(2022) 02 GUJ CK 0030

In the Gujarat High Court

Case No : R/Special Civil Application No. 177, 2339, 2688, 3180, 6258 Of 2019

Pashabhai Umedbhai Patel & 25 Other(S) APPELLANT

Vs

State Of Gujarat & 2 Other(S) RESPONDENT

Date of Decision : 08-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 16, 141, 226
Gujarat Civil Services (Pension) Rules, 2002 — Rule 9(55), 51, 51(2)(c)
Contempt Courts Act, 1971 — Section 2(b)
Limitation Act, 1963 — Section 22, 23

Citation : (2022) 02 GUJ CK 0030

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Harshal N Pandya, Meet Thakkar

Final Decision : Allowed

Judgement

Biren Vaishnav, J

1. Rule, returnable forthwith. Mr. Meet M. Thakkar, learned Assistant Government Pleader waives service of notice of Rule for the respondents.

2. With the consent of the learned advocates appearing for the respective parties, the petitions were taken up for its final disposal on 5.1.2022.

3. In all these petitions, under Article 226 of the Constitution of India, the petitioners who were erstwhile employees of the State Government and

ultimately on retirement there-from were absorbed with the Food and Civil Supplies Department, a Public Sector undertaking, initially, prayed for a

relief of granting the benefit of medical allowance in their monthly pension as well as family pension to the heirs. When the petitions have come up for

hearing, the learned counsels for the respective parties have made a statement that as far as their grievance of family pension is concerned, the same has been resolved, inasmuch as, family pension is now being paid to them by virtue of the GR dated 10.7.2019. The only controversy therefore that

remains is that of granting of the benefit of the medical allowance in their monthly pension.

4. For the purposes of this judgment, facts of Special Civil Application No.3180 of 2019 are seen.

4.1. The petitioners are senior citizens and they have approached this Court inasmuch as, it is their case that the State is not implementing the verdict

given by this Court in cases of similarly situated pensioners who are co-employees of the present employers in respect of grant of medical allowance

in their monthly pensions. The petitioners had joined the Food and Civil Supplies department on different dates and, thereafter upon creation of the

Gujarat State Civil Supplies Corporation on 2.10.1980, the petitioners are the employees of Civil Services Department and were sent on deputation to

the Corporation. In the year 1986, the State Government decided to absorb the employees sent on deputation to the Corporation and other employees

like the petitioners were permanently absorbed. All those employees had been treated to have retired from government service with effect from

4.12.1998 and were sanctioned pension from the State Government. Their pension is also commuted. Thereafter, 1/3rd of commuted pension was

restored on completion of fifteen years and such pension payment orders are placed on record. The petitioners are also granted 50% of DA merger.

5. Ms. Harshal Pandya, learned counsel for the petitioners would submit that the petitioners are not being paid medical allowance which other

pensioners are being receiving as monthly pension. A representation was made, which, however has remained unanswered. Ms. Pandya for the

petitioners would place reliance on the decision of this Court rendered in SCA No.12918 / 2010 with SCA No.12929 / 2010 dated 5.4.2019, wherein,

an identical issue of the retired employees of the Gujarat State Civil Supplies Corporation in context of prayer to direct them to pay medical allowance

with the pension was considered. She would submit that following the earlier decision rendered in SCA No.16209 of 2013 the Court allowed the

petition with a direction to see that the medical allowance is sanctioned to the petitioners and paid alongwith family pension. She would therefore

submit that the petitioners being similarly situated are entitled to the benefits of medical allowance as it forms part of components of pension as decided by this Court. The aforesaid decision was even confirmed in appeal as the LPA against the said judgments have not been entertained.

6. Learned AGP Mr. Thakkar appearing for the respondent - State would draw the attention of the Court to the affidavit-in-reply filed by the

respondent-State and submit that the case of the petitioners does not fall within the parameters of Rule 9(55) of the Gujarat Civil Services (Pension)

Rules, 2002 and, therefore, the petitioners are not entitled to seek the benefits of medical allowance as a part of their pension. Reliance is also placed

on Rule 51(2)(c) of the Rules which provides for retirement benefits and the submission is made that the medical allowance and medical

reimbursement would not form part of the retirement benefits and, therefore, the petitioners accordingly are not entitled to the benefits of medical

allowance. The pension defined in Rule 9(55) is referred to for the purposes of this submission.

6.1. Reading the affidavit-in-reply, learned AGP would further submit that the petition is barred by delay and latches inasmuch as the petitioners have

been fence-sitters. They have not approached this Court within time and they have slept over their rights and chosen not to come to this Court. Fence-

sitters cannot be given the benefit of identical order of the Court, merely, because such an order is passed in the case of other co-employees. Reliance

is placed on the decision in the case of State of Uttar Pradesh v. Arvind Kumar Shrivastava reported in 2015(1) SCC 237. The relevant paragraphs of

that judgment are read before this Court to submit that fence-sitters who have acquiescence cannot be given the benefit of a subsequent decision of

the Court.

7. Ms. Pandya on the other hand would rely on the following decisions:

(1) Vipulkumar Atmaram Parekh v. State of Gujarat reported in 2009(5) GLR 3914 - Para 9 and 10

(2) Union of India v. Tarsem Singh 2008(8) SCC 648 - Para 4 to 8

(3) Lajja Ram & Others v. Union Territory reported in 2013(11) SCC 235 - Para 9 and 11 &

(4) Union of India v. Krishna Rao reported in 2018(18) SCC 107 - Para 12

8. Considering the above submissions made by the learned advocates for the respective parties, the issue need not detain us for long.

9. In an extensive consideration made by this Court in SCA No.16209 of 2013, a

judgment which was rendered by this Court on 20.10.2015 which

was subsequently followed in the decision dated 5.4.2016 in SCA No.12918 of 2010, the Court extensively considered the provisions in context of the

prayer of payment of medical allowance to the petitioners who were employees of the Industrial Research Laboratory and the Court has in the

decision dated 5.4.2016 rendered in SCA No.12918 of 2010 in the context of the State Civil Supply Corporation, which were the co-employees of the

petitioners, held as under extensively reproducing the decision. The Court observed in para Nos.7 and 8 as under:

â??7. In my view, this issue is no longer res-integra, after the pronouncement of the judgment and order of this Court dated 30th October,

2015 passed in the Special Civil Application No.16209 of 2013. The order reads thus:

â??1 By this writ application under Article 226 of the Constitution of India, the petitioners retired Government employees, have prayed for

the following reliefs:

7. The petitioners respectfully pray that, on the basis of the facts and circumstances as mentioned hereinabove and which may be urged at

the time of hearing, the Honourable Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to

the respondent authorities and may be pleased to:

(A) declare and hold that the petitioners are entitled and eligible for the benefit of medical allowance in monthly pension and the family

pension, and

(B) direct the respondent authorities to extend the benefit of medical allowance in their monthly pension and the benefit of family pension to

the petitioners, and

(C) award the cost of present petition, and

(D) pension admissible and final disposal of this petition, this Honourable Court may be pleased to direct the GIRDA, Res. No.4 to sent the

proposal to the State Government in respect of grant of benefit of medical allowance and family pension to the petitioners so as to enable

the authorities of the State Government to consider the same, and

(E) pending admissible and final disposal of this petition, this Honourable Court may be pleased to direct the respondent authorities to start

paying medical allowance to the petitioners in their monthly pension as being paid to other pensioners, and/or

(F) grant any other relief or pass any other order which the Honourable Court may consider as just and proper in the facts and

circumstances of the case.

2 The case of the petitioners may be summarized as under;

2.1 The petitioners joined the services of the State Government and were posted in the Industrial Research Laboratory (I.R.L., for short)

under the Administrative Control of the Commissioner of Industries. All the petitioners were holding the technical post.

2.2 On 06.04.1981, the Gujarat Industrial Research and Development Agency (GIRDA, for short) was established.

2.3 On 30.06.1982, the State Government accorded approval to the GIRDA to take over the Industrial Research Laboratory with effect from

01.04.1982, and accordingly, the same was taken over by the GIRDA. All the employees working in the I.R.L. were sent on deputation in the

GIRDA. In the year 1982, the question of permanent absorption of the employees working in the I.R.L. cropped up in view of the merger of

the I.R.L. with the GIRDA, In such circumstances, the State Government decided to call for an option from the employees of the I.R.L.

whether they desired to be absorbed permanently in the GIRDA or not. While calling for such option, it was made clear to the employees

working on the technical side that as everything was being taken over by the GIRDA, no technical post would continue, and therefore, upon

giving option for being continued in the parent department, their services would be terminated.

2.4 In such circumstances referred to above, the petitioners were left with no other option, except being absorbed in the GIRDA, and

accordingly, they were absorbed with effect from 01.10.1985 on permanent basis.

2.5 After being absorbed in the GIRDA, all the petitioners were treated to have retired from the services of the Government. The pension

was sanctioned in favour of the petitioners with effect from 01.10.1985 for that period and were permitted to commute full pension. In the

year 19981999, the State Government decided to grant the benefit of the commuted portion of pension to all the Government employees who

had been absorbed in the Public Sector Undertaking / Autonomous Body. Since the authority delayed the process, the petitioners Nos.1 and

2 herein filed two Special Civil Applications Nos.12436 and 12437 of 2009 respectively. Both the writ applications were disposed of in the

following terms:

1. During the course of hearing, Mr.J.K. Shah, learned Assistant Government Pleader, has tendered the affidavit filed by Mr.Ramsing R.

Parmar, whereby it is categorically stated that his office has received the letter from the office of the Pension and Provident Fund,

Gandinagar, and the same is under consideration by his office. In pursuance of the same, learned Assistant Government Pleader has

submitted that the grievance of the petitioners will be redressed by the respondent-authority within the stipulated time.

2. Mr.Paresh Upadhyay, learned advocate for the petitioners, states that in view of the averments made in the said affidavit as well as the

statement made by the learned Assistant Government Pleader, he does not press both the petitions.

3. In view of aforesaid, both the petitions stand disposed of as not pressed. It is made clear that the respondentauthority will redress the

grievance of the petitioners within a period of six weeks from today. Notice is discharged with no order as to costs. Liberty to revive in case

of difficulty.

2.6 The authorities, thereafter, started processing the pension cases by asking the petitioners to provide the necessary details in a

prescribed format. In the year 201011, the sanction letters of restoration of pension were issued in favour of the petitioners with revision

pertaining to the 6th Pay Commission. Since the authorities did not sanction the pension, after merging 50% D.A. in view of the policy of the

State Government of granting the benefit of merger of D.A. in pension with effect from 01.04.2004,0 several representations were made in

that regard. On 11.05.2011, the Finance Department clarified that since all the benefits were granted to the absorbed employees at par with

the other pensioners, the benefit of merger of 50% D.A. would be also payable to such employees.

2.7 On 28.07.2011, the District Treasury Office was instructed to pay pension after merging 50% D.A.

2.8 It is the case of the petitioners that in the pension, which is being paid to them, the medical allowance is not being paid. The other

pensioners are being paid the medical allowance. The two widows of the Government employees also preferred representations for grant of

the family pension upon death of their respective husbands who were absorbed and treated as retired from the Government services along

with the present petitioners. However, the request was declined. On 09.05.2012, the District Treasury Office, Vadodara replied that as there

was no clear direction for payment of medical allowance, the same was not being paid. On the issue of family pension and medical

allowance, the GIRDA informed the State Government that such benefits are not being paid to the employees of the GIRDA and appropriate

instructions were sought in that regard by the GIRDA from the Government. The grievance of the petitioners is that they have all retired and

although are entitled for the benefit of medical allowance in their monthly pension, yet the same has been wrongly denied without there

being any legal basis for the same.

3 Ms. Harshal Pandya, the learned advocate appearing for the petitioners submitted that although the Commissioner of Industries has

issued appropriate directions as regards the payment of medical allowance, the authorities of GIRDA for some reasons or the other are not

forwarding the proposal for the grant of medical allowance and family pension.

4 Ms. Pandya submitted that it is not proper on the part of the State Government to harass helpless widows. According to Ms. Pandya, the

benefit of family pension is available to a widow / widower of a pensioner under the statutory rules of the Gujarat Civil Services (Pension)

Rules, but the same has been denied despite the fact that the employees absorbed in other Boards / Corporations are being paid the same.

5 Ms. Pandya submitted that her clients are all retired employees of the State Government and are claiming pension for the service rendered

with the State Government. For the service rendered with the GIRDA, benefits have already been paid which do not include pension. Her

clients are not claiming any benefit from the GIRDA.

6 In such circumstances referred to above, Ms. Pandya submitted that there being merit in this application, the same be allowed and

appropriate Mandamus be issued.

7 On the other hand, this writ application has been vehemently opposed by Mr. Swapneshwar Gautam, the learned Assistant Government

Pleader appearing for the State respondent. Mr. Gautam placed reliance on the following averments made in the affidavitreply filed on

behalf of the respondents Nos.1, 3 and 4:

5. It is respectfully submits that by way of filing the present petition the petitioner has prayed for to allow the benefit of medical allowance

in monthly pension and family pension. It is further submits that on 06.04.1981 the Gujarat Industrial Research Development Agency

(GIRDA for short) came into existence. The State Government accorded the approval to GIRDA= take over the Research Laboratory with

effect from 01.04.1982, wide Government Resolution dated 03.06.1982 and accordingly, the same was taken over by GIRDA and all the

employees working in IRL was take over by GIRDA, they have been given fresh appointment letters from GIRDA. The copy of GIRDA

appointment letter and GIRDS service rules 1981 are attached herewith and marked as Annexure R1.

6. It is respectfully submits that as all the petitioners were absorb GIRDA on 01.10.1985. NonTechnical staff have been given the option to

absorb in GIRDS or to stay in parent department while technical staff were absorb with three increment and one promotion it appears that

the petitioner were benefited by a good option. A copy of acknowledgment for the appointment of three increment and one promotion is

attached herewith and marked as Annexure R2. It is further submits that the petitioner have been also given commuted full pension for the

service which they have done in IRL. A copy of commuted full pension for the services done by the petitioners in IRL is attached herewith

and marked as Annexure R3.

7. It is respectfully submits that as order passed by the Honâ??ble Court dated 30.04.2010, the pension and Provident Fund Office have

releasedpensionwith effectfrom 01.07.2004 vide order No.DPP/ Restoratinpension/PR1/G/10/531/AG/REV/843 dated 13.05.2010. A copy is attached herewith and marked as Annexure R4.

8. It is respectfully submits that the petitioners are already being paid 6th pay commission and their pension case are also approved by the

pension and provident fund office and they are paid pension accordingly. It is further submits that after seeking guidance from Finance

Department, Office of the Pension and Providence Fund vide letter dated 28.07.2011 as Directed Treasury Officer, Vadodara merging the

benefit of 50 percent Dearness Allowance on revised pension for the duration of 01.04.2004 to 31.12.2005 the copy of letter dated

28.07.2011 is attached as Annexure R5.

9. It is further submitted that in earlier time Provident Fund and Pension Department has decided to give 1/3 pension for period petitioner

work for IRL. By the letter dated 28. 07.2011 they have given the merger of 50 percent Dearness Allowance on revised pension.

10. It is respectfully submit that in accordance with the provision of Finance Departments G.R. No NVN/1074/U.O./352/J dated 19.02.1974

office of the Pension and Provident Fund had issued as letter dated 29.11.2013 stating there in that, the State Government has not been

accepted responsibility, provide the benefit of family pension to the employees who are absorb in public sector unit and therefore there is

no question of sanction family pension for their families. A copy of letter dated 29.11.2013 and Finance Department G.R. Dated 19.02.1974

is attached herewith and marked as Annexure R6.

11. It is respectfully draw the attention of this Honble Court that the widow of later Mr. Shah and Mr. Machhi were paid full commuted

value of pension for services they render in IRL. It is further submitted that late Mr. Shah and Mr. Machhi were pay as prescribe by GIRDA

during service in GIRDA they were also paid retirement benefit.

12. It is respectfully submit that as per the provision made in Finance Department by GR dated 03.10.2012 read with provision of 5th pay

GR dated 07.01.1998, the medical allowance is to be paid to state Govt. employees as per standard rules. Both above referred G.R. Is

attached herewith Annexure R- 7. It is further submitted that the two letters as mentioned below annexed as Annexure R8:

1. Letter dated 01.06.2012 issued by Accountant and Treasury Office,

Gandhinagar. The Director has clearly mentioned that the employees

of the State Government who were deputation to public sector unit and again repatriate are not entitle have medical allowance.

2. The finance dapartment has mentioned in its letter dated 15.04.2010 that they get the benefit of medical allowance from office where they

service during the period of absorption. The petitioners have given appointment letters from GIRDA and they are abide by GIRDA service

rules, as per GIRDA service 1981, GIRDA is providing CPF scheme to it employee.

13. It is further submits that GIRDA is grant in aid organization and registered under society act the copy of 100 percent grant in aid

certificate/resolution is attached as Annexure R9. It is further submitted that as per GIRDA service, GIRDA is paying only Contributive

Provident Fund (CPF) to its employee. The Industries and Mines Department is the administrative authority of the GIRDA. Therefore GIRDA

has no power to sanction medical allowance in pension. It is respectfully submitted that the present petitioner has given example of Gujarat

Water Resources and Development Corporation Limited where the petitioner want to convey that by GR dated 05.06.2012 granting benefit

of family pension to the Government employees who were absorb in Gujarat Water Resources and Development Corporation Limited and

request to considered their case grant of benefit for family pension and medical allowance.

14. It is further submits that the Gujarat Water Resources and Development Corporation Limited is autonomous body, having liberty to

frame their own rules. Therefore their rules are not applicable to Industries Commissioner or GIRDA. It is respectfully submits that the

petitioner are seeking benefit of medical allowance from the State Government and alleged that as the pension is paid by the State

Government so they should be treated as State Government employees. The petitioners has also mentioned since the GIRDA has no power to

sanction medical allowance, in light of petitioner. The present department may refer issued to State Government to direct GIRDA to

proposed medical allowance. GIRDA sought guidance from Industries and Mines Department as it is administrative authority of GIRDA vide

letter No.GIRDA/PE.Ta.Bh/1213/1192 dated 30.01.2013 for medical allowances in pension. In reply of letter dated 30.01.2013, the Industry

and Mines Department has advised us to act as per GIRDA service rule. A copy of communication letters are attached herein and marked as

Annexure R10. It is further submitted that GIRDA is having CPF scheme in which such retire employees are not entitled for pension or

medical allowances in pension.

15. It is respectfully submits that GIRDA has not receive any official letter from its Head Office i.e., Office of the Industry Commissioner

asking us to submit proposal for granting medical allowance, the industries and mines Dept. is an administrative authority the authorities

has asked to conduct suitable action in this matter, therefore GIRDA is sought their advise and having advised as GIRDA and act as per

GIRDA service rule. GIRDA is being autonomous body grant in aid organization and registered under society act which has provided only

CPF to each employee. Therefore, no medical allowance in the pension to be paid to its employees. As per letter

No.DPP/LM/Spe.C.A.1620913/733/13 dated 29.11.2013 from office of the pension and Provident Fund, the employees absorb on

01.10.1985 in GIRDA are paid commuted full pension and after completion of 15 years they are eligible to get 1/3 pension. With reference

to finance department G.R. dated 19.02.1974 office of the pension and Provident Fun as issued the letter No.DPP/Lm.Spe.C.A.

No.1620913/13 dated 29.11.2013 stating that the State Government has not accept the responsibilities of the family pension for their

families for the employees who are absorbed, therefore no question of sanctioning family pension for the present petitioner.

16. It is respectfully submitted the office of the Industries Commissioner wide letter dated 27.02.103 have advised GIRDA to contact treasury

branch Vadodara and taken action for the family pension of Mr. R.R. Shah and Mr. Z.R. Machhi reference was made to treasury officer

vadodara were letter dated 03.04.2013 in the matter. In reply to our letter dated 01.03.2013 treasury officer has informed GIRDA that

family pension cannot be sanction to the employees where repatriated and absorb in present department. The petitioner have also inform

accordingly. A copy of letters dated 27.02.2013, 01.03.2013 and 03.04.2014 are attached herewith and marked as Annexure R11.

17. It is further submit that with reference the finance department GR dated 19.02.1974 as per letter No.DPP/LM/Spe. C.A. No.16209-

13/733/13 dated 29.11.2013 from the office of Pension and Provident Fund, providing / sanctioning medical allowance is policy matter of

the State Government. Medical allowance in pension cannot be payable to absorb employees entitle and in this their official orders raised

from the State Government.

18. It is respectfully submits that the present petitioner who are employees absorb from IRL to GIRDA has got full commuted pension from

Government for the service done in IRL. They have also paid salary and medical allowance while they are on service with GIRDA. They

were paid retirement benefit and contributive Provident Fund (CPF) after getting retied from GIRDA.

8 Mr. Gautam submitted that in view of the above stance of the State Government, this application deserves to be rejected.

9 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls

for my consideration is whether the petitioners are entitled to reliefs, as prayed for, in this writ application.

10 The word pensioner is defined in the Gujarat Civil Service (Pension) Rules, 2002. Pensioner means a retired Government employee who

has been granted pension

10.1 Rule 51 of the Gujarat Civil Service (Pension) Rules, 2002 provides benefit of family pension to the families of absorbed employees,

which reads as under:

Rule 51: Pension on absorption in or under Public Sector undertaking:

(2)(b)(i) The benefit of family pension under ChapterX of these rules shall be admissible only to the families of those who are actually in

receipt of pension from the State Government, after their absorption in the Public Sector undertaking referred to in this rule. This benefit

shall not be admissible to the families of those who got only the service gratuity.

(ii) Family Pension shall not be admissible from only one source either from the State Government or the public sector undertaking referred to in this rule in case such public sector undertaking has a similar scheme for payment of family pension. The beneficiary shall be given

option to choose either of the two scheme.

(iii) Grant of family pension shall be subject to other conditions specified in Chapter X of these rules.

(iv) It shall be responsibility of pension sanctioning authority to process the claim of family pension. He shall forward the claim of family

pension after verifying that there exists no scheme for grant of family pension to the families of the Government employees already

absorbed in the public sector undertaking.

11 It appears from the stance of the GIRDA that the grant of benefit of restoration of pension, merger of D.A. and three increments,

disentitle the pensioners to claim the family pension and medical allowance, as they cannot be treated as employees of the State

Government. It also appears that the GIRDA proposes to rely upon a Government Resolution dated 19.02.1974, by which, the State

Government had declined to take the responsibility of paying the family pension.

12 However, it appears that the State Government, thereafter, issued another resolution dated 01.04.1989 modifying the earlier

resolution/policy for bringing uniformity in the mater of pensionery benefits. The relevant part of the resolution dated 01.04.1989 reads

thus:

At present the cases of Government employees, on deputation to Public Sector Undertaking of the State Government, who are absorbed in

the PSUs in public interest permanently, are regulated as per the provisions contained in the G.Rs. F. D. referred to in the preamble. The

question of establishing parity in the matter of, pensionary benefit to such State Government employees, with the provisions in force in

Government of India had been under consideration of Government. After careful consideration, Government has decided that in partial

modification to the provisions contained in the GRs referred to in the preamble, the cases of the Government employees who select to be

absorbed in the Autonomous body/Public Sector Undertaking will be regulated as under:

(1) A Government employee on absorption to Public Sector Undertaking/

Autonomous body is eligible for prorata pension and DCRG based

on the length of his qualifying services till the date of his absorption in the PSU/ Autonomous Body. The pension will be calculated on the

average emoluments for 3 years preceding the date of absorption and DCRG will be calculated on the basis of the emoluments immediately

before absorption.

(2) Within 6 months of absorption, every such of Government employees, absorbed in PSUs/Autonomous bodies will exercise option for

either of the two alternatives indicated below:

(a) Receiving monthly pension and DCRG as per the rules or

(b) Receiving DCTG and a lumpsum amount in lieu of pension worked out with reference to the commutation table. Were no option is

exercised, the absorbed employee will automatically be governed under the option (b) above. The option once exercised will be final. The

person who chooses the alternative mentioned in Para1 and 2(b) above, 1/3 of the lumpsum amount will be treated as commutation of

pension and 2/3 of the amount will be treated as retirement benefits.

(3) In case the Government employee, absorbed in PSU/Autonomous Bodies, resigns after receiving pensionery benefits, the resignation will

be treated as resignation from Government service and as a consequence of resignation, pensionary benefits received under these orders

will be forfeited.

(4) The absorbed Government employee will receive all the benefits admissible to other corresponding employees of PSUs/Autonomous

bodies. But in respect of gratuity the sum total of the gratuity received from Government at the time of absorption and the gratuity received

from the PSU/Autonomous body for service rendered there should not exceed the amount of gratuity that would have been received had he

been continued in Government service and retired on the same pay which be drew on retirement from PSUs/Autonomous bodies.

(5) Any further liberalisation of pension rule after permanent absorption will not be extended. However, if such liberalization comes into

effect retrospectively i.e., with effect from the date prior to the date of absorption, the benefit will be admissible.

(6) In the case where the absorbed employee elects to receive recurring pension and DCRG in terms of 1(2)(a) above, and wishes to

commute some portion of his pension as per the rules, the same will be admissible.

(7) These benefits will be admissible only if the absorption is in public interest.

(8) A permanent Government employee who has been appointed in an Autonomous Body/ PSU wholly on substantially financed by

Government, on his own application in response to a press advertisement etc., on his permanent absorption in such organisation will be

entitled to get benefits of these orders except carry forward of leave.

(9) All the cases to be regulated under this order will have to be decided by the concerned Administrative Departments in Sachivalaya, who

in turn will have to seek approval of Finance Department.

(10) The pay of the Government employee absorbed in PSUs/Autonomous bodies will be regulated as per the provisions of the G.R.F.D.

No.NVT3286GOI95P dated 178-1988 as amended from time time.

(11) (i) The benefit of family pension will be admissible to those who are in receipt of pension after absorption in PSUs.

(ii) The benefit is not admissible to those who have not rendered requisite number of qualifying service to earn them pension. Accordingly

the benefit of family, pension will not be admissible to the families of those Government servants absorbed in PSUs, who have not completed

10 years qualifying service.

(iii) The family pension will also be admissible to those Government servants absorbed in PSUs who die before receiving pensionery benefits

admissible under these orders subject to the fulfillment of conditions mentioned in para 1(11)(ii) above.

(iv) The family pension will This benefit will be admissible to the Government servant who is appointed to PSUs in the manner indicated in

para 1(8) above and has been granted retirement benefits under these orders.

(v) The family pension to the eligible members of the PSU absorbed, Government servants will be given from one source only, i.e., either

from the Government or from the Public Sector Undertakings/ Autonomous bodies if such organization has any scheme for grant of family pension. The eligible member may be allowed to choose either of the two scheme.

(vi) It will be responsibility of the pension sanctioning authority to process the claim for family pension. He should forward the claim for

family pension after verifying that there exists no scheme for grant of family pension to the families of Government servant already

absorbed in the PSUs/Autonomous bodies.

(12) For actual payment of retired benefits as a consequence of absorption, the procedure prescribed for a retired employee should be

followed.

13 The materials on record would indicate that the widows of the respective employees, who were absorbed in the Gujarat Water Resources

Development Corporation and were receiving the pension from the State Government, are being granted the benefit of family pension.

The G.W.R.D.C. is also a Public Sector Undertaking of the State Government. I see no good reason for the respondents to deny the benefit

so far as the petitioners are concerned, including the widows. I also take notice of the Government resolution dated 03.10.2012 sanctioning

the medical allowance to the Government / Panchayat employees, etc, which reads as under:

RESOLUTION:

Under the Government Resolution Dated : 22/01/98, mentioned in the preamble, the state Government has decided to grant Medical

Allowance of Rs.100/ per month to employees as well as pensioners of the State Government and Panchayat. The revision of the existing

rate of Medical Allowance was under consideration of the Government. After careful consideration the Government is pleased to revise the

existing rate of Medical Allowance Rs.100/ per month to Rs.300/ per month with following conditions.

1) These orders shall be applicable to employees and pensioners of the State Government, employees and pensioners of panchayat and

Primary and Secondary School teachers as well as Work Charged employees (who have completed the service of one full year without any

break).

(2) These orders shall be implemented with effect from dated 01102012.

(3) Other provisions of the G.R.F,D. Dated 22011998 shall continue to be applicable.

(4) Accounting system and conditions regarding option shall be as it is.

14 I also take notice of the Government resolution dated 09.03.1999 as regards the absorption of the Government employees in the Public

Sector Undertaking / Autonomous Body of the State Government. The same reads as under:

In the Government Resolution Finance Department No.NVT1196 GOI10P, dated: 23.4.1998, Para 3 of the said Resolution is substituted as

follow:

3. The Government, after careful considerations, has decided to grant benefit of restoration of one third commuted portion of pension of

pension after 15 years from the date of commutation or 1.4.1985, whichever is later notwithstanding the fact that having commuted the full

pension they were not in receipt of any monthly pension.

15 I find merit in the submissions of Ms. Pandya that the confusion has been created by the Treasury Office, Vadodara, so far as the grant

of family pension to the two widows is concerned. Ms. Pandya is right in submitting that the Treasury Office has no authority to take any

decision in the absence of any direction or decision taken by the highest authority i.e. the Finance Department. I find substance in the

submissions of Ms. Pandya that the petitioners are claiming the two benefits in their capacity as retired employees of the State Government

i.e. for the services rendered with the State Government and not for the services rendered with the GIRDA. In fact, the GIRDA has nothing

to do with this issue.

16 In the result, this application is allowed. The State Government as well as the respondent No.3 herein are directed to see that the medical

allowance is sanctioned and paid to the pensioners along with the monthly pension as they are receiving, and at the same time, the two

widows are paid the family pensions in accordance with the rules governing the same. This exercise shall be completed within a period of

two months from today and the payment should be made with arrears from the date of filing of this petition.â??

8 In the result, both the writ applications are allowed. The State Government as

well as the respondents Nos.1 and 2 are directed to see that

the medical allowance is sanctioned and paid to the petitioners along with a monthly pension as they are receiving. If any of the petitioners

have passed away, then the widows shall be paid family pension in accordance with the rules governing the same with the necessary

benefits. Let this exercise be completed within a period of two months from today and the payment should be made with the arrears from the

date of filing of these petitions. Direct service is permitted.â??

10. Accordingly, the case of the present petitioners is squarely covered by the above decision.

11. To the submission made by learned AGP that the petitioners being fence-sitters and, therefore, the decision of State of Uttar Pradesh (Supra)

should be made applicable, it is needless to say that by the decision in the case of Vipul Aatmaram Parekh (Supra), this Court observing as under

(paragraph 9 thereof) has held that if at any particular of point, there is decision of this Court every authority of the State Government is bound to

follow the same and apply its mind and extended them to the employees rather than compel them to come to Court.

â??9. At the outset, it is required to be noted that the objection raised by the respondent No.3 that while granting the benefit of higher pay

scale on completion of 9 years service/seniority prior to the request transfer is not required to be counted is not sustainable in view of the

many decisions of the Division Bench as well as learned Single Judges of this Court. Even, the controversy in question is now not res

integra in view of the the decision of the Hon'ble Supreme Court in the case of Uttam Vishun Pawar (supra). All the decisions have been

considered by this Court in the recent decision of this Court in the case of Naynaben Manubhai Vyas & Others(supra) dated 12.3.2009 in

Special Civil Application No. 1446 of 1994 and other allied matters. In spite of the above decisions of this Court, since long the office of the

respondent No.3 is raising same and similar objection driving the employee to the Court and to obtain the similar order. If, on a particular

point there is a decision of this Court every authority of the State Government is bound to follow the same unless it is upset by the higher

forum. The authority has to apply its mind before raising objection and grant the benefit accordingly and shall not compel the employee to

obtain similar order from the Court. To raise the objections again and again which are overruled by the Court by decision would not only

compelling the employee to incur the expenditure towards the legal proceedings but it will also increase the litigation and burden to the

Courts, which are otherwise today heavy burdened due to backlog of cases and Courts are trying their best to get out of the backlog. In the

case of (Smt) Dhanlakshmiben Liladhar Suchak (supra) the learned Single Judge of this Court as far as back in the year 1992 has

observed that the Government should be model employer. The model employer is one who would not deny just claim of his employee and

employees on any technical ground. Such model employer would not wait for any direction to be given to accept just claim of the

employee/employees. It is further observed that once it is found that an employee is similarly situated the benefits flowing from a judgment in

a case of other similarly situated employee, it should be given to other similarly situated employee and employee should not be driven to the

Court for addressing just grievances. Even in the case of Secretary, Labour, Social Welfare & Tribunal Development Department & Anr.

(Supra), the Full Bench of this Court in para 9 and 10 has observed and held as under:

â??9. The legal position regarding the binding nature of judgments delivered by High Courts was clearly explained as far back as 1962 by

the Supreme Court. In East India Commercial Co. Ltd. V. Collector of Customs, Calcuttam A.I.R. 1962 S.C. 1893, Subba Rao. J. (as he then

was) speaking for himself and Mudholkar J., has explained though A.K. Sarkar J. who was the legal position, the legal position in

paragraph 29 of the report as follows:

This raises the question whether an administrative tribunal can ignore the law declared by the highest court in the State and initiate

proceedings in direct violation of the law so declared. Under Art. 215, every High Court shall be a court of record and shall have all the

powers of such a court including the power to punish for contempt of itself. Under Art: 226, it has a plenary power to issue orders or writs

for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any

Government, within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all courts and tribunals throughout the territories in

relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence

can ignore the law declared by that court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate courts

can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court

binding on subordinate courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its

supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working: otherwise, there

would be confusion in the administration of law and respect for law would irretrievably suffer, We, therefore, hold that the law declared by

the highest court in the State is binding on authorities or tribunals under its superintendence, and that they cannot ignore it either in

initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority, signifying

the launching of proceedings contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be

without jurisdiction.â??

The position was reiterated in Makhan Lal Vs. State of Jammu and Kashmir, A.I.R. 1971 S.C. 2206. It was the context of the law declared by

the Supreme Court that the decision laid down to that effect so far as Article 141 of the Constitution was concerned, but what has been

observed in paragraph 5 at page 2209 by Grover J. speaking for the Supreme Court has equal application so far as pronouncements by the

High Courts are concerned. Grover J. observed at page 2209:

â??The Judgment which was delivered did not merely declare the promotions granted to the respondents in the writ petition filed at the

previous stage as unconstitutional but also laid down in clear and unequivocal terms that the distribution of appointments, posts or

promotions made in implementation of the communal policy was contrary to the constitutional guarantee of Article 16. The law so declared by this court was binding on the respondent State and its officers and they were bound to follow it whether a majority of the present

respondents were parties or not to the previous petition.â??

It cannot, therefore, be contended by anyone, that since Acharya, the petitioner in Special Civil Application No. 2215 of 1979, was not a

party to Special Civil Application No. 806 of 1975, that the law laid down by D.A. Desai, J. in his judgment in that case on August 7, 1975

was not applicable to the case of Acharya. Whether the law is declared by the Supreme Court or whether the law is declared by the High

Court, the legal position as regards authorities and tribunals subordinate to the Supreme Court and High Courts respectively is the same as

pointed out by Subba Rao J. in East India Commercial Co.s case (supra).

10. In Shri Baradakanta Mishtra V. Shri Bhimsen Dixit, A.I.R. 1972 S.C. 2466, the legal position regarding binding nature of the High

Court's decision was once again reiterated by the Supreme Court and after quoting the above passage which we have extracted from the

judgment of Subba Rao J. in East India Commercial Co. s case (supra) in paragraphs 15 and 16 of the judgment, Dwiveid J. speaking for

the Supreme Court observed at page 2169:

â??The conduct of the appellant in following the previous decision of the High Court is calculated to create confusion in the administration

of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct

is therefore comprehended by the principles underlying the law of contempt. The analogy of the inferior court's disobedience to the specific

order of a superior court also suggests that his conduct falls within the purview of the law of contempt. Just as the disobedience to a

specific order of the Court undermines the authority and dignity of the court in a particular case, similarly any deliberate and mala fide

conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court.

Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the later conduct has a much

wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court generally, but is also likely to subvert the Rule of law and engender harassing uncertainty and confusion in the administration of law.â??

In Hashmukhlal C. Shah V. State of Gujarat, 19 G.L.R. 378, a Division Bench of this High Court consisting of J.B. Mehta and P.D. Desai

JJ. after examining several decisions on the point, observed: â??... in a Government which is ruled by laws, there must be complete

awareness to carry out faithfully and honestly lawful orders passed by a Court of law after impartial adjudication. Then only will private

individuals, organizations and institutions learn to respect the decisions of Court. In absence of such attitude on the part of all concerned,

chaotic conditions might arise and the function assigned to the Courts of law under the Constitution might be rendered a futile exercise.â??

From these four decisions, the following propositions emerges:

Â (1).It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if law on a particular

point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State.\

(2).The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the

highest Court in the State and they cannot ignore it either in initiating proceeding of deciding on the rights involved in such a proceeding.

(3).If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal

position in utter disregard of that position proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the

High Court and would amount to civil contempt as defined in section 2(b) of the Contempt Courts Act, 1971.â??

Thus, even the Division Bench has held that not following the law laid down by the High Court and disregarding the same would amount to

Civil Contempt as defined in Section 2(b) of the of the Contempt of Courts Act, 1971. However, in view of the unconditional apology

tendered by the concerned officer, which is accepted, no further order is passed.â??

12. Even in the case of Tarsem Singh (Supra), the Supreme Court in paragraph Nos.4 to 8 has observed as under:

â??4. The principles underlying continuing wrongs and recurring/ successive wrongs have been applied to service law disputes. A

`continuing wrong' refers to a single wrongful act which causes a continuing injury. `Recurring/successive wrongs' are those which occur

periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna S.P. Waghmare vs. Shree

Dhyaneshwar Maharaj Sansthan - [AIR 1959 SC 798], explained the concept of continuing wrong (in the context of Section 23 of

Limitation Act, 1908 corresponding to Section 22 of Limitation Act, 1963) :

31. It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act

responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing

wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury

caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the

injury caused by the wrongful act and what may be described as the effect of the said injury.

5. In M. R. Gupta vs. Union of India [1995 (5) SCC 628], the appellant approached the High Court in 1989 with a grievance in regard to

his initial pay fixation with effect from 1.8.1978. The claim was rejected as it was raised after 11 years. This Court applied the principles of

continuing wrong and recurring wrongs and reversed the decision. This Court held :

5. ...The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against

him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So

long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong

computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be

paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has

become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to

cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as,

promotion etc., would also be subject to the defence of latches etc. to dis-entitle him to those reliefs. The pay fixation can be made only on

the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his latches

and the bar of limitation. It is to this limited extent of proper pay fixation, the application cannot be treated as time barred.........

6. In Shiv Dass vs. Union of India - 2007 (9) SCC 277 Paras 8 & 10), this Court held:

â??8â?¦ The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and

public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the

effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is

invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the

High Court in deciding whether or not to exercise such jurisdiction.

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay

in filing the petition.......... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or

restrict the relief which could be granted to a reasonable period of about three years.

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and latches (where remedy is sought by

filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the

said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong

creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative

decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties,

then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in

spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting

others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery

of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict

the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment

of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before

the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on

arrears in such circumstances.â??

13. For the aforesaid reasons, all these petitions are allowed. The respondents are directed to see that the petitioners are sanctioned medical

allowance and the same is paid to the petitioners alongwith monthly pension in accordance with the directions issued by this Court in the case of

Special Civil Application No.12918/2010. That exercise shall be completed within a period of two months from the date of receipt of copy of the order

and the payment should be made with arrears from the date of filing of the petition. Rule is made absolute to the aforesaid extent. Direct Service is

permitted.

