

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 16321 of 2020**

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MOHAMMEDRIYAZ ABDULLATIF KAZI & ANR.
Versus
STATE OF GUJARAT & ORS.

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Appearance:

DECEASED LITIGANT for the Petitioner(s) No. 1
MS HARSHAL N PANDYA(3141) for the Petitioner(s) No. 1.1
MS NIDHI VYAS, ASST. GOVERNMENT PLEADER/PP for the
Respondent(s) No. 1
NOTICE SERVED for the Respondent(s) No. 1,2,3,4,5,6,7,8

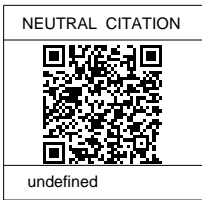
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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

**Date : 09/05/2024
ORAL ORDER**

1. Heard learned advocate Ms.Harshal N. Pandya on behalf for the petitioner and learned Assistant Government Pleader Ms. Nidhi Vyas for the respondent - State.

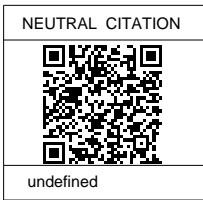
2. By way of this petition, the petitioner, inter-alia, raises a grievance as regards non-consideration of the case of the petitioner for grant of pension and other retiral dues. It is the case of the petitioner that he was appointed and joined services with the respondent No.6 - Sunflower High School on 27.01.1992 and had worked as such till 24.05.2010. The petitioner resigned from that school and joined respondent no.8 school as a Principal, which is a grant-in-aid school. The petitioner retired from service on 31.10.2020. Pending the petition, sole petitioner was died on 24.01.2021 and legal heir



is brought on record.

2.1. It is the case of the petitioner that though he was entitled for grant of pension more particularly, as per the policy of the State Government yet, since the respondents had not deemed it appropriate to grant pension to the petitioner, therefore, the petitioner was constrained to approach this Court by way of this petition.

3. Learned advocate Ms.Pandya on behalf of the petitioner would, for the purpose of entitlement of the petitioner, draw the attention of this Court to Government Resolution dated 05.02.1980, whereby it was, inter-alia, decided that employees of non-granted recognized secondary schools shall be entitled to be paid pension. The primary criterion is as regards re-depositing the amount of contribution of CPF or pension as per the scheme, which may have been prevalent at the relevant point of time, and whereas it also appears that vide Government Resolution dated 28.09.1992, the ambit of the earlier Government Resolution was circumscribed by, inter-alia restricting only such employees, who had been appointed prior to June, 1992 being entitled for the purpose of grant of pension. It is submitted that the petitioner having



been appointed and having joined service on 27.01.1992, the petitioner would be entitled for grant of pension.

4. Learned advocate Ms.Pandya would also rely upon decision of the learned Co-ordinate Bench in Special Civil Application No.4987 of 2002 dated 18.11.2002 more particularly, whereby the learned Co-ordinate Bench in case of similarly situated employee, working in the same school, had been directed to be granted pension. Observations of the learned Coordinate Bench, relevant for the present purpose, are reproduced hereinbelow for benefit:-

“Be it noted that indisputably the petitioner has served as a secondary school teacher/principal continuously from 14th June, 1965 till 31st October, 1999 without any break. The Government Resolution dated 1st March, 1974 is an amendment to the earlier Government Resolution dated 31st December, 1971. A bare perusal of the said Resolution dated 1st March, 1974 discloses the Government's intention to count all services of teachers of Non-Government Grant-inAid Schools as pensionable service irrespective of the resignation/termination of service provided there are not more than six breaks in the service, not more than four of which should be due to resignation. Hence, it is evident that even in case a secondary school teacher resigns from one Grant-in-Aid School and joins another Grant-in-Aid School, services rendered in both such schools shall be considered pensionable. Even in respect of Non-Grant-in-Aid Schools the Government has resolved under its Resolution dated 5th February, 1980 that teachers serving in such Non-Grant-inAid Secondary

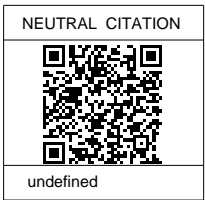


Schools shall be entitled to the pensionary benefits provided the concerned school deposits its contribution to the Contributory Provident Fund or the Pension Fund with the State Government. The said facility has been discontinued under the Government Resolution dated 28th September, 1992 in respect of those Non-Grant-inAid Schools which have been recognized in the month of June, 1992 or thereafter. Obviously, the respondent no.7 School has been recognized long before June, 1992. The teachers serving in the said school, therefore, can not be denied pensionary benefits under the aforesaid Government Resolution dated 28th September, 1992.

In the circumstances, the petition is allowed.

It is declared that the petitioner is entitled to pensionary benefits for the services rendered by him as a Secondary School Teacher/Principal from 14th June, 1965 till 31st October, 1999. The respondent no.7 School and the concerned authorities are directed to process the pension papers of the petitioner expeditiously and to issue pension payment order in favour of the petitioner. The respondent no.7 - School shall deposit the amount of contribution to the Contributory Provident Fund or the Pension Fund as envisaged in the Government Resolution dated 5th February, 1980. The necessary procedure shall be completed and the pension payment order shall be issued on or before 31st March, 2003. In the event the respondent fails to issue pension payment order by 31st March, 2003, the petitioner shall be entitled to receive interest at the rate of 10 per cent per annum from the date such amount has become due till the date the same is paid to the petitioner. Rule is made absolute with costs."

4.1. It is submitted by learned advocate Ms.Pandya that relying upon the said decision, later decisions also have been passed by the learned Co-ordinate Benches.

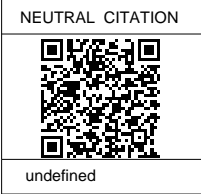


4.2. Considering the fact that decision in the case of Special Civil Application No.4987 of 2002 i.e. between S.D Bhatt vs. State of Gujarat holds the field insofar as the present issue is concerned, and considering the fact that the present petitioner is identically situated to the petitioner of the said petition more particularly, the petitioner of the said petition being colleagues in the same school, the benefit as granted by the learned Coordinate Bench to the petitioner therein, is required to be granted to the petitioner herein. Under such circumstances, the following directions are passed:-

(ii) Respondent Nos.7 and 8 as well as the respondent State Authorities are directed to process the pension papers of the petitioner as expeditiously as possible. It is further directed that the arrears payable on revision of pay pursuant to the 7th Pay Commission be paid as early as possible.

(ii) The respondent No.7 shall deposit the amount of contribution to the CPF or pension fund as envisaged in Government Resolution dated 05.02.1980 within a period of one month from the date of receipt of this order.

(iii) The direction at point (i) above shall be complied within



a period of three months from the date of receipt of this order. In case the respondent State fails to comply with the direction as regards processing the pension papers of the petitioner and making appropriate payment to the petitioner within a period of 90 days from the date of receipt of this order, then the petitioner would be entitled to interest at the rate 6% p.a. on the arrears of pension.

(iv) It is unnecessary to reiterate that respondent No.7 is expected to cooperate. However, in the event of non-cooperation leading to a delay in the preparation of pension papers beyond 90 days, the State, in case the interest is required to be paid to the petitioner, is at liberty to recover the same from the respondent No.7. To clarify, the burden of any accrued interest shall be shifted to respondent No.7 if the delay is due to their inaction.

5. With the above observations and directions, the petition is disposed of as allowed. Direct service is permitted.

Bhoomi

(NIKHIL S. KARIEL,J)