

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

**LETTERS PATENT APPEAL NO. 96 of 2013**

**In**

**SPECIAL CIVIL APPLICATION NO. 1023 of 2011**

**With**

**CIVIL APPLICATION NO. 1352 of 2013**

**In**

**LETTERS PATENT APPEAL NO. 96 of 2013**

**With**

**LETTERS PATENT APPEAL NO. 97 of 2013**

**In**

**SPECIAL CIVIL APPLICATION NO. 1024 of 2011**

**With**

**CIVIL APPLICATION NO. 1353 of 2013**

**In**

**LETTERS PATENT APPEAL NO. 97 of 2013**

**With**

**LETTERS PATENT APPEAL NO. 98 of 2013**

**In**

**SPECIAL CIVIL APPLICATION NO. 1025 of 2011**

**With**

**CIVIL APPLICATION NO. 1354 of 2013**

**In**

**LETTERS PATENT APPEAL NO. 98 of 2013**

**With**

**LETTERS PATENT APPEAL NO. 99 of 2013**

**In**

**SPECIAL CIVIL APPLICATION NO. 3969 of 2011**

**With**

**CIVIL APPLICATION NO. 1355 of 2013**

**In**

**LETTERS PATENT APPEAL NO. 99 of 2013**

**With**

**LETTERS PATENT APPEAL NO. 100 of 2013**

**In**

**SPECIAL CIVIL APPLICATION NO. 3970 of 2011**

**With**

**CIVIL APPLICATION NO. 12360 of 2012**  
**In**  
**LETTERS PATENT APPEAL (STAMP NUMBER) NO. 1135 of 2012**  
**With**  
**LETTERS PATENT APPEAL NO. 101 of 2013**  
**In**  
**SPECIAL CIVIL APPLICATION NO. 4070 of 2011**  
**With**  
**CIVIL APPLICATION NO. 1357 of 2013**  
**In**  
**LETTERS PATENT APPEAL NO. 101 of 2013**  
**With**  
**LETTERS PATENT APPEAL NO. 102 of 2013**  
**In**  
**SPECIAL CIVIL APPLICATION NO. 4071 of 2011**  
**With**  
**CIVIL APPLICATION NO. 1358 of 2013**  
**In**  
**LETTERS PATENT APPEAL NO. 102 of 2013**  
**With**  
**LETTERS PATENT APPEAL NO. 103 of 2013**  
**In**  
**SPECIAL CIVIL APPLICATION NO. 3971 of 2011**  
**With**  
**CIVIL APPLICATION NO. 1359 of 2013**  
**In**  
**LETTERS PATENT APPEAL NO. 103 of 2013**  
**With**  
**LETTERS PATENT APPEAL NO. 104 of 2013**  
**In**  
**SPECIAL CIVIL APPLICATION NO. 4068 of 2011**  
**With**  
**CIVIL APPLICATION NO. 1360 of 2013**  
**In**  
**LETTERS PATENT APPEAL NO. 104 of 2013**  
**With**  
**LETTERS PATENT APPEAL NO. 105 of 2013**  
**In**

**SPECIAL CIVIL APPLICATION NO. 4069 of 2011****With****CIVIL APPLICATION NO. 1362 of 2013****In****LETTERS PATENT APPEAL NO. 105 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.R. SHAH****and****HONOURABLE MR.JUSTICE S.H.VORA**

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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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STATE OF GUJARAT &amp; 1....Appellant(s)

Versus

JAYABEN WD/O BHARATBHAI CHAUHAN &amp; 1....Respondent(s)

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Appearance:

MR RAKESH PATEL, AGP for the Appellant(s) No. 1 - 2

MRS KRISHNA G RAWAL, ADVOCATE for the Respondent(s) No. 1

MR MURLI DEVNANI for the Respondent(s) No. 2

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**CORAM: HONOURABLE MR.JUSTICE M.R. SHAH****and****HONOURABLE MR.JUSTICE S.H.VORA**

**Date : 31/01/2013**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

1. Heard Shri Rakesh Patel, learned AGP appearing on behalf of the appellants-original respondents nos. 2 and 3, Ms. Krishna Rawal, learned advocate appearing on behalf of the respective respondents-original petitioners and Shri Murli Devnani, learned advocate appearing on behalf of respondent no. 2-Una Nagarpalika.

2. As common question of law and facts arise in these group of Letters Patent Appeals and as such they are arising out of the impugned common judgment and order passed by the learned Single Judge, all these Letters Patent Appeal are heard, decided and disposed of together by this common order.

3. All these Letters Patent Appeals under Clause 15 of the Letters Patent Appeal have been preferred by the appellants-State of Gujarat and another-original respondents nos. 2 and 3 challenging the impugned common judgment and order passed by the learned Single Judge dated 29/11/2011 in Special Civil Application No. 3969/2011 and allied matters by which the learned Single Judge has allowed the aforesaid Special Civil Applications holding that the petitioners of Special Civil Application Nos. 3969/2011, 3970/2011, 3971/2011, 4068/2011, 4069/2011 and 4070/2011 are entitled to pensionary benefits and the pension is to be fixed and paid on the basis of the last drawn salary by such employees and the family pension is also to be fixed and paid to the petitioners of

Special Civil Application Nos. 4071/2011, 1023/2011, 1024/2011 and 1025/2011 on the basis of the last pay drawn by the deceased employee in accordance with law.

4. The facts leading to the present Letters Patent Appeals in a nutshell are as under;

4.1. The respondent no. 1-original petitioners in each appeals (hereinafter referred to as 'the petitioners') were serving with the Una Nagarpalika initially as daily wagers. It appears that the respective petitioners alongwith other similarly situated employees of Una Nagarpalika raised an industrial dispute before the Industrial Tribunal, Rajkot raising the demand that they should be made permanent and should be paid the allowance at par with the government employees. The said dispute was referred to the Industrial Tribunal, Rajkot for its adjudication, which were numbered as REF (ITR) No.349/87,35/87,152/89,31/90 and vide order dated 12/02/1997 the Industrial Tribunal (2), Rajkot allowed the said References in part by ordering the concerned workmen in all the References, except those who have been made permanent prior to 01/01/1989, to be made permanent by the Una Nagarpalika with effect from 01/01/1989 and ordered to pay the difference of pay and allowances from 01/01/1990 onwards. The Industrial Tribunal also passed an order that the legal representative of the workmen, who died during pendency of reference cases, shall also get the difference of pay and allowances from 01/01/1990 up to the date of the death of the concerned workmen. Vide common judgment and award dated 12/02/1997 passed in REF (ITR) No.349/87,35/87,152/89,31/90 the respective workmen as

such were made permanent. The common judgment and award dated 12/02/1997 passed by the Industrial Tribunal (2), Rajkot in REF (ITR) No.349/87,35/87,152/89,31/90 came to be confirmed up to the Division Bench of this Court by way of Special Civil Application as well as Letters Patent Appeal.

4.2. It appears that thereafter some of the workmen of the Una Nagarpalika in whose favour the common judgment and award dated 12/02/1997 was passed by the Industrial Tribunal (2), Rajkot and who were also made permanent preferred Special Civil Application No. 589/2010 and allied matters challenging the action of the State in not granting the benefit of pension/family pension to them and the learned Single Judge vide common judgment and order dated 28/10/2010 allowed the aforesaid Special Civil Applications by quashing and setting aside the decision of the Nagarpalika and directed to extend them the benefits of 1994 Resolution like granting of pensionary benefits etc. at par with other Government employees. Being aggrieved and dissatisfied with the common judgment and order passed by the learned Single Judge dated 28/10/2010 in Special Civil Application No. 589/2010 and other allied matters, the Nagarpalika preferred Letters Patent Appeals Nos.214/2011 and other allied matters before the Division Bench and by common judgment and order dated 03/02/2011 dismissed all the aforesaid Letters Patent Appeals confirming the common judgment and order passed by the learned Single Judge dated 28/10/2010 in Special Civil Application Nos. 589/2010 and allied matters. It is reported that the concerned workmen in the aforesaid Special Civil Application Nos. 589/2010 and allied matters thereafter have been granted the benefit of pension etc. as per the judgment

and order passed by the learned Single Judge in Special Civil Application Nos. 589/2010 and other allied matters confirmed up to the Division Bench. Thereafter, the respective petitioners, who were similarly situated like the workmen of Special Civil Application Nos. 589/2010 and allied matters in whose favour the judgment and award was passed by the Industrial Tribunal (2), Rajkot dated 12/02/1997 in REF (ITR) No.349/87,35/87,152/89,31/90 preferred Special Civil Application Nos. 3696/2011 and other allied matters claiming similar benefits, which were granted to the petitioners of Special Civil Application Nos. 589/2010 and other allied matters like pensionary benefits etc. and by impugned common judgment and order the learned Single Judge, relying upon the decision of the learned Single Judge dated 28/10/2010 in Special Civil Application No. 589/2010 and other allied matters and the decision of the Division Bench dated 03/02/2011 in Letters Patent Appeal No. 214/2011 and other allied matters, has allowed all the aforesaid Special Civil Applications directing the authorities, inclusive of the appellants, to pay the pensionary benefits like pension/family pension to the concerned workmen/employee/heirs of deceased as the case may be. Being aggrieved and dissatisfied with the impugned common judgment and order dated 29/11/2011 passed in Special Civil Application Nos. 3969/2011 and other allied matters (impugned in the present Letters Patent Appeals) as such the Una Nagarpalika did prefer Letters Patent Appeal Nos. 716/2012 and other allied Letters Patent Appeals in which the appellants was also made party and the same came to be heard by the Division Bench but the same are withdrawn by the Nagarpalika on dated 26/04/2012 and the Division Bench has disposed of the aforesaid Letters

Patent Appeal Nos. 716/2012 and other allied matters as withdrawn. It is also required to be noted at this stage that thereafter the appellants-State of Gujarat and another have preferred the present Letters Patent Appeals challenging the impugned common judgment and order dated 29/11/2011 passed in Special Civil Application Nos. 3969/2011 and other allied matters.

5. At the outset, it is required to be noted that Shri Rakesh Patel, learned AGP appearing on behalf of the appellants is not in a position to dispute that as such the original petitioners are similarly situated to those petitioners of Special Civil Application Nos. 589/2010 and other allied matters in whose favour the order was passed by the learned Single Judge confirmed by the Division Bench and pursuant to which now they are being paid the pension/family pension. However, he has tried to distinguish the facts by submitting that the respective petitioners were as such appointed after the Panchayat was converted into Una Nagarpalika i.e. after 18/10/1986 and, therefore, he has submitted that as the respective petitioners/concerned employees were appointed after 18/10/1986 as per the Government Resolution dated 20/11/1994 they shall not be entitled to the benefits of pension/family pension. No other submissions have been made. However, considering the statement with respect to each of respective petitioners, observed in paragraph 2 of the impugned judgment and order, it appears that as such the respective petitioners were appointed much prior to 18/10/1986 and even the GPF etc. were also deducted much prior to 18/10/1986. However, they were conferred with the benefit of permanency etc. from the year 1989/1990.



However, it is to be noted that as such the aforesaid aspect came to be considered by the learned Single Judge in its judgment and order dated 28/10/2010 passed in Special Civil Application No. 589/2010 and other allied matters and only thereafter the learned Single Judge has held that all those petitioners (who were similarly situated as the respective petitioners) are entitled to the benefit of Government Resolution 1994 i.e. pension/family pension. As stated hereinabove, the judgment and order passed by the learned Single Judge in Special Civil Application No. 589/2010 and other allied Special Civil Applications has been confirmed by the Division Bench vide judgment and order dated 03/02/2011 in Letters Patent Appeal No. 214/2011 and other allied Letters Patent Appeals. The respective petitioners are similarly situated to those employees-petitioners of Special Civil Application Nos. 589/2010 and other allied Special Civil Application and in fact they were also party to the Reference/References before the Industrial Tribunal in whose favour the judgment and award was passed by the Industrial Tribunal (2), Rajkot in REF (ITR) No.349/87,35/87,152/89,31/90.

6. Considering the aforesaid facts and circumstances and the aforesaid decisions and considering the fact that the respective petitioners are similarly situated to those employees and when the learned Single Judge has passed the impugned common judgment and order, it cannot be said that the learned Single Judge has committed any error. It is to be noted that while allowing the Special Civil Applications and passing the impugned common judgment and order the learned Single Judge has considered the observations made by

the Division Bench made in the judgment and order dated 03/02/2011 passed in Letters Patent Appeal No. 214/2011 and other allied Letters Patent Appeals and in paragraph 6 the learned Single Judge has observed as under;

*“6. It is undisputed position that all the concerned employees were treated in the GPF scheme, therefore, respective GPF accounts were opened and the deduction was also made from their salary from the date on which they were made permanent and until they retired from service or their service ended on account of their death. It is also undisputed position that all such employees were not treated in CPF scheme, which is applicable to other municipal employees and no deduction for the purpose of CPF has been made by the municipality from the salary of concerned employees. If the employee, when he is absorbed in service, is treated for all purposes in the GPF scheme for pensionary benefits and not treated in the CPF scheme for lumpsum amount, and the said position continued until the person concerned reached to the age of superannuation or otherwise, would it be open to the employer or the concerned authorities to deny the pensionary benefits after retirement on the ground that the employees concerned was not eligible for pension as per the GPF scheme. In our view, if such is permitted to be entertained and accepted, it would not only be highly improper on the part of the authority, but can also be termed as atrocious action, which would be absurd on the face of it.*

*7. The learned counsel for the appellant, however contended that the employees concerned, who were in the then panchayat service and subsequently continued in the municipality, were not recruited by the regular selection process and it was submitted that it is only w.e.f. 1.1.1989 they have been granted permanency benefit. When on 1.1.1989 permanency benefits were granted, they were taken as municipal employees and not as employees of the panchayat. Under the circumstances, they would be entitled for all benefits, which may be available to other municipal employees. It was submitted that as per the decision of this Court in case of **Chorwad Gram Panchayat Vs. Ramniklal***

**Dharshi Shah** reported at **(2010)1 GCD 675**, such employees who were not recruited by the regular selection process of the then Gram Panchayat, could not be termed as in panchayat service and, therefore, would not be eligible for the pensional benefits as available to other employees of the panchayat or Government service. Learned counsel, therefore, contended that if the employees were of the municipality, there is no scheme of the Government for pensional benefits, but the scheme applicable would be CPF to the employees of the municipality. It was submitted that the learned single Judge was guided by the resolution of the Government, which in the submission of the municipality is not applicable and, therefore, the order passed by the learned single Judge is erroneous.

8. There cannot be any different view in respect of the employees taken by this Court in Chorwad Gram Panchayat (*supra*). However, the point which arise for consideration in the present group of matters did not arise in the said case inasmuch as if for all purposes the employees concerned were treated as in panchayat service with the scheme of the Government for pension by deduction of GPF, would it be open to the Government or the municipality to deny the pensional benefits, if the employees concerned have retired from service. It is true that if one was not appointed by regular recruitment process, he may not fall in the panchayat service. In our view, the factum of giving treatment by the municipality and Government to all the concerned employees in the present case as member of the panchayat service and the consequent action of regular deduction of contribution of GPF account that too from the inception of the service as the permanent employees until reaching to the age of superannuation or until the services came to an end, would be sufficient to decline the entertainment of such plea taken by municipality and/or the Government as the case may be, that the employees concerned in view of the aforesaid decision of this Court in case of Chorwad Gram Panchayat (*supra*), would not be entitled for the pensional benefits. Be it noted that it is not the case of the appellant or any of the State authority that it is on account of any fraud or misrepresentation or any mischief played by the concerned employees at the relevant point of time or even thereafter they were treated as member of GPF

*scheme. Therefore, the question is to be examined in light of the bonafide action on the part of employee as well as the concerned officer of the employer or the Government, as the case may be. It is true that in normal circumstance, such estoppel may not operate against any statute, but it is not a mere case of considering the question of estoppel. In our view, a case of conduct of the party concerned coupled with the alteration of the position of the party concerned throughout. At any point of time, neither the municipality or the Government has refunded the amount of contribution nor they have intimated to the employees concerned for their mistake or otherwise. After completion of the service, if such a plea is entertained or is accepted, in our view, it would result into allowing the atrocious treatment to be played by the municipality or the Government or its officers, which would violate Article 14 of the Constitution.*

9. *The aforesaid is coupled with the circumstance that it is not that in every case whenever a person is daily wager or a temporary employee of the Government, he would not be eligible or entitled for pension. On the contrary as per the policy of the Government, even if a person is an adhoc/temporary employee, after completion of requisite length of service, he is to be treated as eligible for the scheme of pension and once he is treated as eligible for the scheme of pension, and his contribution are being deducted from his salary, he would be eligible for the pension upon completion of the requisite length of service. Therefore, there is no absolute bar operating upon the entitlement of the pension by the employees of the then Gram Panchayat, who are treated as for all purposes covered by the scheme of pension for the contribution from their salary and same position continued until they reached to the age of superannuation or until the end of their service."*

7. It is also required to be noted at this stage that as such the appellants have preferred the present Letters Patent Appeals only after the Nagarpalika withdrew the Letters Patent Appeal challenging the impugned common judgment and order passed by the learned Single Judge.

8. In view of the above, we see no reason to interfere with the impugned common judgment an order passed by the learned Single Judge dated 29/11/2011 in Special Civil Application No. 3969/2011 and other allied matters. Under the circumstances, all the Letters Patent Appeals fail and they are dismissed with cost, which is quantified at Rs. 1,000/- in each of the Letters Patent Appeals to be deposited by the applicants within a period of four weeks from today and on such deposit the same shall be paid to the concerned workmen/employee-original petitioner/any of the heir of the original petitioner (in case anybody has expired in between).

9. In view of dismissal of the Letters Patent Appeals and as the question is with respect to pension/family pension, the concerned authorities to see to it that the impugned judgment and order passed by the learned Single Judge is complied with at the earliest and the pension/family pension is paid to the concerned workmen/employee/heir of the concerned employee at the earliest but not later than 31/03/2013.

10. In view of dismissal of the Letters Patent Appeals, no order in the respective Civil Applications and they are disposed of accordingly.

**(M.R.SHAH, J.)**

**(S.H.VORA, J.)**

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