

SPECIAL CIVIL APPLICATION No 3377 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
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? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 - No

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LILAVATI M DALAL, SINCE DECEASED THROUGH HEIRS & LEGAL REPRESENTATIVE

Versus

STATE OF GUJARAT & OTHERS

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Appearance:

MR RD DAVE for Petitioners

Ms MANISHA LAVKUMAR, AGP for Respondent No. 1

MR HARIN P RAVAL for Respondent No. 2

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 30/06/1999

ORAL JUDGEMENT

Bhanuprasad Mansukhlal Dalal (hereinafter referred to as "the deceased") was appointed as a Junior Clerk-cum-Typist in the District Local Board Office, Junagadh on 10.9.1956. The deceased was thereafter absorbed in service with the Junagadh District Panchayat with effect from 1.4.1963. The deceased met with an accident and expired on 23.4.1971 after having put in total service of 14 years, 7 months and 13 days. The provident fund standing in the name of the deceased amounting to Rs.2028-72 was paid to his two minor

brothers who were the nominees. As per the Government record the said amount was paid on 24.5.1972. Lilavatiben, mother of the deceased made applications to the Panchayat authorities and other concerned authorities to fix the family pension payable to her and to pay all the arrears. However, the authorities did not accede to the request and ultimately the widowed mother addressed a letter to the Hon'ble Chief Justice of India and thereafter also to the Hon'ble Chief Justice of this Court. The said letters were treated as Suo Motu writ petition and notice was issued to the respondents on 26.6.1986.

2. At the hearing before this Court, the respondents contested the claim of the widowed mother to get family pension by contending that the mother did not fall within the definition of 'family' as per clause (3) of the Government Resolution dated 1.1.1972. After considering the said contention, this Court overruled the same as per the order dated 24.11.1986 passed in the present petition and after referring to Rule 20 of the Revised Pension Rules, 1950, this Court held that as per the Revised Pension Rules, 1950 the mother was also included in the definition of 'family'. After giving the said finding that the petitioner-mother would be entitled to gratuity benefit as well as the family pension, this Court directed the respondents to decide the question as to what amount of family pension and gratuity will be admissible to the petitioner.

3. As stated in the reply affidavit, the respondents worked out the amount of family pension and gratuity for the period from 24.4.1971 to 23.4.1981 as under :-

(1) Pension Rs. 9172-10 ps.

(2) Gratuity Rs. 2472-00 Minus Rs.1471

Amount of Government  
contribution to  
contributory provident  
fund.

According to the respondents, the aforesaid amounts of family pension and gratuity have been paid to the widowed mother as per the Government Resolution dated 5.1.1987 sanctioning the grant of family pension for a period of 10 years and gratuity to Lilavatiben, the widowed mother of the deceased, who was depending on the deceased during the life time of the deceased. In the affidavit in reply dated 17.12.1998 filed by Mr MJ Patel,

Under Secretary to the Government of Gujarat, Panchayat and Rural Housing and Rural Development Department, the respondents have, however, pressed their objection that the mother was not entitled to get family pension in view of the definition of 'family' in the scheme of Family Pension introduced by Government Resolution dated 1.1.1972. The learned counsel for the respondents also relied upon the decision of the Apex Court in the case of State of Gujarat vs. Sarti Devi, 37(2) GLR 140 for contending that the mother of the deceased employee is not included in the definition of 'family' and would, therefore, not be entitled to family pension.

4. This Court does not propose to examine this question for the simple reason that by order dated 24.11.1986 this Court had already considered the objection of the respondents and had held that the mother was included in the definition of 'family' as per Rule 20 of the Revision Pension Rules, 1950. The said order was not carried in appeal and on the contrary the Government acquiesced in the same by passing Resolution dated 5.1.1987 sanctioning the payment of family pension to the petitioner. The said order was not made subject to the result of this petition and was passed with the concurrence of the Finance Department.

5. Even if the matter were to be examined on merits, the respondents have not chosen to deal with the definition of 'family' as contained Appendix XIV-C of the Revised Pension Rules, 1950 which Appendix contains the Rules for family pension.

Rule 20 in Appendix XIV-C reads as under :-

"A. 'Family'

(i) For the purpose of making nominations for death-cum-retirement gratuity, shall include the following relatives of a Government servant:

xxx xxx xxx

(g) Mother:

xxx xxx xxx

(ii) for the purpose of making nominations for family pension, shall include the relatives of a Government servant mentioned in items (a) to (g) in clause

(i) above."

Rule 34(a) also provides that the pension sanctioned under the said Rule will be allowed :-

(i) to the eldest surviving widow  
...../husband;

(ii) failing a widow/husband, to the eldest  
surviving son;

(iii) failing (i) and (ii) to the eldest  
surviving unmarried daughter;

(iv) these failing, to the eldest widowed  
daughter;

(b) in the event of no pension becoming  
payable under clause (a), the pension may be  
granted :-

(1) to the father;

(2) failing the father, to the mother;

.....

6. The Revised Pension Rules are statutory rules framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution. The definition of 'family' as contained in the aforesaid statutory rules cannot be whittled down by the executive instructions contained in the Government Resolution dated 1.1.1972. For this reason also, the contention urged on behalf of the respondents that the mother cannot be treated as a family member for the purpose of family pension scheme cannot be accepted. The mother is, therefore, eligible to get family pension when the deceased died unmarried and his father had predeceased the mother, and the mother was dependant on the deceased during his life time.

6A. The decision in the case of Sarti Devi was only concerned with the executive instructions contained in the Government Resolution dated 1.1.1972 and not with the aforesaid statutory Rules.

7. Now, the only question which survives is whether the widowed mother of the deceased is entitled to receive family pension for more than 10 years. Admittedly, the mother of the deceased was paid family pension for 10 years upto 23.4.1981 and then expired on 17.3.1993 during pendency of this petition. Hence, the question is required to be examined with reference to the payment of family pension for the period from 24.4.1981 to 17.3.1993 to the heirs of the deceased who were permitted to be brought on the record of this petition as heirs of the deceased petitioner.

8. The respondents have not pointed out as to on what basis the benefits of family pension payable to the widowed mother of the deceased have been confined to only 10 year period. Apart from that under the Government Resolution dated 1.1.1972 there is no period stipulated during which the family pension is to be paid. Of course, the rate at which the family pension is payable varies, in the cases where the Government servant has put in seven years continuous service or more prior to his death, full family pension is payable for a period of seven years from the date following the date of death or till the date on which the Government servant would have reached normal age of superannuation had he remained alive, whichever period is shorter and for the subsequent period the family pension is payable at a reduced rate.

9. The learned AGP submitted that the deceased expired on 23.4.1971 and the Government Resolution dated 1.1.1972 provides that the family pension under the scheme provided for by the said Government Resolution would be admissible in the case of death while in service "on or after 1.6.1971". Hence, the benefit of the said Resolution cannot be given to the petitioner.

However, in view of the decision of this Court in the case of Kamlaben vs. State of Gujarat, 1989 (2) GLR 1068, the Government has deleted the underlined words as per the Government Resolution dated 19.5.1989. Hence, Lilavatiben, widowed mother of the deceased was entitled to get family pension till her death on 17.3.1993 at the rates applicable at the relevant time during the entire period from 24.4.1971 till her death on 17.3.1993.

10. The petition is accordingly allowed. The respondents are directed to calculate the arrears of family pension payable to Smt. Lilavatiben M. Dalal for the period from 24.4.1981 to 17.3.1993 within a period of three months from the date of receipt of the writ of this Court or a certified copy of this judgement, whichever is earlier and to pay the petitioners, heirs of Lilavatiben M Dalal, such amount of arrears within a further period of three months from the date of calculation of the amount i.e. within six months from the date of receipt of the writ or judgment. If the amount is not paid within the aforesaid time limit, the respondents shall pay interest on the amount due and payable at the rate of 12% p.a. from today.

11. Rule is made absolute. There shall be no order as to costs.

Direct Service is permitted.

Sd/-

June 30, 1999 (M.S. Shah, J.)

sundar/-