(1991) 08 GUJ CK 0030

In the Gujarat High Court

Mankuvarba Manaharsinh Vaghela APPELLANT

Vs

Tharad Nagar Panchayat and Another RESPONDENT

Date of Decision : 02-08-1991

Acts Referred:
Gujarat Panchayats Act, 1961 — Section 203, 203

Citation : (1992) 1 GLR 375

Hon'ble Judges : R.C. Mankad, J

Bench : Single Bench

Judgement

R.C. Mankad, J.—Petitioner, who is widow of the deceased employee of Tharad Nagar Panchayat-respondent No. 1 (herein ''Panchayat'' for short) has filed this petition seeking direction against the Panchayat and the State Government to pay to her family pension from the date of the death of her husband.

2. Petitioner''s husband Manaharsinh Bhagvansinh Vaghela (''Deceased'' for short) was employed as Clerk by the Panchayat on November 8, 1971. He continued to be employed as Clerk by the Panchayat till he died on January 12, 1986. It would, therefore, appear that he died in harness and when he died he had completed more than 14 years service. Petitioner claims that she is entitled to family pension under the Family Pension Scheme applicable to Government servants. She, therefore, made representation to the Panchayat on April 13, 1987 to give her family pension with effect from the date of the death of her husband. The Panchayat, however, by its reply dated July 19, 1988 stated that the Panchayat had by Resolution recommended to pay pension to the petitioner, but the Accounts Officer at Palanpur had stated that under the existing Government Rules nothing was required to be done. The Panchayat, therefore, stated that no action could be taken on her representation and that her representation was filed. Thereafter, petitioner''s Advocate gave notice dated November 1, 1988 to the Panchayat and the State Government to pay family pension to the petitioner. The Panchayat, however, again informed the petitioner that under the existing Rules of the Government, nothing could be done. So far

as Government was concerned, all that it did was to acknowledge the notice given by the petitioner. Since the Panchayat and the Government did not pay her family pension, petitioner filed this petition praying inter alia for a direction against the respondents to pay her family pension in accordance with the relevant scheme of the Rules.

3. In State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, , the Supreme Court held as follows:

We are, therefore, of the view that Panchayat service constituted u/s 203 of the Gujarat Panchayats Act is a Civil service of the State and that the members of the service are Government servants. This very question-had been decided by the High Court of Gujarat more than 15 years back in G.L. Shukla v. State of Gujarat 8 GLR 833 and there appears no good reason to depart from the view then taken by the High Court.

It is not disputed that the deceased was in the service of the Panchayat as Clerk from Novembers, 1971 to January, 12, 1986. He was, therefore, a Government servant. Now the State Government has framed Family Pension Scheme under Resolution No. FPS-1071-J dated January 1, 1972. This Scheme was made applicable to those, who were in service on June 1, 1971 or recruited thereafter. It was provided that the Scheme would be applicable in case of death while in service on or after June 1, 1971 provided the Government servant had completed a minimum period of five years of continuous service on the date of death. By Resolution No. NVT-1187-GOI-41-(iii)-P-1, dated July 31, 1987 the Government decided to allow family pension to the families of Government employees, who died in harness irrespective of their length of service. Thus requirement of 5 years service done away with and to that extent Family Pension Scheme framed under the aforesaid Resolution dated January 1, 1972 stood modified. However, so far as petitioner''s husband is concerned, he joined the services of the Panchayat on November 8, 1971 and he continued to be in service till he died on January, 12, 1986. As held by the Supreme Court in State of Gujarat v. Ramanlal (supra), he was a Government servant. That being so, he would be governed by the Family Pension Scheme framed under the said Resolution dated January, 1, 1972, which is modified from time to time. Petitioner''s husband had completed more than 14 years service on the day he expired and, therefore, Family Pension Scheme, as originally framed, was applicable to him. Under the original Scheme, the Government servant was required to contribute two months pay to become eligible for Family Pension Scheme. However, the requirement of contributing two months'' pay was done away with under Resolution dated October 17, 1977 with effect from October 1, 1977. Therefore so far as petitioner''s husband was concerned, there was no question of his contributing two months'' salary to become eligible for the benefits under the Family Pension Scheme. It is, therefore, clear that petitioner is entitled to family pension under the said Family Pension Scheme, which is admittedly applicable to all the Government servants. The Panchayat was, therefore, wrong in refusing to grant family pension to the petitioner. This petition, therefore, deserves to be allowed.

4. There is, however, no material on record to determine the monthly amount of family pension admissible to the petitioner. Therefore, the proper course to adopt is to direct the respondents to compute the family pension and dearness and other allowances payable to the petitioner from time to time within specified time and to pay up the arrears of family pension and other allowance payable to the petitioner within specified time. It, however, appears that by Resolution No. PCR-5175/29-M dated October 29, 1975 issued by the Government in Finance Department the minimum pension payable to the widow of the Government servant is Rs. 375/- per month. It also cannot be disputed that in addition to the pension, Government servant''s widow is also entitled to allowances such as Dearness Allowance and Medical Allowance. There is therefore no reason to deprive the petitioner of the minimum pension plus allowances payable to her till the time the respondent compute the family pension payable to her.

5. In the result this petition is allowed.

6. The respondents are directed to compute the family pension payable to the petitioner under the Family Pension Scheme framed by the Government under Resolution dated January 1, 1972 as modified from time to time and pay to the petitioner arrears of family pension and allowances on the basis of such computation within two months from the date of the receipt of the writ of this Court. The arrears of pension and allowances payable to the petitioner shall be paid with 12 per cent interest per annum from the date the pension and allowances became payable to the date of actual payment. The respondents are further directed to pay to the petitioner family pension at the minimum rate of Rs. 375/- per month plus allowances with effect from August 1, 1991 regularly every month on or before 7th of every month. This minimum pension will be subject to the adjustment, if additional family pension is payable to the petitioner. The additional pension payable to the petitioner shall also carry interest at the rate of 12 per cent per annum from the date such additional pension is payable to the date it is actually paid. It is clarified that primary obligation to pay family pension to the petitioner, as aforesaid, shall be of the Panchayat and in case it fails to do so, it will be open to the petitioner to recover the same from the State Government also. It is further clarified that the liability to pay family pension to the petitioner, as aforesaid, shall be joint and several of both the respondents. Rule is made absolute accordingly with costs. Cost is quantified at Rs.500/.