

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2680 of 2001

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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 concerned : NO
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

MULIBA GUMANSINH JADEJA

Versus

STATE OF GUJARAT

Appearance:

MR SATYEN B RAWAL for Petitioner No. 1
MR LB DABHI, AGP, for Respondent No. 1,5
RULE SERVED for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 30/06/2004

ORAL JUDGEMENT

1. The petitioner herein is the widow of late Gumansinh Hemubha Jadeja who was working as Police Constable with the respondent no.4 from 1.2.1946. The petitioner's husband retired on 29.5.1951 as he was declared as invalid. In the present petition the petitioner claimed family pension pursuant to the

Government Resolution dated 11th May 1990, after a lapse of more than 46 years. While admitting the matter on 16th April 2001, learned Advocate for the petitioner has submitted that the petitioner confined her claim for the arrears of family pension from 13.9.1996 in view of the application at Annexure H/1 to the petition.

2. The respondents have filed their reply on 27th March 2003 disputing the claim of the petitioner. The petitioner has also filed rejoinder to the reply.

3. Learned counsel for the petitioner has placed reliance upon Rule 258 of The Bombay Civil Services Rules and submitted that the petitioner's husband had retired on the ground of invalidity and therefore the petitioner is entitled for family pension. Rule 258 reads as under:

"258. Unless in any case it be otherwise distinctly provided in this sub-section, an invalid pension shall be granted to a Government servant, who is permitted to retire from Government service before reaching the age of superannuation, on production of a medical certificate in the form prescribed in Rule 201, to the effect that he is by mental or bodily infirmity incapacitated for Government service or for the particular branch of Government service to which he belongs.

Provided that no such invalid pension under these rules shall be granted to a Government servant unless he has completed ten years of qualifying service."

Learned counsel for the petitioner has submitted that the petitioner has produced a medical certificate under Rule 201. However, as per the proviso to Rule 258 the pension can be granted only to the Government servants who has completed 10 years of qualifying service. In the present case the petitioner's husband has not even completed five years of service and there is nothing on record to show that the petitioner's husband has completed ten years of qualifying service. Therefore, Rule 258 will not help the petitioner for claiming family pension.

4. Learned counsel for the petitioner has also relied upon a Government Resolution dated 11th May 1990, more particularly paragraph 5 thereof. The said paragraph reads as under:

"5. As provided in the 1972 Scheme, the

Family Pension is admissible in case of death while in service after 5 years of continuous service to the eligible family members after Government servant's death. The family pension is also admissible to the family of Government employee who has rendered at least 10 years' service. This limit of 10 years for the purpose of family pension is reduced to 5 years but the service rendered should be certified to have been satisfactory by the pension sanctioning authority."

Learned counsel therefore contended that the petitioner's husband has completed five years service and therefore in view of the aforesaid Government Resolution the petitioner is entitled to get family pension. However, this pension scheme has come into effect only in the year 1972 which has no retrospective effect. As per the say of the petitioner her husband had retired in the year 1951. Apart from that this Government Resolution stipulates that family pension can be given to the family members of the Government servant who had completed continuous five years service and if the Government servant expires while in service. It is not the case of the petitioner that her husband had died while in service. Therefore, the aforesaid Government Resolution will not be of any help to the petitioner.

5. Apart from the above, the present petition has been filed in the year 2001 and therefore there is a gross delay of about 50 years which is not explained at all. Upon the retirement of the petitioner's husband, he has been paid gratuity and other eligible benefits. The District Superintendent of Police, Rajkot, after considering the case of the petitioner, in his letter dated 19.12.1951 has stated that the petitioner's husband was not entitled for the benefits of pension. Thus, there is nothing on record to show that the petitioner is entitled to family pension.

6. In the result, there are no merits in the petition. Hence the petition is rejected. Rule is discharged with no order as to costs.

[K.S.JHAVERI, J.]

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