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(2004) 07 GUJ CK 0070

In the Gujarat High Court

Case No : Letters Patent Appeal No''s. 699, 861, 865, 1026, 1053, 1104 and 1105 of 2004 and Civil Application No''s. 2125, 2305, 2464, 2597, 2598, 3694 and 3697 of 2004

Gujarat State Khadi Gramodyog Board APPELLANT

Vs

Gujarat State Khadi Gramodyog Pensioners Association RESPONDENT

Date of Decision : 23-07-2004

Acts Referred:

Bombay Khadi and Village Industries Act, 1960 — Section 16, 17, 17(2), 18, 19
Gujarat Rajya Khadi Gramodyog Board Officers and Servants (Conditions of Service) Regulations, 1973 — Regulation 2(5), 5(2)

Citation : (2004) 24 GLH 323 : (2005) 1 GLR 24

Hon'ble Judges : J.N. Bhatt, J;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : D.D. Vyas and Dhaval D. Vyas, S.N. Shelat, A.G, A.D. Oza, G.P. and Harhsa Devani, AGP, for the Appellant; M.B. Gandhi, for the Respondent

Judgement

J.N. Bhatt, J.—In this group of Letters Patent Appeals, common questions have been involved arising out of the common judgment and therefore, upon request, the entire group is heard together and is being disposed of by this common judgment.

2. In this group of Letters Patent Appeals, under Clause 15 of the Letters Patent, the common question which has come to the surface for our consideration, determination and adjudication, is, as to whether the employees of Gujarat State Khadi Gramodyog Board, are entitled for the payment of pension, according to the revised pay scales, as per the recommendations of the 5th Pay Commission Report, as accepted and adopted by the respondents, who have retired prior to 01.1.1996, and if yes, whether the liability of such payment of revised pension is on the part of the Board and/or State of Gujarat, or both ?

3. Challenging the action of non-payment of the pensionary benefits, upon the basis of the revised pay scales, pursuant to the acceptance of the 5th Pay

Commission Report by the respondent No.1- Board and the respondent No.2- State of Gujarat, brought in by original petitioner, Gujarat State Khadi Gramodyog Board Association against the respondents, interalia, contending that employees of the Board are entitled to the revised amount of pension, on the basis of the revised pay scales, based on the recommendations of the 5th Pay Commission Report, which came to be accepted and adopted by both the respondents, in case of persons who have retired prior to 01.1.1996. The original petitioner, championing the cause of retired employees of the Board for the pensionary benefits, is hereinafter referred to, as an "Association", whereas, the respondent no.1- Gujarat State Khadi Gramodyog Board is hereinafter referred to as the "Board" and the respondent no.2, the State of Gujarat is hereinafter referred to as the "State" , for convenience and brevity sake.

4. The respondent No.1- Board created under the relevant provisions of the Bombay Khadi and Village Industries Act, 1960 [for short Act]. The Board is also defined u/s 2 [a] of the Act. The respondent no.2 State, by virtue of the Notification issued in the official gazette, pursuant to Section 3 of the Act, constituted the Board. The Board, thus, in existence, is governed by the Act and the Regulation thereunder, since, the date of Notification, dated 5th May 1960, published on 12th May, 1960.

5. It would be appropriate to refer the underlying design and desideratum of the creation of the Board. With a view to provide encouragement, organization development and regulation of Khadi and village industries in the erstwhile State of Bombay and to constitute or open one or more Board to carry on such objects, the legislative enactment came to be made in exercise of the powers conferred by sub section (1) read with Clause (b) of sub section (2) of Section 30 of the Act and with previous approval and sanction of the State of Government, under letter dated 12th November,1973, the Rules and Regulations came to be notified known as, Gujarat Rajya Khadi Gramodyog Board Officers and Servants [Conditions of Service] Regulations of 1973. The said Regulation governed the terms and conditions of the personnel of the Board. The employees of the Board are also governed by the provisions contained in the Gujarat Civil Services [Discipline and Appeal] Rules, 1971 for the conduct and discipline, as well as the appeal, when the pay and other conditions of the service of any officer or servant are as laid down in the contract entered into by the Board with him, the officer or servant shall be governed by that contract and so far as the pay and other conditions of service are concerned. Whereas in other cases, pursuant to the said Regulation, Bombay Civil Services Rules, 1959 shall apply to the officers and the servants of the Board, as regards their pay, joining time, foreign service, maintenance of records of service, addition to pay, travelling allowance, combination of appointments, leave, revised leave and superannuation.

6. Let it be noted also that in exercise of the powers conferred by clause (b) of sub section (2) of Section 30 read with sub section (3) of section 7 of Bombay Khadi and Village Industries Act, 1960, the Gujarat State Khadi Gramodyog

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Board with the previous sanction of the Government of Gujarat under the letter dated 11th March, 1971, has, also, formulated the regulation governing the gratuity of the employees of the Board, known as Gujarat Rajya Khadi Gramodyog Board Employees Gratuity Regulations, 1971. The terms and conditions and the liability for payment of gratuity are governed by this Regulation.

7. It would be appropriate and expedient to refer the Board provisions of the Act, since the question of liability for the payment of revised pensionary benefits, based on the revised pay scales, pursuant to the 5th Pay Commission report is under challenge. Chapter I of the Act deals with the preliminary contents, commencement and definition, which may not be very material for the present. In Chapter II, the provisions are made for the purpose of establishment Incorporation and Constitution of the Board or Boards, where Chapter III deals with the functions and powers of the Board. Chapter IV is not very material for the adjudication of the dispute involved, as it only pertains to the preparation and submissions of programme. Whereas in Chapter V of the Act, various provisions are made for finances, accounts, audit and debts of the Board. Miscellaneous provisions are made in Chapter VI for the purpose of running the of business and to carry on the aims and objects of the Act.

8. After consideration of the provisions of the Act, aims and objects and Rules of 1966, and the Regulation of 1965 under the Act, the overall managerial control, supervision, monitoring, decision making process, regulatory status, the financial powers and the very constitution of the entire Board in terms of Section 4 of the Act, leaves no any manner of doubt that the real control, authority and pervasive role that the State of Gujarat in running the business of the Board is such that though the Board is the statutory one, it is under the direct control, authority and monitoring of the respondent no.2- State of Gujarat.

9. The statutory frame of the Act, rules and regulations, the mechanism of the administration of the Board, and the transactions and the dependence of the Board for funds and finance for the administration of the Board and its activity, it becomes quite unambiguous and evident that the role of respondent no.1 State of Gujarat is of a "loco-paranti", qua the respondent no.1 Board. Notwithstanding the fact that the Board is a statutory one, right from the commencement, the management, the administration, the appointment, regulations running of activities formulations of policy making of decision, change of diversification in the business of the Board and the statutory setup, would not in any way admit, even on the hypothesis of no responsibility for the pay, pension, perks of the personnel of the Board, in so far as the respondent no.2 State of Gujarat is concerned.

10. In one group of Letters Patent Appeal, the challenge is against the direction of the learned Single Judge for the payment of revised pensionary benefits, based on the revised pay scales, pursuant to the 5th Pay Commission is, in our opinion, not only misconceived but is totally meritless. More so, when it is an

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admitted fact that the existing pay pension, and perks structures for the personnel of the Board is met with the funds and finance to the Board from the State. How could it be conceived even for a moment that the revised pension or pay is not the responsibility of the State ? And the Board can only be condemned and saddled to pay by the State in so far as the revised pensionary benefits based, on the revision of pay scales upon recommendations of the 5th Pay Commission report, accepted and adopted by the State of Gujarat and followed for the entire personnel of the State? The respondent no.2 State cannot be permitted to contend for a moment that the liability for the payment of enhanced or revised pensionary benefits or the revised pay scales, pursuant to the recommendations of the 5th Pay Commission Report accepted and adopted and directed to be adopted and again permitted to be adopted to the Respondent No.1 Board.

11. Could be thwarted it, by the State, on the general premise, that the State will be in acute financial burden, if such a view, as it is taken by the learned Single Judge is permitted to be taken? Right, now, in focus the question is, about the liability of the respondent no.2 State for the payment of revised pensionary benefits, based on revised pay scales on recommendations of 5th Pay Commission Report, in so far as current personnel and retired personnel of the Board is concerned. We need not and we cannot proceed on a wider hypothesis advanced on behalf of the State by the learned Advocate General in course of the submissions before us. The question which requires to be examined and considered is, as to whether the liability of respondent no.2 State is quite, coextensive with that of the liability of the Board for the payment of the enhanced pensionary benefits based on relevant pay scales and nothing beyond that, to which our answer is positively in the affirmative.

12. In our opinion, the view taken by the learned Single Judge in directing the respondent no.2 to pay along with the Board, jointly and severally, the revised pensionary benefits to the employees, who retired prior to 01/1/1996 is quite justified, and we are fully satisfied that such a view is the only permissible view, which is rightly taken by the learned Single Judge in the impugned judgment.

13. Our attention has also been invited to the observations made by the learned Single Judge in the impugned judgment. It is observed by the learned Single Judge at page- 6 of the judgment that it is not in dispute between the parties that the respondent no.1 Board, which is established in the year 1973 and is receiving 100% grant from the State Government. The respondent no.1 Board has been created under the relevant provisions of the Bombay Khadi and Village Industries Act, 1960. It is very clear from the said observations that the respondent no.1 Board is fully funded and financed by the Government and also was not in dispute before the learned Single Judge, which is surprisingly and halfheartedly reiterated and it is submitted that the respondent no.1-Board is not fully financed and funded by respondent no.2-State. Nothing has been successfully shown from the record, which would support such a statement,

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contrary to the observations made by the learned Single Judge.

14. The mechanism of the respondent no.1 Board is such, though it is a statutory Board, it is functioning under the management, control, direction, monitoring and pervasive supervision of respondent no.2 State. The statutory format of the respondent no.1 Board is, also, defined u/s 2[a] of the said Act. Under Chapter II, section 3, the respondent no.2 State has issued notification in the official gazette for the establishment of the Board for the entire State of Gujarat and by virtue of the notification issued by the respondent no.2 State, the Board has came into existence and, therefore, it is an establishment and statutory Board. The creator of which the respondent no.2- State, whereas Chapter V regulations provides for finance, accounts, audits of the Board and it further provided to be prepared and to be approved by the State Government and the 100% finance is provided by the State Government. Therefore, there is no doubt in our mind that the respondent no.1 Board is a statutory creation of respondent no.2 for all the purposes to encourage khadi and to regulate khadi out of State Policy.

15. For all practical purposes, respondent no.1 Board is an instrumentality of the State and, therefore, it is covered under Article 12 and undoubtedly amenable to the writ jurisdiction of this Court. Since 1973 in the set up of respondent no.1, pension scheme was introduced and was made applicable from 12.11.1973, and who were the members of the Contributory Provident Fund (CPF), they were made eligible for the pension scheme. It is, also, corroborated and supported and reinforced by the Resolution dated 06.11.87. It is, therefore, clear that the petitioners, who were employees of the respondent No.1 Board, and who have retired after 1.1.86 were also entitled to pensionary benefits. The respondent No.1 Board, undoubtedly, has been paying pension to the employees, those who have retired from service of the Board, got pensionary benefits but not in terms of the recommendations made by the 5th Pay Commission report until 31.12.1995. As a result of which, the pension which was being paid to the petitioners, were due and payable, prior to the recommendations of the 5th Pay Commission and it continued. However, the effect of the recommendations made by the 5th Pay Commission report, accepted by the State and despite that the respondent no.2 State, as well as, the respondent No.1 Board, have not been given. In other words, the pensionary benefits which were available under the pension scheme, which were not revised in terms of the 5th Pay Commission report, though accepted and adopted by the respondents authorities, have not been paid so far.

16. The grievance of the petitioners, therefore, is that the revised pension amount has not been paid to them and they are being deprived of such benefits, without any cognizable reasons, despite the fact that the Board has passed the Resolution and the Respondent No.2- State of Gujarat has approved the same. It will be also interesting to mention at this stage that the Government had issued the directions to the effect that the Government, as well as, the Board employees were also given the interim relief and accordingly the pensioners of the Board

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were given interim relief prior to the implementation of the 5th Pay Commission report. The observations made by the learned Single Judge on this behalf relying upon the pay slips of some of the original petitioners are cogent and weighty.

17. Question now requires to be considered is as to whether the 135 employes-pensioners who have retired prior to the date of 01.1.96, which is the cut off date for the implementation of the 5th Pay Commission report, are entitled to claim the revised pensionary benefits in terms of the report of the 5th Pay Commission or not ? There is no dispute about the fact that they were paid enhanced amount of pension by adopting the interim relief formula evolved by the Government. Since the respondent no.1 Board was not giving full effect to the pensionary benefits in terms of the 5th Pay Commission report, they have to knock the door of justice by filing the writ petitions. They have claimed the revised pensionary benefits in the light of acceptance of the report of the 5th Pay Commission, which ought to have been paid them, upon the implementation and enforcement of the recommendations of the 5th Pay Commission by the Government and the Board. The petitioners had also placed on record material information and the data in a tabular format and the statement for the amount due and payable under the 5th Pay Commission report, between the period 1.1.96 to 30.9.98 produced at Annexure D. It is in this context, the contention of the petitioners, who are the pensioners of the Board, who have retired after 1.1.96 have been given such benefits, whereas the persons who have retired prior to 1.1.96, they have not been given such benefits and, therefore, they are deprived of their legitimate pensionary benefits due and payable to them and they are discriminated by both the respondents. There is no dispute about the fact that the persons, who have retired after 1.1.96 have been receiving full pension as per the report of the 5th Pay Commission. The list of such persons came to be produced by the petitioners in the petitions at Annexure A.

18. In this group of Letters Patent Appeal, there are in all 326 appeals, out of which, the original respondent No.1 Board has preferred 164 appeals, whereas Government has preferred 162 appeals by invocation of Clause 15 of the Letters Patent. And the second group of the original writ petitions involving 25 employees and the main writ petitions being SCA No.8687 /99 filed by the Association in which the petitioners have retired after 1.1.96 and who have claimed revised pensionary benefits, as well as, higher benefit of gratuity as they are paid gratuity on the old pay scales though they have retired after 1.1.96 for the reason not known to us, claiming the revised pay scales as basis for the revision of both, pension as well as gratuity.

19. In so far as the persons in the second group of petitions in SCA 8687/99, who retired from service of the respondent No.1 Board after 1.1.96, and who have been given pensionary and other retiral benefits, since the respondents Board denied the benefits available to them for pension on the basis of the 5th Pay Commission in respect of the benefits of pension, gratuity to some of the petitioners, they had to seek justice by filing writ petition. It may be noted that

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the pension scheme which was introduced for the benefit of the employees of the Board, there was no reason for the respondents not to extend the benefits of the revised pension in terms of the 5th Pay Commission report, which was accepted and adopted by both the respondents. Our attention has also been invited to the office order, dated 16.10.90, issued by the respondent no.1-Board which is produced at Annexure G in the petition. The Office Order dated 16.10.1990 pertains to the pension cum gratuity and it has been mentioned in the said order that the respondent No.2- Government of Gujarat has granted approval for making applicable the pension cum gratuity scheme with retrospective effect to the employees of the Board, who have retired from service on superannuation. It has been further mentioned in the said order that the Family Pension Scheme is, also, included as per the clarification made in the Government of Gujarat Resolution dated 31.8.89.

20. It will be, also, material to mention, at this juncture, that in a Board meeting, which was held on 31.7.91 for the year 1991-92, in the Agenda Item No.4 which was relating to the application of the superannuation rules of the government employees as per the resolution of the Government, dated 31.9.89, to the employees of the Board and it has been resolved to adopt such rules in respect of the employees of respondent No.1-Board. It is not disputed that the notification of the respondent No.1-Board which was, also, placed before the Government for previous approval and upon such previous approval and sanction of the Government, the said notification, pursuant to the provisions of Section 30 sub section (2) (b) of the Act was published.

21. In Regulation 2(5) of the Regulation, known as Gujarat State Khadi Gramodyog Board Officers and Servants (Conditions of service) Regulations, 1973, the provisions are made for pay and other conditions of service of any officer or servants of the Board, which on plain perusal, undoubtedly, go to show or to suggest that when the pay and other conditions of service of any officer or servant are laid down in a contract entered into by the Board with him, the officer or servant shall be governed by that contract in so far as the pay and other conditions of service are concerned. And in other cases, the Bombay Civil Service Rules, 1959 as applied from time to time to the government servants, shall apply to the officers and servants of the Board, as regards their pay, joining time, foreign service, maintenance of record of service, addition to pay, travelling allowance, combination of appointments, leave, revised leave and superannuation. It is, therefore, incumbent upon the respondent No.1-Board to implement the resolution. There is no reason why the employees of the respondent no.1- Board should be deprived of such benefits. In fact, it is incumbent upon the respondent no.1- Board to accord and permit all the pensionary and retiral benefits in terms of the revised pay scales, as recommended by the 5th Pay Commission and its report. More so, when it is accepted and adopted by not only respondent No.1- Board, but also, by the respondent No.2- State of Gujarat. It is in this context, the denial or refusal by the Board to its employees for such benefits is unjust, unreasonable and

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perverse. It is a statutory right of the employees of the Board to claim pension according to the Rules and Regulations of the Board.

22. Our attention has, also, been invited to the letter written by the respondent no.1 Board, to the Commissioner of Cottage and Village Industries, Gujarat-State, dated 15.5.1999, to the effect that employees, who are entitled for pension and to discharge their liability, it is communicated in the letter that calculated amount, as per the revised scale in terms of the 5th Pay Commission, recommendations made in its report has been payable by way of pension, as well as, by way of gratuity and the letter also indicated that the increase in the said liability arose with effect from 1.1.96 being a cut off date for the implementation of the recommendations made by the 5th Pay Commission in its report and on that basis, different calculations have been made and the reference of the employees, who have retired prior to 1.1.96, has been made thereunder.

23. Despite the aforesaid request, repeatedly, made for the payment of revised pension and gratuity, to some of the retired pensioners, who were retired after 01.01.96 was not attended or subscribed to. It is very apparent from the provisions of the Act, Regulations and Rules, the State Government has deep pervasive control, managerial as well as monetary, and also monitoring of the working performance of the Board. The learned Single Judge has, rightly, found from the record that the entire financial responsibility rests on the Government, in so far as the pay, pension and perks of the personnel of the Board are concerned. The Gujarat Civil Service [Conduct] Rules, 1971, as well as, the Gujarat Civil Services [Discipline and Appeal] Rules, 1971, which are governing the terms and conditions and the conduct of the employees of the Board, are, also, a clear pointer and indicator of the responsibility of the respondent no.2-State Government, for the pay, pension and perks, due and payable under the policy or resolution of the Government and applicable to the other government employees, is the same that of, an employee of the State Government.

24. It is in this context, if one examines the record on hand, it becomes, factually, very evident that the respondent no.1 Board, in so far as the employees''s working terms and conditions are concerned, the 100% finance is by the Government till 1996-97, the entire financial burden emanated out and borne by it for the establishment creations, maintenance and up keeping remained with the Government, as per the admitted facts. However, it has been vehemently propounded before us that the liability of the respondent no.2-State of Gujarat for payment of revised pensionary benefits to the retired personnel of the Board prior to 1.1.96 has to be met with by the Board''s funds and not the finance of the Government, is running diametrically counter to the evidence emerging from the record of the present group of appeals.

25. It will be appropriate, at this juncture, to refer to the interim order passed by this Court on 17.10.2000, which came to be recorded, after hearing both the parties. It has rightly been reproduced in the impugned judgment of the learned Single Judge, on typed page 71 and 72 , which reads here as under.

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" 1.Having heard the learned counsel for the parties and perusing the pleading of the parties and more particularly the resolution of the Government dated 20.1.1998, prima facie, I am satisfied that there cannot be any legitimate defence from the side of the respondent, against the claim of Pre 1996 pensioners. So far as the claim of post 96 pensioners is concerned, it is to be sated that it has to be first taken care of and decided by a High Level Committee to be constituted. it has been informed to the Court by the learned counsel for the State of Gujarat that Member Secretary of the Board is a Government Officer. Further, the counsel for the Board stated that the Board is receiving 100% grant from the Government and whatever liabilities of the Board of revised family pension or pension falls on the Government and this money has to come from the exchequer of the Government."

26. The aforesaid observations made by this Court while passing the order dated 17.10.2000 have remained unchallenged subsequently, also, because of the order dated 9.8.2001, passed by the High Court, the petitions have been revived by this Court but the observations have remained as it is.

27. In our opinion, also, nothing has been successfully shown or nothing has been, successfully, spelt out, which would even remotely whisper that the Government can raise its hands and get away from shouldering responsibility of making payment to the pensioners, with effect from 1.1.96. The respondent no.1 Board has, also, accepted and adopted the 5th Pay Commission report on the same terms and conditions, which were accepted and adopted by the respondent No.2 State of Gujarat, with effect from 1.1.96, by the resolution dated 31.3.98 passed by the respondent no.1 Board. The respondent no.2 State Government has, also, passed the resolution thereafter, on 4.5.98 and directed to make applicable the 5th Pay Commission Report in favour of the employees of the Board, with effect from 1.1.96 and directed to implement the said resolution. It is also, amply, clear from the record that the Finance Department, has, also, resolved, by passing a resolution, dated 7.1.98, whereby, it is clarified that the State Government has accepted the 5th Pay Commission report, with effect from 1.1.96 and made provisions even in favour of the employees, who have retired prior to 1.1.96 and further directing that they all are entitled to the revision of pay scales as per the 5th Pay Commission report and they are entitled for revision of their pension and the Government has accepted the such revision of pension to the concerned employees, who have retired prior to 1.1.96. Obviously, those who have retired on or before after 1.1.96, are undoubtedly entitled to the benefit of the revised pay scales, as well as, the pensionary benefits based on revised pay scale.

28. In our opinion, the learned Single Judge has rightly placed reliance on these two resolutions, dated 7.1.98 and 4.5.98, in reaching to the conclusion that the pensioners are entitled for the benefit, as a matter of right, on the basis of the resolution and the Resolution dated 4.5.98, which came to be issued by the State Government and which was made applicable to the employees of the Board, with

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a direction to implement the recommendations of the 5th Pay Commission, as accepted and adopted by the respondent no.2 State of Gujarat with effect from 01.1.96. A vague attempt has been made to assail the ultimate conclusion made by the learned Single Judge that the original-petitioners are entitled to the benefit of revised pay scale, as well as, the revision of pensionary benefits from the respondent no.2 State of Gujarat, as they are squarely covered and governed by the Resolutions relied on and highlighted in the impugned judgment by the learned Single Judge.

29. After having given our anxious thoughts and considerations to the resolutions of the Government, dated 4.5.98, which makes no any iota of doubt in our mind that the respondent no.2 is fully accountable-liable for the payment of revised pensionary benefit to the employees of the respondent no.1 Board with effect from 1.1.96 and the ultimate conclusion recorded by the learned Single Judge has remained unassailable. Even the resolution dated 4.5.98 makes it abundantly clear from Clause 5, which reads as under :-

"(5) Revised pay scales have to be made applicable subject to the provisions of the Gujarat State Khadi Gramodyog Board Gujarat State Service [Revision of Pay] Rules, 1998 and the payments of arrears as per the revised pay scales also have to be made only in accordance with the instructions contained in the resolution dated 7.1.98 bearing No.PGR.1098.1.M. of the Fiancee Department. For the amount of additional expenditure/arrears amount to be incurred because of the application of the revised pay scales, provisions are required to be made in the supplementary budget by submitting proposal to the Budget Department through Gujarat Rajya Khadi Gramodyog Board Budgetary Provision Department."

30. The Resolution, dated 7.1.98, placed on record at page 26 in the original petition, internal page 2 of the resolution, dated 7.1.98, in clear terms states that the case of the employees who have retired prior to 1.1.96, their pension shall have to be revised on the basis and as per the formula and the guidelines evolved by the Central Government and the arrears shall have to be made and paid accordingly. In other words, it becomes very clear that the employees who have retired prior to 1.1.96 shall be entitled and the respondent No.2 State of Gujarat shall be liable to make payment as per the revised pension formula on the basis on which the Central Government employees have been paid. There is no dispute about the fact that the employees of the respondent no.1 Board are also entitled to the revision of pay scales, as per the Pay Rules 1998 and payment of arrears as per the revised pay scales also have to be made only in accordance with the instructions contained in the Resolution dated, 07.1.98, passed by the Finance Department.

31. The respondent No.2-State of Gujarat, thereafter by passing the resolution dated 4.5.98, in consonance with the policy evolved by the resolution dated 7.1.98, it has been decided and directed that the cases of the employees who have retired prior to 1.1.96, will be entitled to have revision of pensionary benefits same as that as granted by the Central Government at par on the basis

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and the formula adopted by the Central Government. It has been a mystery to comprehend, as to why, when the real master of the employees of the respondent No.1-Board is, getting 100% finance and funds from the respondent no.2,the State of Gujarat, has tried to avoid statutory liability for the payment of revised pensionary benefits to the employees of the respondent no.1. Board, at par, as on the same basis, the other employees of the State Government are given the benefits in terms of the recommendations of the 5th Pay Commission.

32. Following aspects have been emerged, unquestionably, from the record.

[1] That the respondent no.1 Board is initiated, created and constituted under the statutory provisions of Bombay Khadi and Village Industries Act, 1960, and the Board means, a Board deemed to be constituted under that Act;

[2] The respondent no.1 Board is constituted and created pursuant to the Notification dated 5.5.1960, gazetted on 12.5.1950 by the respondent No.2-State of Gujarat, under the said Act of 1960;

[3] The original-petitioners are the employees of the respondent no.1.

[4] That the Board has its own Regulation for which specific provisions have been incorporated in Chapter V of the Act.

[5] Chapter V of the Act clearly provides for finance Accounts and audit and, also, provides for budget and various other aspects. Section 16 of Chapter V empowers the State Government to transfer to the Board immovable and movable properties for the effective and efficient control and management of the activities of the Board. Of course the State could place certain conditions and limitations, as it may deem fit to foster the purpose of the Act.

[6] whereas Section 17 of the Act provides for the funds of the Board and as to how the funds shall be constituted. It is thus statutorily provided in sub section 2 of Section 17.

33. Really, it will be very interesting to refer and highlight the provisions of Section 17, which deals with the formulation of the funds of the Board. Therefore, Section 17 needs to be reproduced, which reads as here as under:-

(1) Every Board shall have its own fund and all receipts of the Board shall be credited thereto, and all payments by the Board shall be met therefrom.

(2) A Board may accept grants, subvention, donations and gifts and receive loans from Government or a local authority or any body or association whether incorporated or not, or an individual for all or any of the purposes of this Act.

(3) All money belonging to the fund or a Board shall be deposited in such manner as the State Government may by a special or general order direct.

(4) The accounts of a Board shall be operated upon by such officers jointly or individually as may be authorized by the Board."

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[7] Section 18 provides for application of funds and property of the Board, whereas section 19 specifically makes statutory provisions on subvention and allowances of the Board by the State Government for the purpose of Act, from time to time, on such terms and conditions, as the State Government may determine and the Board is also empowered to borrow the money but with the previous sanction of the State Government.

34. Again an important provision has been incorporated in Section 20 , which deals with budgetary provisions. It has been provided in Section 20 that every Board has been obliged to undertake the exercise of preparation of budget, on such date, which may be determined by the State Government, and such budget is required to be presented to the State Government for the next financial year, highlighting the anticipated and estimated receipts and expenditure on capital and revenue accounts according to the programme and schedule of the stock. It will be, also, material to mention, at this stage, that the State Government has to consider the budgetary proposal for the purpose of and has to power to sanction even the reappropriation power of the Board from one head to other in the sanctioned budget is restricted to the extent of 33 1/3 %. The supplementary budgetary provisions are made u/s 22 and such provisions of supplementary budget are analogous to the provisions of Section 21 of the Act.

35. Of course the Board is obliged to prepare annual report for being submitted to the State of Gujarat within the period of six months from the date of completion of the financial year, highlighting the full details of accounts and its activities during the previous financial year, along with the statement of accounts, as provided in section 25 of the Act.

36. Section 24 gives the authority and power to the respondent No.2-State of Gujarat to direct the Board to submit the report on such matters and such statistics and such returns as a State government may direct from time to time.

37. That it is undisputed that pension has been made applicable to the employees of the Board, since 1973 and the benefit of the revision of pay scales, as well as, pension has been given by the respondents and availed by the employees of the Board, so far. The respondent no.2 State of Gujarat has resolved, by a resolution, dated 21.9.98, which has been, also, accepted and adopted by the respondent No.1 Board by its resolution dated 4.5.98. Both the resolutions are referable to the acceptance of the recommendations of the 5th Pay Commission report, pertaining to the revision of pay scales, as well as, the revision of pension.

38. Regulation 5(2) of Regulation 1973, provides about the pay and other conditions of the service, the Bombay Civil Service Rules, 1958 has been applied from time to time to the government servant, officer and servants of the Board, as regards their pay, joining time, foreign service, maintenance of records of service, addition to pay, travelling allowances, combination of appointments, leave, revised leave, and superannuation and likewise, Section 4[2] regulation

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deals with that Discipline and Appeal Rules, pertaining to the employees of the Board, and providing that the Gujarat Civil Services (Discipline and Appeal) Rules, 1971, in force from time to time shall apply to the employees and the officer of the Board.

39. That the respondent no.1 Board did write the respondent no.2 State of Gujarat by a letter dated 15.5.99 highlighting the fact of the revised pay scales on the pensionable rights of the employees of the Board and claiming such benefits and to shoulder the additional responsibility, arising out of the implementation of the 5th Pay Commission recommendations report, which are made applicable with effect form 1.1.96.

40. That following the Government Resolutions, are material and relevant for the purpose of appreciating and adjudicating the merits of this group of appeals.

(1) Government Resolution Finance Department No.FPS-1071-1688-J, dated 1st January, 1972.

(2) Government Resolution Finance Department No.NVT-1187-GOI-41(ii)P-I dated the 31st July, 1987

(3) Government Of India, Ministry of Personnel, Public Grievance & Pensions, Department of Pension and Pensioners Welfare Office Memorandum No.45/86/97-PSPw/(A)0part II dated the 27th October, 1997

(4) Government Resolution Finance Department No.HGV-5496-GOI-14-P-i, dated the 23rd April, 1996.

(5) Government Resolution Finance Department No.NVT-1196-GOI- 8/P dated the 26th September, 1996.

(6) Government Resolution Finance Department No.HGV-5496-GOI-31-P-I, dated the 26th September, 1996.

(7) Government Resolution Finance Department No.HGV-5497-GOI-1-P-I, dated the 23rd April, 1997.

(8) Government Resolution Finance Department No.PGR-3097-75-M, dated the 20th November 1997.

41. It could also very well be visualized from the provisions of the aforesaid resolutions in general and from the resolution dated 20th January, 1998, in particular regarding specifying to the revision of pension of pre-1996 pensioners, as well as, family pensioners.

42. That the State Government had appointed the High Power Committee to examine the feasibility of application of the orders issued by the Government of India, in respect of the revision of pay scales and pensionary benefits on the basis of the recommendations of the 5th Central Pay Commission, respectively by virtue of the Government Resolution, Finance Department, dated the 20th November, 1997. The Committee has recommended and had desired the State

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Government to follow the Government of India''s orders in respect of the provisions regarding pension and commutation of pension and it has been fortified and manifested in the Government Resolutions dated 20th November, 1998.

43. Needless to mention that the 5th Pay commission had, also, desired, under the terms of reference to make suitable recommendations, not only for the purpose of revision of pay scales, but also for the revision of pension.

44. So far as the terms of Reference No.1.13(c) is concerned, as per the report of the 5th Central Pay Commission, contained in Vol.No.I, it is very clear that the Commission was asked to make recommendations, relating to pension structure as well. The said terms of reference reads here as under:-

.1.13(c) " To examine with a view to having a proper pension structure for pensioners, the existing pension structure, including death-retirement benefits and make recommendations relating thereto which may be desirable and feasible."

45. In pursuance of the aforesaid Government of India''s order contained in the Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare, Office Memorandum, dated 27th October, 1997, the matter regarding revision of pension and family pension of pre 1996 pensioners was under consideration of the State Government, and after consideration, accorded sanction to the regulation of pension and family pension of existing pensioners and family pensioners with effect from 01.1.96, which came to be manifested in the aforesaid resolution dated 20th January, 1998, which unequivocally, specifies the applicability of the said resolution, whereby, it is clear that the said resolution shall apply to all pensioners and family pensioners, who were drawing pension or family pension on 1.1.96 under the Revised Pension Rules, 1950 as amended from time to time and the Family Pension Scheme, 1972 as sanctioned by the resolution dated 1st January, 1972, and as amended from time to time. It, also, includes the definition of existing "pensioner" or existing " family pensioner" or "pension" and "temporary increase" etc. expressly.

46. The contention of the respondent No.2 State of Gujarat that the employees, who have retired on or after 1.1.96 till the date of 4.5.98, will not be entitled to the 5th Pay Commission benefits, as the revision of their salary cannot be granted with effect from 1.1.96 till 4.5.98 as the resolution adopting the recommendation of the 5th Pay Commission came to be accepted only on 4.5.98. This decision in not granting the revised pay scales, pensionary benefits, as well as, the amount of gratuity on revised pay scales, is without any base, logic and legality, when the policy decision came to be taken and evolved by the respondent No.2 State of Gujarat, after appointing the High Power Committee to examine the feasibility of application of orders issued by the Government of India, in respect of the revision of pay scales and pensionary benefits, on the basis of revision of pay scales and pensionary benefits, on the basis of the

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recommendations of 5th Central Pay Commission respectively, under the Resolution, Finance Department, dated 20th November, 1997, and, upon acceptance of the recommendations of the said committee, which had issued the State Government to follow the Government Of India''s orders in respect of the provisions, regulating the pension, commutation of pension, etc. and it has been fortified and manifested in the Government Resolutions dated 20th January, 1998. Therefore, the stand taken by the respondent no.2 State of Gujarat that the pensioners of the respondent no.1 Board, who have retired even after 1.1.96 will not be entitled to the revised pensionary benefits till the date of 4.5.98, such a contention is meritless, and contrary to the policy evolved by the Government. Nothing has been successfully shown or nothing has been successfully spelt out from any part of the record that the department or any such undertaking or the instrumentality of the State, depending upon the management and finance of the State of Gujarat is required to signifying the consent by passing the resolution in the same way and fashion, respondent no.2 Government, passed.

47. The Government Resolution, dated 20th January,1998 is heralding the Government policy decision with reference to the revision of pay pension and family pension of pre 1996, and it is very clear from para 13 that the direction was issued to the concerned department and pension disbursing authorities, so that such government orders emanated from the resolutions are brought to the notice of all concerned on top priority basis and they are also advised to prominently display these orders on their notice board for the benefit of the pensioners. It is in this context, we are at great loss to comprehend and we have failed to understand as to why such baseless and meritless contention is raised, and deprived the benefits for a quite long time, who are the senior citizens, retired persons.

48. It will be material to note from para-11 that the Government, thought it desirable that the benefit of such orders should reach the beneficiaries, as expeditiously as, possible and to achieve this objective, it shall desire that the pension disbursing authorities should ensure that the revised pension and arrears due to the pensioners in terms of the orders, highlighted in that resolution, is paid to the pensioners or credited to their Bank accounts, in fact, by 31.3.98 or before positively. Unfortunately, despite having taken such policy decision, and anxiety for the implementation, such orders on the part of the respondent no.2 State of Gujarat, resulted into serious failure and manifestation of apathetic conduct on the part of the bureaucracy, which has kept senior citizens far away from legal dues and see the bad luck of those, who have retired long before, instead of visiting the temple of God, they per force, had no any option but to go on visiting the temple of justice, what a great gross apathy ? What a great indifferenceness ?

49. Hopefully, such a condemnable approach and attitude of the concerned authorities should be appropriately dealt with by the higher authority, like Chief Secretary and to see that the policy decision, when it is sought to be

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expeditiously implemented by informing the concerned persons and officers on a fast track manner and that too, when the avowed policy of the Government has been, with regard to the pensionary benefits, that first cheque of pension should be handed over to the employee, on last day of his service so that his next month can be peacefully enjoyed.

50. Despite this, such attitude, which really not only caused great trauma and terror for the senior citizens, but has constituted a launching pad for approaching the Court. Unfortunately, we are very much pained and disturbed due to the fact that when on one hand, policy is evolved to render benefits to the beneficiaries, expeditiously, and on the other hand, the concerned officers or the agencies have shown deplorable indifferenceness, which may amount to misconduct. We, therefore, hope and trust that the Finance Secretary and Chief Secretary of the respondent no.2 State of Gujarat will consider for appropriate actions and steps early and report on or before 30th October, 2004 to the Registrar of High Court and we hope this aspect and cry, which we raise here, will not turn into a wildness, as, such a conduct and apathetic attitude and approach on the part of the concerned personnel, has, also, added unbreakable back log to the Docket of Court, and avoidable delay and expenditure, on part of both the sides, affected breakable back of various senior citizens and pensioners. What a pity ?

51. Our attention has also been invited to the Government Resolution dated 19th April, 2000, whereunder, again there is revision in the pension of the pensioners and by virtue of the revised pay scales what should be the minimum amount of compensation and/or amount payable in case of pensioners and also in case of family pensioners. Of course, this resolution, as such does not play very significant role in determining the merit of the case on hand. Notwithstanding that, it is probably placed on record to show that the effect of the revised pensionary benefits for pensioners, as well as, family pensioners is after due consideration given, with effect from 1.1.96 and the narration of certain facts and aspects in the said resolution are pertinent, except that the said resolution will not be very material.

52. The respondent no.1 Board is a statutory creation and, by virtue of the notification issued by the respondent no.2, it came to be established in the year 1973 in terms of the provisions of section 3 in Chapter II of 1960 Act, and the Board is constituted statutorily with a view to encourage, organization, development, and regulation of khadi and village industries of the State and for that purpose, to constitute one or more Board to carry out such objects. The respondent no.1 Board, which is established in the year 1973 in the State of Gujarat and has been receiving 100 % finance from the State Government, u/s 2(a) of the said Act. Therefore, it is clear that it is a statutory Board, its creation is statutory and its creator is, respondent No.2- State of Gujarat, having full and complete managerial and monitoring command.

53. For the first time, for the employees of the respondent no.1 the pension scheme came to be introduced in the year 1973. It was made applicable to the

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Board and also persons, who were in service on 12.11.73, and who were the members of the contributory provident fund (CPF) and were made eligible for the pension scheme, which is reinforced by the Resolution, dated 6.11.87. It is not in dispute, that the all the petitioners, who were employees of the respondent no.1 Board, who have retired, on or after 1.1.86, are entitled to that benefit. It is also not in dispute that the employees of the Board are also qualified and eligible for pension and, as such, they have been paid pensionary benefits by the respondent no.2 State of Gujarat, out of grant, through the Board.

54. The respondent no.1 Board has been paying the pension to the employees, those who have retired from service but the question is that the pension received by the pensioners is the pension available to them as the amount prior to the recommendations made by the 5th Pay Commission, upto 31.12.95 and the learned Single Judge, upon, consideration of the entire factual spectrum and profile and relevant law, and the Resolutions of the Government, has reached to the conclusion that the employees are entitled to the revised pensionary benefits with effect from 1.1.96 and the liability for payment of such pensionary benefits, is not only of respondent No.1-Board, but also coextensive liability of respondent no.2-State of Gujarat, being the creator, controller and caretaker of respondent no.1 Board. Even the interim relief benefits were, also, given and paid to the employees.

55. In will be interesting to mention at this juncture that the employees of the Board, who had retired prior to 31.1.1986 and subsequent to the 12.11.1973, made claim and demand for the revised pensionary benefits, who were hitherto, the members of the CPF scheme, as on 31.1.1986. The respondent no.1-Board had passed resolution on 13.10.1987 that the employees, who were in service on 12.11.1987, were entitled for the pensionary benefits and gratuity and those employees who were in service from 12.11.73 to 31.3.1986 are entitled for the benefits of revised pension as per the revised Pension Rules of the State Government and the Family Pension Rules, 1972, as revised, and as amended from time to time and for that purpose, representation came to be made by the Board to the Government, successfully.

56. As a result of which, the respondent No.2-State of Gujarat had also passed a Government Resolution, dated 31.8.1989 accepting the Board''s representation and proposal, and it had been resolved that the employees of the Board will be entitled, with effect from 1973 and, therefore, the benefits, pension and gratuity must be given to the employees, who have retired with effect from 12.11.1983, and in place of CPF, scheme of pension cum gratuity was governed by the revised Pension Rules of the State Government and the Family Pension Rules, 1972. Even the respondent No.2 State of Gujarat accepted the recommendation of the representation of the respondent No.1 Board in this connection for the payment of revised pensionary benefits to the employees of the Board. The proposal came to be accepted by the State Government on 16.11.1987 and accordingly, the benefits were given, with retrospective effect from 12.11.1973 including the

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revision of Pension Rules, 1950 and the Family Pension Rules, 1972.

57. It may be noted in the said resolution and it has also been clarified that the pension cum gratuity scheme of the State Government, as amended from time to time, shall apply to the employees of the Board automatically. But it has been further clarified that the State Government shall not be liable for the expenditure. However, as per the Board meeting for the year 1991-92, held on 31.7.91, regarding the application of the superannuation rules of the government employees, as per the Resolution of the Government, dated 31.9.89, it has been resolved to adopt such rules in respect of the employees of the Board, which is produced at page 30 in the main petition. The State Government has been paying and sanctioning the budget wherein the expenses of pension have been included as a part of the budget.

58. The details and particulars stated in the statement submitted at page-92 in the main writ petition are not only not controverted but are admitted. It will be interesting to mention that the learned Single Judge has also, dealt with this aspect fully in the impugned judgment and has also highlighted the factual data from the very beginning in a tabular format.

59. The classification, which the respondent no.1-Board has created for the purpose of entitlement for revised pensionary benefits to the pensioners of the Board, one that those who have retired after 04.5.98 and those who have retired before 4.5.98, is apart from being unnecessary, in our opinion is, unreasonable, unjust, and arbitrary, without any rhyme or reason and without any logic or legality. It is therefore, rightly held by the learned single judge, that such a classification is required to be ignored and, therefore, the learned Single Judge had directed that such a classification shall be quashed. We are failed to understand as to why such avoidable interpretation and untenable and illegal classification has been made, which has proved to be a hurdle and impediment in the rights of the pensioners, creating hostile discrimination in view of the clear policy of the Government, which has been subsequently highlighted and manifested in the resolution of the Government, dated 20.1.1998. Simply because the resolution came to be made, adopting such Government Resolution by the respondent no.1 Board does not justify occurrence or emergence of any basis for classifications pre and post 04.5.98, pensioners classes, for the purpose of availing the enhanced pensionary benefits pursuant to the recommendations and the report of the 5th Pay Commission.

60. We are tempted to mention that a mere little application of mind to the issue, raised by the Pensioners Association and who are illegally, adversely affected, could have prevented avoidable hardships, delay, in encasement of the rights of the senior citizens and pensioners for the withdrawal of the revised pensionary benefits. Be that as it may, it is rightly said, "This World has suffered much pain and cruelty from doing what we believe it to be right, rather than from doing what we believe it to be wrong."

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61. After having given close scrutiny and intimate analysis of the policy and the resultant implementation, qua the other Government employees and the Government Resolutions dated 7.1.98, 20.,1.98, 4.5.98 and 19.4.2000, we are, clearly, of the opinion that all the petitioners, the erstwhile employees, and now pensioners of the Board are entitled to, and the respondents are liable to pay, jointly and severally, the revised pensionary benefits to the petitioners and the others, who are falling in the same category, as same way that of other government employees, who have obtained such benefits and paid by the respondent No.2-State of Gujarat. The aforesaid resolutions, which we have, closely, considered are applicable to the employees of the Board, and the pensioners of the Board and the respondent No.1-Board, as well as, respondent No.2-State of Gujarat, are jointly and severally liable, as those resolutions are binding to them. How it can be denied when such Resolutions are made, created, formulated, adopted and implemented and implemented after the concurrence of the respondent No.2-State of Gujarat. We therefore, affirm the views and observations expressed by the learned Single Judge in the impugned judgment in this behalf, with some more additional grounds.

62. The learned Single Judge has, also, considered the relevant proposition of law and has, rightly, held that all the petitioners are, legally, entitled to claim revised pensionary benefits, on the basis of the revised pay scales, as per the government policy and resolutions and both the respondents are jointly and severally, liable as respondent no.2- State of Gujarat is a creator and the respondent no.1-Board is the brain-child of respondent no.2 and having deep and pervasive overall administrative, managerial, policy making and financial control and monitoring, cannot be permitted to contend to absolve dues or liability of payment of revised pensionary benefits, merely by saying that by writing a letter, the respondent no.1-Board has been informed to create its own fund. It is nothing but impermissible, unilateral action against a statutory duty, rather than voluntary foregoing the exercise of power and that too, by a model master, a State, which has wedded to the "doctrine of welfare State" in a democracy and socialist setup of governance. We, therefore, confirm the views and expressions of the learned Single Judge, in this connection, except to the extent that the 137 petitioners-pensioners who retired prior to 1.1.96, after having received the gratuity on the basis of old pay scales on their respective dates of superannuation, they will be only entitled to the revised pensionary benefits based on revised pay scales regardless of the fact that they had superannuated prior to the cut off date is 1.1.96 in view of the clear policy of the Government proposal, manifested in the aforesaid resolutions highlighting the entitlement of the pensioners.

63. Such 137 persons are the respondents in this Letters Patent Appeal and who are the original petitioners in Special Civil Application No.8674 of 1999, whereas the 25 petitioners, who are the pensioners, who retired after 1.1.96 undoubtedly shall be entitled to revised pensionary benefits founded upon the revised pay scales pursuant to the recommendations of the 5th Pay Commissions and the

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aforesaid resolutions of the Government, as well as, the benefits of revised gratuity amount. For them, both the respondents are bound to pay the pensionary benefits as well as the gratuity amount benefits based on revised pay scales in the light of the policy of the Government and the resultant resolutions referred to by us hereinbefore in greater details.

64. Since we are not addressed on the proposition of the doctrine of lifting of veil, we do not deem it necessary to meticulously divulge on that aspect, since the learned single judge has elaborately and successfully dealt with this proposition of jurisprudence. As a matter of fact, the lifting of veil proposition can be successfully pressed into service provided there is any veil. In our opinion the proposition in so far as the controversy is involved in light of the celebrated aforesaid documentary evidence and the policy of the Government, is very clear like a broad day light. We, therefore, deem it fit not to stretch this aspect further when direct responsibility is established in the light of our discussions made hereinabove.

65. Surprisingly, the respondent no.2-State of Gujarat has tried to escape the liability for the payment of revised pensionary benefits and the amount of gratuity to the employees of the respondent no.1-Board has filed further affidavits in course of the hearing of these Letters Patent Appeals, in support of the contention that only the respondent no.1- Board can be held liable and not the respondent no.2-State of Gujarat. No explanation is tendered as to why such further affidavits were not filed before the learned Single Judge and they why are for the first time, came to be produced before the Letters Patent Court. It is, also, a settled proposition of law that the point which is not canvassed, advanced and expounded before the Court below, and has been sought to be introduced and raised for the first time before the Appellate Court, which is not a pure question of law, cannot be permitted to be urged. Such contention, ipso facto deserves straightway summarily rejection and, therefore, the further affidavits along with the Annexure, is required to be rejected. The contention on behalf of the respondent no.2- State of Gujarat by the Advocate General that the respondent no.2 had communicated in 1989 to create and raise its funds for the pensionary benefits to the employees. In our opinion deserves no consideration at this stage, since it has been not raised before the learned Single Judge and no such affidavit was filed. It is not a pure and simple question of law. Not only that there is no any even probable and reasonable reasons as to why these two important documents came to be explained and produced before the Letters Patent Court, and not before the learned Single Judge. The proposition as advanced to avoid the responsibility for payment of benefits to the employees of the respondent no.1- Board, now pensioners on the basis of these affidavits, must fall, like a pack of cards.

66. Notwithstanding, assuming and even after considering that the said two documentary piece of evidence, it cannot be said that the respondent No.2-State is not liable and is totally absolved for the payment of such funds by the

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respondent no.1-Board, for payment of amounts due and payable towards the pensionary benefits and gratuity to the employees on the ground, that the contention of State of Gujarat, by a resolution dated 31.8.89, that the respondent no.1 Board was communicated that for the purpose of pension scheme, the entire expenditure shall be borne by the Board and the State shall not be liable for any pension schemes and, therefore, there will be no further funds or monetary benefits or finance from the State of Gujarat.

67. Prima facie, reliance on such a resolution will go to show that when the respondent No.1-Board upon the approval of respondent No.2-State of Gujarat, switched over from the Contributory Provident Fund [CPF] scheme, to pension-cum-gratuity scheme and which will be applicable with effect from 30.1.1986 to those employees who were the members of the CPF. This paradigm and shift from CPF scheme to DCRG and gratuity scheme, was approved by the State of Gujarat with a direction that the employees of the Board, who retired on or before 12.11.1973, they will be entitled to the pensionary benefits and they, on availing the new scheme, in place of CPF scheme shall have to refund the amount, forming contribution of the Board along with the interest to the Board and it is in this context, it has been decided that the Board has to take appropriate and requisite steps and action for the recovery of the CPF scheme amount from the employees, who have opted for the new pensionary benefits and the Board was expected to pay the amount of pensionary benefits those who opted for the new scheme, out of the funds collected from the new returns and recovery of CPF scheme and contribution of the Board and the resultant interest thereon. And for that purpose, the State Government by virtue of the aforesaid resolutions directed the Board to incur and bear the expenditure of the pension schemes and no any fund or finance shall be given towards the expenditure of the pension for that part only.

68. Despite the resolution dated 31.8.1989, it is an admitted fact that the respondent no.2 State of Gujarat continued to provide funds and finance until 1996-97 . Which means that the 100% finance and grant given by the respondent No.2-State of Gujarat to the respondent No.1-Board continued till 1996-97, despite the resolution of 1989. In other words, the resolution of 1989 was not implemented until 1997-98. The Government while making the provisions in the budget refused to provide funds for pensionary benefits to the pensioners for formers employees of the Board and in all probabilities that the action on the part of the respondent no.2-State of Gujarat has ignited the employees of the Board, as well as, the former pensioners of the Board for resorting the legal battle. Such an attempt or U-turn paradigm is really hostile, discriminatory and totally incompetent and untenable.

69. After having given our anxious thoughts to the text, tenor of the resolution of the Government, dated 31.8.1989, referable to the retrospective effect of pensionary benefits to the pensioners of the Board, and after considering the request of the Board, manifested in its letter, dated 6.11.87, the reliance of the

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learned Advocate General on the said resolution, in support of his plea that the respondent No.2- State is not liable from that date, the resolution is sanctioned, is totally misplaced and misconceived. It leaves no any manner of doubt, in our mind that the Board, who is 100% financed by the respondent No.2 State of Gujarat cannot be permitted to contend that by virtue of this resolution dated 31.8.1989, the entire responsibility for the payment of pension and pensionary benefits shall not be on the part of the State, for the simple reason that if one gets into reality upon conjoint reading of Clauses 5, 6 and 7, it becomes quite evident that since the Board was permitted to convert CPF scheme into pension DCRG scheme, upon revision of the contributory part of the Board in CPF and interest thereon collected fund, being in the hands of the Board, the pensionary benefits, funds, which were forming part of the budgetary proposals, was not necessary and it is in this context, the text of the resolution dated 31.8.89 has to be read and interpreted.

70. In other words, the liability and the responsibility of the respondent no.1 Board, which took and shouldered the payment of the pension and pensionary benefits to the employees of the Board out of the surplus funds, since in its existence of 1973 onwards till the resolution 31.8.89, without any demure and qualification, arising a new dimensions, and paradigm for the reason that the funds, which were forming part of the provident fund saving and upon change of CPF scheme into pension DCRG scheme and permitting the Board to retain the refund of the huge amount, the resolution came to be made. But it cannot be contended that it was for absolving the State Government from the liability of payment of pension and pensionary benefits to the employees of the Board when and after the said funds came to be expended and utilised for the employees of the Board.

71. The aforesaid our interpretation is further fortified by the fact that despite the resolution, dated 31.8.89, the employees and the pensioners of the Board continued to enjoy the pension and pensionary amounts out of the budgetary funds of the respondent No.2- State of Gujarat until 1996-97, it is not in dispute. How this resolution, therefore, can be founded upon for absolving its liability for the pension and pensionary benefits to the Board''s employees. We, therefore, find that the submissions of the learned Advocate General, having aids from the averments made io Clause 6 of the resolution dated 31.8.89, is, totally, misconceived and unacceptable.

72. The text, tenor and content of Clause 6 of the Resolution cannot be read in isolation. It has to be read in the entire background and the context, in which Clause 5 is incorporated in the resolution. The grant or funds for the pension for the Board shall not on the part of the State and it will be the responsibility of the Board etc. averments in clause 6 of the resolution are referable to the change of scheme from CPF to pension and DCRG and resultant refund and returns or saving out of the PF amount by the employees on option, is the mother of the resolution. It cannot be said that this resolution absolves the State Government

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from payment of funds for the purpose of pension and pensionary benefits to the employees of the Board. In our opinion, therefore, the Resolution, dated 31.8.89, so strongly relied on by the learned Advocate General does not take the Government to any point of return and such contention therefore, has to be, totally, rejected, being untenable and unsustainable.

73. Not only that even thereafter, the Government issued Resolution dated 4.5.98, which run counters to the submission advanced by the learned Advocate General. The text of the Clause 6 of this Resolution is unambiguous to support that the Board is directed to make budgetary proposals to the State Government, so as to meet with the additional liability of the Board arising out of the acceptance of the 5th Pay Commission Recommendations for the purpose of revision of pay scales, as well as, the pensionary benefits. It is in this context, the direction is incorporated in Clause 5 of the said resolution that the Board has to make specific proposal in the budgetary demands from the Government for getting funds so as to meet with the additional liability, arising out of acceptance of the recommendations of the 5th Pay Commission. This makes it amply and abundantly clear that the respondent no.2- State of Gujarat, who is the creator is liable, and who has remained liable from 1973 for the creation of the Board for the payment of pay, pension and other benefits available to the employees of the Board, as the Board is funded fully by the respondent no.2-State.

74. In the result, upon true analysis and appraisal of the factual and legal profile and proposition, highlighted hereinbefore and incorporated events and circumstances and the text, tenor of the Government Resolutions and the resolutions of the Board, referred to hereinabove, we are of the clear opinion that this group of Letters Patent Appeals, at the instance of the Board and the State of Gujarat does not require any interference in exercise of our powers under Clause 15 of the Letters Patent except, in the matter of

(1) the grant of interest by the learned Single Judge at the rate of 9% per annum on the delayed payment of pensionary benefits from the date of their entitlement till 31.12.2003. The interest shall be payable at the rate of 9% per annum from the date of the resolution of the Board i.e. 4.5.98 as per the resolution of the Respondent No.2-State of Gujarat, dated 4.5.98.

(2) In so far as the question of gratuity benefits is concerned, the resultant directions shall be as under:-

The gratuity benefits on the basis of the Government Resolution, dated 20.11.98 with effect from 1.1.96 or from the date of their entitlement shall be in respect of the employees who have even retired on or before 1.1.96

(3) The original respondents, namely, the respondent No.1-Board, as well as, the respondent No.2-State of Gujarat are directed to pay the revised pensionary benefits and thereafter revised monthly pension onwards regularly, as per the Pension Rules.

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(4) Both the respondents are directed to comply with the directions on or before 30.10.2004, as directed, with cots of Rs.10,000/=.

75. In the result, Letters Patent Appeals and Civil Applications, in this group, shall stand disposed of accordingly.

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