the financial condition of the family of the deceased employee, where family is in distress or penury or financial trauma, the plea thus, has to be evaluated on the facts of each case, or else the object of the scheme would stand defeated, inasmuch as in such an eventuality, any and every dependant of the employee dying in harness would claim employment as if public employment is heritable. Worthy reliance can be placed upon the case of ***Union of India v. Shashank Goswami***, reported in **(2012) 11 SCC 307**, to buttress this observation.

9. Adverting to the facts of the case, firstly let me refer the issues framed by the learned Court below at Exhibit-17:-

- “1. Whether the plaintiff proves that her mother Nani Kutti T. was serving as a staff nurse in Civil hospital at Junagadh and she died on dated 4-4-1987 during the service ?
- 2. Whether the plaintiff proves that she was minor at the time of the death of her mother ?
- 3. Whether the plaintiff proves that when she was minor her father had remarried and due to it she resides separate from her father ?
- 4. Whether the plaintiff proves that she has applied for service in proper time after she attained majority ?
- 5. Whether the plaintiff proves that the income of family pension cannot be count as limit of income?
- 6. Whether the plaintiff proves that the order of defendant to reject the application of the plaintiff to get the service on compensate ground is illegal, against the policy of the Government and the principles of natural Justice ?
- 7. Whether the plaintiff proves that after the death of her mother she is entitled to get the service on compensate ground ?
- 8. Whether the defendant proves that this Court has not jurisdiction to entertain present suit?
- 9. Whether the deft, proves that plaintiff's suit is time barred ?
- 10. Whether the deft, proves the contention raised in para 10 of written statement Exh.15?
- 11. Whether the deft, proves that, as per the policy of the Government the plaintiff is not entitled to get the service on compensate ground?
- 12. Whether the plaintiff is entitled to get the the reliefs as prayed for?

13. What Order and decree ?"

Inasmuch as 13 issues have been framed by the learned trial Court. Amongst them, issue Nos. 1, 2, 4, 5, 10 and 11 answered in Affirmative. Issue No.3 answered in partly Affirmative. Issue Nos. 6 to 9 and 12 answered in Negative.

10. Learned trial Court having referred to the facts of the case, mainly on Two aspects, denies employment to the plaintiff on the ground of compassionate appointment. Firstly, that plaintiff is not in harness. Plaintiff's father is in a Government job. Learned trial Court declined the plaintiff's plea that her father has abandoned her. Learned trial Court answering this plea held that plaintiff is studying in Boarding school and during the vacation period, she used to visit her father's home. She has been maintained through family pension of the mother received by the plaintiff, and in addition thereto, plaintiff's father was also helping her to study and Secondly, the learned trial Court referred to Exhibit-36, which is a Government Resolution issued by the State Government, whereby the term 'dependant' was defined. The Government Resolution states that, only a Widow/Widower would get the employment on the ground of compassionate appointment, subject to financial condition. The learned appellate Court, as against the aforesaid finding, recorded the reasons that since father has remarried, it cannot be stated that the father's income is sufficient and the plaintiff was not in financial distress and that, the Government Resolution at Exhibit-36 shall not be applied to the plaintiff as it applies prospectively from the year 2000, plaintiff's claim is

much prior to it, and therefore, plaintiff fell in the definition of 'dependant' and she is entitled to get the employment on the ground of compassionate appointment.

11. Having assessed the finding of the learned Court below, I find that the learned appellate Court ride on the surmise and conjecture to grant the decree in favor of the plaintiff. The two reasons are suffice to stand out the judgment and decree passed by the learned appellate Court. Firstly, at no point of time, father disclaimed the responsibility of the plaintiff, who was minor at the relevant time, despite, he remarried. No evidence has been placed on record by the plaintiff to say and establish that her father did not owe plaintiff's responsibility, rather to be noticed that plaintiff studied in the Boarding School. The father was serving in a Government job at the time of death of the mother and continued the same till he superannuated.

12. This matter is taken up for hearing today, the plaintiff was getting family pension of her mother in relation thereto, she was also maintained by her father or rather, it can be said that at no point of time, she preferred any litigation claiming that she has not been maintained by her father. The foundational aspect that she was not maintained by her father and that she was in financial trauma or penury, without having being backed by any evidence on record does not be proved. Therefore, the finding of the learned appellate Court without being supported by any evidence that the plaintiff was in financial stress and she was facing penury leads her to be in harness is totally baseless and groundless finding or rather its a surmises and conjecture.

13. Perusal of the plaint indicates that plaintiff has not claimed any policy, instruction or Government Resolution of the Government, which permits the plaintiff to seek employment on the ground of compassionate appointment. The State Government, while leading the evidence produced, Resolution or policy for compassionate appointment at Exhibit-36 on record. This being the Exhibit-36 Government Resolution setting up the guidelines to grant the appointment on the compassionate ground. It is dated 10.03.2000. There was a previous Notification dated 13.10.1975 and it was amended by the Exhibit-36 Government Resolution. Under this scheme, defendant was treated to be widow or widower or unmarried daughter or son. Learned trial Court recorded that, according to this Government Resolution, plaintiff is not entitled to get any employment.

14. Learned appellate Court referred to Exhibit-35 and said that Exhibit-36 Government Resolution would apply prospectively and Exhibit-35 would apply. However, Exhibit-35 does not provide any guideline. It is a letter of the Government clarifying that, initially the income limit, which was considered for employment on the compassionate appointment was Rs.600/-, but it was too meagre, and therefore, it was a letter written to the State Government by the Secretary that this condition may be reviewed. Therefore, placing of reliance by the learned appellate Court on Exhibit-35 is again a complete misreading of Resolution. The latest Government Resolution, therefore, does not permit the plaintiff to have the employment on the ground of compassionate appointment.

15. It is admitted position that, pending the litigation, the plaintiff became fortunate and got Government service as a Teacher in the year 2016 and she restricted her claim to the monetary loss by making representation claiming it up to August, 2016. Learned APP places the same on the record of this Second Appeal. Learned advocate Mr. Vishwas S. Dave appearing for the original plaintiff did not dispute about the correctness of this letter.

16. In view of above, according to this Court, the State Government has made out a case to allow this appeal. Accordingly, all three substantial questions of law framed hereinabove are answered in favor of the appellant.

17. Hence, this appeal is allowed.

i) Consequently, the impugned judgment and decree passed by the first appellate Court in Regular Civil Appeal No.50 of 2002 dated 28.01.2005 is hereby quashed and set aside and the judgment and decree dated 23.04.2002 passed in Regular Civil Suit No. 485 of 2000 is restored.

ii) It is clarified that this Court has not examined whether the plaintiff is entitled to any monetary claim up to August, 2016 or not, and therefore, that issue has been left undecided as it is not part of the proceedings.

iii) Registry is directed to return back the Record and Proceedings to the concerned Court forthwith.

**Sd/-
(J.C. DOSHI, J.)**

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