IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10012 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
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HIRBAI WD/O LATE KASAMBHAI ISMAILBHAI SAMEJA & ANR.
Versus
MUNICIPAL CORPORATION OF MORBI

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Appearance:
DECEASED LITIGANT THROUGH LEGAL HEIRS/ REPRESTENTATIVES for the Petitioner(s) No. 1
MR ANAND B GOGIA(5849) for the Petitioner(s) No. 1.1
MR BB GOGIA(5851) for the Petitioner(s) No. 1.1
MS KAJAL L KALWANI(6623) for the Petitioner(s) No. 1.1
MR HARIBHAI PATEL FOR MR DEEPAK P SANCHELA(2696) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

Date : 12/03/2026
JUDGMENT

1. Rule returnable forthwith. Mr.Haribhai Patel, learned advocate, waives service of Rule on behalf of the respondent. With the consent of learned advocates for the parties, the matter is taken up for hearing.

2. Heard Mr.Anand B. Gogia, learned advocate for the petitioner and Mr.Haribhai Patel, learned advocate for the respondent.

3. The present petition is filed under Article 226 of the Constitution of India, seeking the following reliefs :

> *"A. YOUR LORDSHIPS may be pleased to admit the petition.*
>
> *B. Respondent may please be directed by writ of mandamus or by any other appropriate writ, orders, directions to release the pension / family pension to the Petitioner from the date of retirement of deceased employee / husband of the petitioner and from the death of her husband along with interest at the rate of 9% and may further be pleased to direct to adjust / recover their amount of contribution of CPF / difference and gratuity, if any, from arrears of pension payable to the petitioner and may continue paying her family pension in accordance with pension scheme."*

SHORT FACTS OF THE CASE :

4. The short facts of the case appear to be that the husband of the original petitioner was serving in the respondent-Municipality and came to be retired on 29/02/1995. At that point of time, undisputedly, there was no pension scheme framed by the respondent. Later in point of time, a pension scheme and its rules were framed by the respondent-Municipality. As per Rule 3 of such Pension Rules, such pension rules came into effect from 01/04/1995 and it would apply to full time and permanent employees of the Corporation working as on 01/04/1995.

4.1 The public notices came to be issued by the respondent-Municipality on 26/02/1999 and 03/04/1999, calling upon the employees concerned to submit their option as to whether they are opting for the pension scheme or not.

4.2 The husband of the original petitioner appears to have submitted an option form on 23/03/1999. The respondent-

Municipality denied the case of the husband of the original petitioner when it passed an order on 09/10/2003, whereby the list of eligible employees was published. The reason for not granting the benefit of option of pension under the said pension rules to the husband of the petitioner was that he had already retired from service prior to 01/04/1995.

4.3 It appears that during his lifetime, the employee - husband of the petitioner, did not thought it fit to approach this Court by way of any petition. Furthermore, he died on 04/01/2006 and the present petition is filed in the year 2018 by his widow seeking pension and family pension from the respondent. Furthermore, there is nothing on record to show that prior to filing of this petition, the original petitioner ever approached the respondent-Municipality in regard to the claim of any pension or family pension, etc.

4.4 The original petitioner – widow died during pendency of this petition, survived by her legal heirs – children. Thus, present petition is pursued by children of deceased – employee.

SUBMISSIONS OF THE PETITIONER :

5. Mr. Gogia, learned advocate for the petitioner, would submit that as the husband of the original petitioner was a permanent employee of the respondent-Corporation, he was entitled to receive pension and accordingly, the original petitioner was also entitled to receive family pension until she alive, which was wrongly denied by the respondent.

5.1 Mr. Gogia, learned advocate, would further submit that the public notices issued by the respondent clearly indicate that employees of the respondent-Municipality appointed prior to 01/04/1995 are also covered under the pension scheme floated by the respondent. It is submitted that once the husband of the petitioner was allowed to submit an option form in regard to obtaining the benefit of pension and as such, the same was processed by the respondent, later on, the respondent cannot be permitted to absolve from its liability to pay pension/family pension.

5.2 Mr. Gogia, learned advocate would further submit that the reason assigned by the respondent in rejecting the claim of the husband of the petitioner *vide* its order dated 09/10/2003 is erroneous and perverse, inasmuch as the husband of the petitioner may be retired prior to 01/04/1995; but being a permanent employee, as per the advertisement issued by the respondent-Corporation, he would be covered under it.

5.3 Mr.Gogia, learned advocate would further submit that in the aforesaid public notices, in the footnote, it was specifically observed that the Establishment Department will have to intimate about the said option form to the retired employees of the respondent. This would mean that all retired employees of the respondent are covered under the pension scheme.

5.4 Making the above submissions, Mr.Gogia, learned advocate for the petitioner, would submit to this Court to allow the present petition.

SUBMISSIONS OF THE RESPONDENT :

6. *Per contra*, Mr. Haribhai Patel, learned advocate for the respondent, would submit that the present petition may be dismissed on the ground of delay and laches, as the husband of the petitioner retired in the year 1995 and the present petition seeking the benefit of pension was filed in the year 2018.

6.1 Mr. Patel, learned advocate, would further submit that at no point of time, the respondent ever prepared any pension paper or processed it as claimed in the petition. It is submitted that the averments made in para 13 and 14 of the reply filed by the respondent are not controverted; thereby, it is clear that this Court has been misguided and misled by the original petitioner in regard to the averments made insofar as Annexure-C is concerned.

6.2 Mr.Patel, learned advocate would further submit that as per the pension rules framed by the Municipality, only those employees who are working full time and permanent as on 01/04/1995 are covered under pension scheme. It is submitted that as the petitioner has not challenged the pension rules framed by the respondent, no liability would attach to the respondent to pay the pension to its employee who retired prior to 01/04/1995.

6.3 Mr. Patel, learned advocate would further submit that there is a complete misreading on the part of the petitioner in

regard to the public notices issued by the respondent-Municipality, inasmuch as the public notices only speak that the option form is available to an employee engaged prior to 01/04/1995 and it would not speak remotely that it would apply to retired employees who retired prior to 01/04/1995. It is submitted that Mr.Gogia, learned advocate for the petitioner, relied upon the footnote of public notice would also not indicate that it also applies to retired employees prior to 01/04/1995, inasmuch as it came to be published in the year 1999, whereby the employees retired between 1995 to 1999, require to be informed by the Establishment Department of the respondent.

6.4 Making the above submissions, Mr.Patel, learned advocate for the respondent would submit to this Court to dismiss the present petition.

ANALYSIS :

7. Having heard the learned advocates for the respective parties and upon perusal of the pleadings and documents, it is not in dispute that the husband of the original petitioner was a permanent employee of the respondent who retired from the service of the respondent on 29/02/1995. The pension scheme was framed by the respondent in the year 1999 and as per Rule 3 of Pension Rules, it is applied to the full time and permanent employees of the respondent serving as on 01/04/1995. The aforesaid Rule 3 of the Pension Rules reads thus:

> *"3) <u>These rules come in to force from 1- 4-1995: The full time and permanent employees on the above mentioned date shall have to give option in writing within 3 (Three) Months after the sanction of these rules by the Director of Municipalities</u>. The employees who have joined the Provident Fund Scheme of the Municipality can join Pension Fund Scheme from retrospective date of their joining the Pension Scheme.*
>
> *The Pension Fund Scheme of the Municipality shall apply to those who join the service after the sanction of these rules automatically.*
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> *Once the option is offered it shall be treated as final and binding."*

8. A bare reading of the aforesaid rule would clearly indicate that those permanent employees who were working as on 01/04/1995 would stand covered by the pension scheme framed by the respondent.

9. The main emphasis of the petitioner to claim pensionary benefit is on basis of two public notices published by the respondent on 26/02/1999 and 03/04/1999, respectively. I have minutely gone through the aforesaid notices published by the respondent, but nothing fruitful comes out in favor of the original petitioner. The latter portion of the aforesaid notice would only indicate that those employees engaged prior to 01/04/1995 shall have to immediately opt for the pension form and to submit the option form. This would not mean that it would apply to employees retired prior to 01/04/1995.

10. The footnote of the aforesaid advertisement would also not carry the case of the petitioner any further, inasmuch as it

only indicates that the Establishment Department of the respondent requires to intimate retired employees of the respondent about the pension form. The aforesaid public notices came to be published in the year 1999, whereby the employees of the respondent who retired between 1995 and 1999 were eligible to get the benefit of pension form and only that class of employees were required to be intimated by the department concerned, unlike the husband of the petitioner, retired on 29/02/1995.

11. In any case, the right of the employee of the respondent to claim pension would be governed by the Pension Scheme and its Rules framed by the respondent. The claim of the pension of husband of the petitioner is not covered as per Rule 3 of the said Pension Scheme/Rules. Thus, in view of the foregoing, I do not find any illegality or irregularity committed by the respondent in rejecting the claim of the husband of the petitioner when it passed the order dated 09/10/2003. The reason for not granting pensionary benefit to the husband of the petitioner was that he retired from service prior to 01/04/1995.

12. Apart from the aforesaid, there is a huge delay in approaching this Court by way of this petition, as the husband of the petitioner, who applied to opt for pensionary benefit in 1999, died in the year 2006 and until then, he had not thought it fit either to submit a representation to the respondent or to approach this Court, as the case may be. Likewise, after his demise, the original petitioner, being the widow of the retired

employee, took almost 12 years to approach this Court, that too without submitting any proof to show that prior to approaching this Court, at any given point of time, she had approached the respondent making the claim for pension/family pension.

13. Lastly, during the course of arguments, it was submitted by Mr.Patel, learned advocate for the respondent, that Annexure-C, which is placed on record, is a got-up document, as there is no seal of the respondent-Corporation on it. It is also submitted that at no point of time, the respondent prepared the pension papers of the husband of the original petitioner. There is substance in said argument; prima facie, this Court may be swayed by the fact that once the respondent had prepared the pension papers of husband of original petitioner, it is unclear why his claim of pension was then denied.

14. This Court vide its order dated 09/03/2026, passed the following order :

> *"[1] The matter was argued threadbare by the learned advocates for the respective parties.*
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> *[2] The Court has drawn the attention of para-13 & 14 of the affidavit in reply filed by the respondents and drawn attention of Mr. Gogia, learned advocate for the petitioner that as such, there is no specific denial to such facts stated in para-13 & 14 of the reply in the rejoinder filed by the petitioner. Furthermore, the copy of Annexure-C, is a typed copy, which speaks of preparation of pension papers by the respondent but the original is not produced wherefrom it can be confirmed as to whether the respondent has in fact prepared it.*

[3] Mr. Gogia, learned advocate requests for one day accommodation to get proper instructions.

[4] S. O. to 10th March, 2026. List on top of the board."

15. Apropos the aforesaid order, Mr.Gogia, learned advocate for the petitioner, would only submit that the original petitioner died during the pendency of this petition and the rejoinder is filed by one of the legal heirs, being the daughter of the original petitioner, who may not be aware of all the facts, including the existence of Annexure-C. This Court would have gone further deep into the matter, as no misstatement or misleading statement can be entertained by this Court and as such, no discretionary relief can be granted in favor of the petitioner if it is found that there is an attempt on the part of the petitioner to make a false or incorrect statement. Yet, this Court would not like to take such recourse by dismissing this petition on this ground alone, as the issue pertains to the pension/family pension of the petitioner, who is no more surviving.

16. In view of the foregoing reasons and conclusions, I do not find any merit in the present petition. Accordingly, the present petition is dismissed, albeit with no costs. Rule is discharged.

(MAULIK J. SHELAT, J)

GAURAV J THAKER

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: GAURAVKUMAR JANARDANBHAI THAKER(HC00951), Principal Pvt. Secretary, at High Court of Gujarat on 12/03/2026 11:37:22