

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 8354 of 2003**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed  
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy  
of the judgment ?

4 Whether this case involves a substantial question  
of law as to the interpretation of the  
constitution of India, 1950 or any order made  
thereunder ?

5 Whether it is to be circulated to the civil judge  
?

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**GOVINDBHAI KHODABHAI GALIYER - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 4 - Respondent(s)**

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**Appearance :**

MRS DT SHAH for Petitioner(s) : 1,  
GOVERNMENT PLEADER for Respondent(s) : 1 - 2, 4,  
RULE SERVED BY DS for Respondent(s) : 1 - 5.  
MR SAURABH G AMIN for Respondent(s) : 3,

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 30/06/2006**

**ORAL JUDGMENT**

1. At the request of learned advocates appearing  
for the parties, the petition is taken up for

final disposal today.

2. It is not in dispute that the petitioner was appointed as Khadi worker under Sarvodaya Scheme on 1/4/1954. On closure of the scheme, the petitioner was allocated to the District Panchayat, Ahmedabad on 1-9-1981 as an ex cadre employee. He was in Panchayat with effect from 1-4-1987. He retired from service on crossing age of superannuation on 30-6-1991. He has not been paid pension considering his past service in the Sarvodaya Scheme. He has therefore, filed this petition seeking the pensionary benefits also considering his past services in the Sarvodaya Scheme.

3. Learned advocate for the petitioner submitted that under identical circumstances, this Court had disposed of Special Civil Application No.6992/2002 and allied matters by common judgement dated 9-3-2006.

4. Having heard learned advocate appearing for the

parties, it would appear that so far as relevant aspects of the matter are concerned, the petitioner is justified in contending that his case is similar to those petitioners whose cases were disposed of by order dated 9-3-2006. In this regard, observations made by this Court can be noted.

"4. It can thus be seen that the main prayer made by all the petitioners is common. The petitioners contend that the service rendered by them initially in the Sarvodaya Scheme and thereafter with the District Panchayat prior to their permanent absorption in the year 1988 should also be counted towards calculating pensionary benefits of the petitioners. In the nutshell, therefore, the case of the petitioners is that entire length of service rendered by them right from their initial appointment in Sarvodaya scheme should be counted as pensionable service.

5. Learned Advocates for the petitioners submitted that issues arising in the present petitions are no longer *res integra*. It is submitted that learned Single Judge of this Court in the case of Prabhudas R. Nimavat v. State of Gujarat rendered in Special Civil Application No. 1696 of 1996 on 16.10.2001, has concluded the controversy between the parties. Learned Advocates pointed out that the learned Single Judge of this Court under identical circumstances found that the petitioners therein are entitled to count their past service prior to their permanent absorption by the District Panchayat for the purpose of pensionary benefits. Learned Single Judge of this Court however turned down the request of the petitioners to award interest on the delayed payment of pensionary benefits. The observations and directions of learned Single Judge may be reproduced at this stage as under :

"....The Government Resolution dated 15.12.1987 annexure - J and other orders rejecting the request to grant pensionary benefit are hereby quashed and set aside qua all the three present petitioners and shall not have binding effect on the present petitioners. The State is directed to consider the services rendered by present petitioners from their initial date of appointment when they were absorbed in the Panchayat cadre i.e. From the year 1980-81 till the date of retirement or otherwise for pensionary benefits as continuous service. Further it is observed that this period should be treated to grant pensionary benefit only and they will not be entitled to claim any cash or other financial benefit. I am told that the present petitioner were given other benefits like leave etc. for their earlier services with Sarvodaya Scheme.

8. Rule is made absolute to above extent. Respondent-State is directed to calculate the pensionary benefit of the present petitioner within four months and should see that the arrears are cleared within six months from the date of the receipt of writ. The State is further directed that they get the pensionary benefits regularly immediately after the payment of arrears. The request to award interest by the learned Counsel for the petitioners is not accepted in view of the fact that this Court has allowed the petition exercising discretion in favour of the old employee in light of the Government Resolution issued in the year 1988 in favour of the employees serving in the education cadre of Sarvodaya Scheme visavis other policy Resolution passed in recent years. Direct service is permitted."

5.1 Learned Advocates appearing for the petitioners further pointed out that the decision of the learned Single Judge in the case of Prabhudas R. Nimavat v. State of Gujarat (supra) has achieved finality. No appeal has been carried against the said decision by the State Government. In fact subsequently two more decisions have been rendered by this Court following the decision in the case of Prabhudas R. Nimavat v. State of Gujarat (supra). It is pointed out that by order dated 19.04.2004 passed in Special Civil Application No. 14642 of 2003 in the case of Bhiksheshkumar Ramdas Sadhu v. State of Gujarat, the learned Single Judge has given similar directions

under identical circumstances. Learned Advocates for the petitioners further point out yet another decision of this Court dated 17.10.2003 passed in Special Civil Application No. 6136 of 1994 wherein similar directions have been issued under similar circumstances. They further point out that none of these decisions have been carried in appeal. In fact the State Government has released the benefits to the concerned petitioners. They, therefore, seek parity with other employees whose cases have been already decided by this Court and the government has already released the pensionary benefits.

6. On the other hand Ms. Shah, learned Assistant Government Pleader appearing for the State Government opposed the petitions. She submitted that it was only by way of compromise that the petitioners, who would have otherwise rendered jobless upon winding of Sarvodaya Scheme, were absorbed in the District Panchayat establishment. She submitted that their appointments and their subsequent permanent absorption in the Panchayat service clearly envisaged that such appointments will be fresh appointments. They are not entitled to receive any benefit of their past service. Their claim for counting previous service for the purpose of pensionary benefits therefore, is not justified. She however conceded that under similar circumstances this Court had rendered decisions which have not been carried in appeal.

7. In view of the above situation I find that it is not open for me to examine the legal issues arising in the present petitions as urged by the learned Assistant Government Pleader. By judicial discipline I am bound by the view of coordinate bench. There are no factual differences pointed out. It is the case of the State Government that the decisions rendered by other benches under similar situation are not appealed. In that view of the matter, respectfully following the decision of this Court in the case of **Prabhudas R. Nimavat v. State of Gujarat (supra)** and subsequent decisions, I find that the prayer of the petitioners for being granted their pensionary benefits counting the entire length of service from their inception has to be accepted. I find that the petitioners have made out a case for counting the entire length of service from their initial appointed date in Sarvodaya Scheme till their

superannuation from the Panchayat service for the purpose of pensionary benefits. In the case of those petitioners who are not receiving any pension since as per the stand of the respondents they had not rendered sufficient length of service to qualify for receiving pension, the respondents shall after calculating the entire length of service as directed hereinabove for the purpose of pensionary benefits, calculate and release all their pensionary benefits.

8. In case of such employees who are receiving pensionary benefits on the basis of truncated services, their pensionary benefits will be revised as per the directions hereinabove.

9. The above exercise shall be completed within a period of two months from the date of receipt of a copy of this order. Arrears be paid within a further period of two months thereafter."

5. Since the case of the petitioner is undisputably similar to those petitioners involved in the above group of petitions, this petition also deserves similar treatment.

6. In the result, petition is allowed in part. The respondents shall consider the entitlement of the petitioner for pensionary benefits considering his past service in Sarvodaya Scheme also and pass appropriate orders, as found necessary as per rules and release arrears, if found payable. Such exercise shall be completed expeditiously and preferably within a period of

four months from the date of receipt of a copy of this order. Learned advocate for the respondents rightly pointed out that claim for interest was denied in the earlier group of petitions and the present petition also shall receive the same treatment in this regard.

7. With these directions, the petition is disposed of. Rule made absolute accordingly with no order as to costs.

Direct service is permitted.

**(Akil Kureshi, J.)**

(raghu)