

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1410 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? -
2. To be referred to the Reporter or not? -

3. Whether Their Lordships wish to see the fair copy of the judgement? -
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -
5. Whether it is to be circulated to the Civil Judge?

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GANGABEN MOHANLAL JOSHI

Versus

SECRETARY, GOVT. PANCHAYAT AND HEALTH DEPARTMENT  
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Appearance:

MR DN RAY, for Petitioner

MR ST MEHTA, AGP, for Respondents.  
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CORAM : MR. JUSTICE KUNDAN SINGH

Date of decision: 30/09/98

#### ORAL JUDGEMENT

This petition has been filed for a direction to the respondents to fix family pension of the petitioner's husband and to pay the same to the petitioner along with arrears of pay.

2. The petitioner is a widow of late Shri Mohanbhai Joshi who expired on 30th July, 1979. Mr. Mohanbhai Joshi was employed by the Government in the Irrigation Department. Initially, he was appointed as an operator from 16-1-1955 and continued till 14-11-1957. He was absorbed in the Workcharged Establishment from 15-11-1957 and continued till 26-11-1964. Then he was appointed as a temporary mechanic from 27-11-1964 and continued till 7-1-1969. He was taken on the Workcharged Establishment on 8-1-1969 and continued till 30-9-1971. He was again appointed as a temporary Mechanic on 1-10-1971 and continued till the date of his retirement i.e. 25-3-1973. Thus, he worked for 9 years, 9 months and 4 days on the Workcharged Establishment as a temporary servant. Though he worked for about 18 years

continuously from the date of appointment on 16-1-1955 till his retirement i.e. 25-3-1973. Later on he died on 30th July, 1979. The petitioner made a representation dated 11-11-1976 before the Executive Engineer to pay pension to the petitioner after fixing salary of the petitioner's husband in the new pay-scale of the year 1975. But the respondent had not replied regarding the decision on the said representation. Then the petitioner has filed this petition before this Court. Initially, the petitioner was filed by Ms. Dharmistha Rawal and then Mr. D.N. Ray learned counsel is appointed by the Legal Aid Committee. Now Mr. D.N. Ray has been allotted this brief to argue out this case.

3. Learned counsel for the petitioner submitted that the petitioner's husband served the department for a period of about 18 years continuously without any break. Some time he was treated as temporary and some time he was taken on the Workcharged Establishment. As such the petitioner's husband's service is to be presumed as continue and permanent for the purpose of determining pension payable to the petitioner's husband. He has also relied upon the decision of the Supreme Court in the case of Yashwant Hari Katakkar Vs. Union of India reported in 1995 AIR SCW 370.

4. Learned counsel for the State submitted that the petitioner's husband had worked for about 9 years and 9 months on the Workcharged Establishment and for the remaining period he had worked on the temporary post and hence he was not entitled for any pensionary benefits. The petitioner is also not entitled for family pension as her husband had died after five years after his retirement. So, entitlement of the pensionary benefits the employee is required to put in minimum 10 years service. The petitioner's husband has rendered his service on the workcharged establishment which is not considered as qualified service. Hence, no pensionary benefits are admissible to the petitioner. Under the provisions of the Gujarat Civil Services (Revision of Pay) Rules, 1975 the petitioner was only to receive revised pay scale with effect from 1-1-1973 only notionally and not the actual amount of difference of salary payable to the employee concerned.

5. I have considered the submissions made on behalf of the parties. According to Rule 30 of the Revised Pension Rules, 1950, a family pension not exceeding the amount specified in Rule 1 may be granted to the family of a Government servant in the event of his death after he has completed 20 years of qualifying service. The

period of duration of the family pension to the family of a Government servant in a case where he dies while still in service shall be ten years from the date immediately following the date of his death, and in a case where he dies after retirement but within a period of 5 years from the date of his retirement, the period of duration of such pension from the date immediately following the date of his death shall be equal to twice as much as it falls short of five years from the date of his retirement.

6. I have considered the submissions made on behalf of the parties. No doubt, the petitioner is not entitled for family pension under the provisions of Rule 30 of the Gujarat Civil Service Rules, 1971. According to the provisions of the Gujarat Civil Services Rules, Under Rule 1, pension can be granted to the family of a government servant in the event of his death if he has completed 20 years of qualified service. In case where he has passed his will his Rule 1

7. In the case of Yashwant Hari Katakhar Vs. Union of India, reported in 1995 AIR SCW 370 has laid down as under :

"It is contended that since the total service of the appellant was in quasi-permanent capacity he was not entitled to the pensionary benefit. There is nothing on the record to show as to why the appellant was not made permanent even when he had served the Government for 18 1/2 years. It would be travesty of justice if the appellant is denied the pensionary benefits simply on the ground that he was not a permanent employee of the Government. The appellant having served the Government for almost two decades it would be unfair to treat him temporary/quasi permanent. Keeping in view the facts and circumstances of this case we hold that the appellant shall be deemed to have become permanent after he served the Government for such a long period. The services of the appellant shall be treated to be in permanent capacity and he shall be entitled to the pensionary benefits."

8. In view of the law laid down by the Supreme Court in the decision referred to above, service of the petitioner's husband for about 18 years is to be treated as permanent for the purpose of pensionary benefits. Simply on the ground that he had worked on the work charge establishment for about 9 years and 9 months would not take away the right of pensionary benefits of the

husband of the petitioner. Accordingly, the petitioner is entitled for pensionary benefits.

9. Accordingly, the petition is allowed and the respondents are directed to calculate and settle the pensionary benefits to be paid to the petitioner's husband within three months from today and to pay the same to the petitioner within a month thereafter. Rule is made absolute, with no order as to costs.

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