

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 5401 of 2024**

With
CIVIL APPLICATION (FOR BRINGING HEIRS) NO. 1 of 2026
In R/SPECIAL CIVIL APPLICATION NO. 5401 of 2024

FOR APPROVAL AND SIGNATURE:**HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**

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Approved for Reporting	Yes	No

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JYOTIBEN JAYANTILAL JANI WD/O JAYANTILAL REVASHANKAR JANI
Versus
STATE OF GUJARAT & ORS.

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Appearance:

MR GM AMIN(124) for the Petitioner(s) No. 1
MS VIRAL N MODI(11024) for the Petitioner(s) No. 1
MS NIDHI VYAS ASSTT. GOVERNMENT PLEADER for the Respondent(s)
No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 2,4
RC JANI & ASSOCIATE(6436) for the Respondent(s) No. 3

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**Date : 03/09/2026****JUDGMENT****CIVIL APPLICATION NO.1 of 2026:**

Present Civil Application is preferred by the applicants, for joining them as legal heirs of the original petitioner, who expired on 25.03.2025 during the pendency of the main writ petition and to condone the delay of 34 days caused in filing the application.

Considering the averments stated in the application, the delay is hereby condoned. The applicants being children of the original petitioner,



who expired during the pendency of the main petition, are permitted to join as petitioner Nos.1/1 and 1/2 in the main writ petition. Hence, the present Civil Application is allowed. Appropriate amendment to be carried out forthwith.

SPECIAL CIVIL APPLICATION No.5401 of 2026:

1. Heard learned advocate Mr. G.M. Amin for the petitioners, learned AGP Ms. Nidhi Vyas for the respondent No.1 – State, learned advocate Mr. Vistrut Jani for RC Jani & Associates for the respondent No.3. Though served, none appears on behalf of the respondent Nos.2 and 4.

2. The present petition is preferred praying for the following reliefs:

- (A) *Be pleased to admit and allow this Special Civil Application.*
- (B) *Be pleased to issue appropriate writ or direction calling upon the respondents to fix pension of the petitioner's husband and be pleased to direct the respondents to pay arrears of pension with running interest of 18 per cent per annum.*
- (C) *Be pleased to issue appropriate writ or direction calling upon the respondents to fix family pension and be pleased to direct the respondents to pay arrears of family pension with running interest of 18 per cent per annum.*
- (D) *Be pleased to issue appropriate writ or direction calling upon the respondents to fix interim pension to the petitioner during the pendency and final hearing of the present petition.*
- (E) *Be pleased to pass any other just and proper order as deemed fit in favour of the applicant.*

3. In the normal course, while it would have been effortless for this Court to have decided the present petition, more particularly considering decision of this Court dated 03.11.2023 in Special Civil Application No.19350 of 2024 and allied matters, which were in the group of the



petitions, where identical reliefs were sought for, yet since attention of this Court has been drawn to an order of the learned Coordinate Bench dated 10.10.2024 in Special Civil Application No.6490 of 2024 and in an identically situated petition, therefore, the issue would have to be appreciated and dealt with independently on its own merits.

4. It is the case of the petitioners that her late father was appointed originally as a Work Charge Technical Assistance in the office of the Executive Engineer, District Irrigation Department, Ahmedabad District, vide order dated 26.06.1967. It is the case of the petitioners that the State has created the Gujarat Water Resources Development Corporation in the year 1978 and whereas employees serving in the Irrigation Department or different District Panchayat and other agencies were transferred to the said newly formed Corporation w.e.f. 16.06.1978. It is the case of the petitioners that the services of her late husband had also been transferred to the Corporation. It is the case of the petitioners that the Irrigation Department of the State had issued a Resolution dated 14.10.1981, whereby employees, who had been transferred to the Corporation, were required to exercise their option as regards continuing with the Corporation or being repatriated to their parent department. The Resolution also laid down a negative condition that if any employee did not exercise his option then the employee would be treated as having chosen for continuing with the Corporation. The Resolution also inter alia laid down that the employee, who had been transferred to the Corporation, were to be treated as employee of the State Government upto 13.12.1981. Later on, it appears that the Corporation had clarified that the employees who wanted to be repatriated would be not entitled for deputation allowance.

5. It is case of the petitioners that the father of the petitioners had chosen not to be repatriated and had not exercised any option and



therefore, as per the terms of the Resolution, the late father of the petitioners was treated as having opted to remain with the Corporation. It requires to be mentioned at this stage that the original deceased petitioner in the petition has averred that the petitioner is not aware about whether husband of the petitioner had exercised any option or not, yet perusal of the communication dated 20.12.2023 reveals that the husband of the original deceased petitioner has retired from the respondent No.3 i.e. the Corporation, thus implying that the employee had either not exercised any option or had exercised option to continue in the Corporation i.e. both contingencies the resultant effect being the same. It is the case of the petitioners that the services rendered by late husband of the prior to being transferred to the Corporation had to be considered for the purpose of pension and the same is required to be granted with arrears.

6. Heard learned advocate Mr. G.M. Amin for the petitioners, who would submit that the issue in question i.e. as regards entitlement of the employee for considering the period prior to the transfer to the Corporation being treated as qualifying services for the purpose of pension, is no more *res integra*. Learned advocate would submit that this Court in various decisions starting from the decision rendered in Special Civil Application No.6690 of 1989 dated 11.08.2000, decision dated 17.03.2016 in Special Civil Application No. 16887 of 2014 as confirmed by decision of Division Bench dated 28.07.2017 in Letters Patent Appeal No.307 of 2017 as well as decision of the learned Coordinate Bench dated 07.03.2011 in Special Civil Application No.5925 of 2001 affirmed by the Division Bench in Letters Patent Appeal No.1552 of 2009 dated 13.09.2012 had taken a view in case of identically situated employees that the period when the employee was working in the District Panchayat, even though less than 10 years should be counted for the purpose of granting pension. Learned advocate would submit that since the law on the present issue is settled in identical set of



facts, even if there has been any deviation by the learned Coordinate Bench, it is requested that this Court may pass order on the line as have been passed by the learned Coordinate Benches as referred to herein above.

7. On the other hand, the present petition is opposed by the learned AGP Ms. Nidhi Vyas on behalf of the respondent State. Learned AGP would rely upon the decision of a learned Coordinate Bench dated 10.10.2024 in Special Civil Application No.6490 of 2024, where in identical set of facts, learned Coordinate Bench had rejected the petition on the ground of delay. In alternative, learned AGP would further submit that in case, this Court were inclined to grant prayer as prayed for in the present petition, then the period of arrears may be circumscribed i.e. for a period of 3 years prior to filing of the present writ petition since the petitioners have chosen to approach this Court belatedly.

8. Considering the submissions made by the parties, it becomes apparent that late husband of the original deceased petitioner having continued with the Corporation, had retired from the service of the Corporation. The issue being as to the period when the late husband of the original deceased petitioner was working with the Panchayat prior to the transfer and absorption of the late husband of the original deceased petitioner with Gujarat Water Resources Development Corporation. As noticed hereinabove, as per the term of the Resolution dated 14.10.1981, the period, which such person had served with Panchayat was to be treated as period in Government servant and whereas the issue is as to whether the petitioners would be entitled to family pension for such services rendered by her husband. It appears in this regard that the issue had come up for the first time in the writ petition being Special Civil Application No. 6690 of 1989, which had been decided by a learned Coordinate Bench (the then Hon'ble Chief Justice of this Court) vide the decision dated 11.08.2000. It



would appear that the learned Coordinate Bench had inter alia held that the period of service prior to the service of employee with the Corporation i.e. rendered with the Panchayat was directed to be counted for the purpose of granting pensionary benefit.pATHAK

9. The law laid down by the learned Coordinate Bench had later on been followed by another learned Coordinate Bench (Mr. J.B. Pardiwala, as his Lordship then was) in decision dated 17.03.2016 in Special Civil Application No.16887 of 2014 and whereas the said decision having been assailed before the Division Bench, the Division Bench vide decision dated 28.02.2017 in Letters Patent Appeal No.307 of 2017 had confirmed the decision of the learned Coordinate Bench dated 17.03.2016. It would also appear that in similar set of petitions, this Court vide an order dated 0311.2023, had directed the respondents State to examine the case of each of the petitioners in the said group of petitions, in consultation with the Corporation and District Panchayat and had directed that if the petitioners therein were fulfilling the parameters laid down by the Division Bench of this Court in decision dated 28.07.2017 rendered in Letters Patent Appeal No.307 of 2017 then the benefits as conferred to the employee in the said decision should be conferred to the petitioners before this Court.

10. It appears that in the interregnum i.e. the recently a decision has been taken by a learned Coordinate Bench dated 10.10.2024 in Special Civil Application No.6490 of 2024, whereby the petition of an identically situated petitioner i.e. who had worked with the District Panchayat and his service being transferred to the Corporation, had sought similar set of reliefs and whereas vide decision referred to, learned Coordinate Bench had dismissed the petition on the ground of delay.

11. In this regard, this Court is inclined to reproduce observations of

learned Coordinate Bench dated 07.03.2011 passed in Special Civil Application No.5925 of 2001 affirmed by Division Bench in Letters Patent Appeal No.1552 of 2009, which had been relied upon by the Coordinate Bench, while passing decision dated 17.03.2016. The observations of the learned Coordinate bench vide judgment dated 17.03.2016 at paras 6 and 7 are reproduced herein below for benefit:

“6. I need not adjudicate this issue in details as the case in hand is squarely covered by the judgment of this Court dated 7th March, 2011 passed in the Special Civil Application No.5925 of 2001 and also affirmed by the Division Bench in the Letters Patent Appeal No.1552 of 2009. An almost identical issue had come before this Court wherein the petitioners were appointed as Tubewell Operators. I may quote the entire judgment of this Court dated 7th March 2011 as under:

“2. The facts relevant for the purpose of deciding the present petition are summarized as under :-

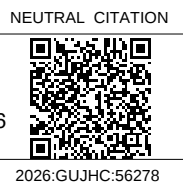
The petitioners were appointed as Tube Well Operators and were working with respondent No. 1 Panchayat. The details of date of appointment and the period for which they worked with the Panchayat can be summarized in a tabular form as under :-

S. No	Name	Name of office	Date of appointment	Date of transfer	Temporary date	Date of service put in with Panchayat (yy-mm-dd)
1	Modi Natvarlal Narottamdas	Deodar	21.01.69	16.07.78	19.6.91	09-05-00
2	Soni Nagjibhai Vaikuntlal	Tarad	19.04.69	--	17.2.72	09-02-28
3	Patel Amratbhai	Deodar	21.01.69	--	1.8.79	09-05-25

	<i>Dhanjibhai</i>					
4	<i>Koli Chamanji Jagsiji</i>	<i>Tharad</i>	<i>20.04.70</i>	--	<i>17.2.72</i>	<i>08-03-05</i>
5	<i>Chauhan Prabhuji Badarji</i>	<i>Tharad</i>	<i>01.01.70</i>	--	<i>17.2.72</i>	<i>08-08-15</i>
6	<i>Modi Kantibhai Shanerbhai</i>	<i>Deodar</i>	<i>23.03.69</i>	--	<i>17.2.72</i>	<i>09-04-25</i>
7	<i>Makwana Versinhji Devsinhji</i>	<i>Deodar</i>	<i>01.12.69</i>	--	--	<i>08-09-15</i>

The petitioners alongwith other employees working on tubewells came to be transferred en bloc to the newly formed Gujarat Water Resources Department. While in service of the Corporation, pay-scales were revised with effect from 1.1.1973 under the 2nd Desai Pay Commission. The Pay Commission also recommended terminal and pensionary benefits to be granted to all categories of employees who have completed five years of service. The Pension Rules, however, required completion of minimum ten years of qualifying service. The grievance of the petitioners as raised in the petition is that at the time when they were transferred to the Corporation, they had put in about 9 years and a few months of service falling short of hardly 4 to 5 months for completion of ten years of qualifying service. The petitioners would be entitled to the pensionary benefits only if they have put in minimum ten years of qualifying service.

3. The question involved in this petition appears to be squarely covered by the judgment rendered by a learned Single Judge (the then Chief Justice of this Court) dated 11.8.2000 in Special Civil Application No. 6690 of 1989. The question is whether the period of service rendered by the petitioners in the Corporation can be counted towards total period of service for the purpose of claiming pensionary benefits from the State in the Panchayat services. This issue was answered in the affirmative by the learned Single Judge while deciding Special Civil Application No. 6690 of 1989. While deciding this issue, the Court observed as under :-



“Learned counsel for the petitioner placed reliance on two resolutions of the Government dated 10.6.1976 and 14.10.1981. On reading relevant part of the resolution, dated 14.10.1981, learned counsel points out that it was noticed subsequently by the Government that employees whose services were transferred cannot be treated as absorbed in the service of Corporation until they are made to exercise their option for transfer of service. The employees transferred from different departments to the Corporation were, therefore, directed to be given option for absorption in the service of the Corporation. The resolution also directs that so long as employees do not exercise their option, they would be treated to be as on deputation in the service of the Corporation. Reliance is ultimately placed on para 7 of the resolution, dated 14.10.1981 and part of para 9, relevant part whereof reads as under:

"9. All the three categories of officers and employees mentioned above who were working in the erstwhile Directorate on or before 10.6.1976 are only entitled for exercising option and they should, therefore, exercise their option within a period of two months from the date of issue of this G.R. in the prescribed form appended to this G.R. The options received thereafter will not be entertained under any circumstances.

The above orders also apply mutatis mutandis to all the employees of the district panchayats who have been transferred en bloc to the Corporation along with the tubewells activities and they should also, therefore, exercise their options likewise subject to the same condition till the expiry of the stipulated period of two months given for exercising options and in the event of their exercising option to remain with the Corporation, they will be deemed to have severed all connections with the State Government service from the date of completion of the period of two months given for exercising option under this Government resolution."

Learned Assistant Government Pleader appearing for the State in his reply submitted that the resolution is of no avail to the petitioner as he was working as work-charge tubewell operator and such option was available only to regular employees. It is submitted that when the entire tubewell work stood transferred to the Corporation, the work-charge employees could claim no right of option to remain in service of the Panchayat and were compulsorily transferred en bloc to the Corporation.

It is not in dispute that total service period of the petitioner in the service of Panchayat is 9 years - 4 months and 11 days, which is



short only by a few months to be able to claim pensionary benefits for which minimum qualifying period of service prescribed is ten years.

The short question that arises before me is, as to whether the petitioner is entitled to take the benefit of resolution, dated 14.10.1981 and seek addition of period of his service in the Corporation for claiming pensionary benefits. Relevant part of resolution has already been quoted above. It is not made clear in the resolution dated 14.10.1981 that work-charged employees are outside its purview. Even if the petitioner was work-charged employee, he could have claimed a right not to seek transfer to the Corporation service but to seek employment elsewhere. Since his services were compulsorily transferred without taking any option from him under the resolution dated 14.10.,1981 along with other employees transferred from different departments, he would be deemed to be work-charged employee on deputation from the service of the Panchayat to the services of the Corporation. Period of service, therefore, spent by him in the Corporation has to be added to his pensionary service. It is also not in dispute that the petitioner on attaining superannuation age of 58 years, has retired on 30.4.1988 and before his retirement, had not exercised any option to be absorbed in the services of the Corporation. Subsequent resolution on which reliance has been placed on behalf of the State, therefore, cannot be made applicable to him as the same has been issued after his retirement.

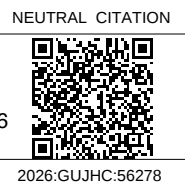
As a result of the discussion above, the petition succeeds and is hereby allowed. Respondents Nos. 1 and 3- i.e. Panchayat Department represented through the District Development Officer and Director of Pension and Provident Fund, Government of Gujarat, are directed to entertain the claim of the petitioner for fixation of his pension and allow him pensionary benefits by treating him to have completed ten years of qualifying service. Since the petitioner retired in 1988, on his making suitable approach in writing to the concerned authorities (respondents Nos. 1 and 3), within a period of one month, necessary orders in his favour would be passed to enable him to obtain pension within outer limit of three months from the date of receipt of representation. His pension be fixed from the due date and arrears to be also paid to him. Rule is made absolute to the aforesaid extent. There shall be no order as to costs."

4. *It is also brought to my notice that the said judgment and order passed by the learned Single Judge was a subject matter of challenge in Letters Patent Appeal No. 831 of 2000 preferred by the District Development Officer. The*

challenge failed in the appeal and the judgment and order of the learned Single Judge was confirmed. In this view of the matter, no extensive discussion is necessary in this regard. However, learned AGP Ms Krina P Calla has brought to my notice an identical petition being Special Civil Application No. 3372 of 2001 wherein the same issue was involved and the same reliefs were prayed for and the said petition was rejected on the ground of delay vide order dated 30.1.2009.

5. *Be that as it may. In the facts and circumstances of that particular case, the learned Single Judge may have thought fit to reject the petition. However, so far as the aspect of delay is concerned, I cannot be oblivious of the fact that what is being prayed for by the petitioners is for pensionary benefits. Even otherwise, having regard to the facts of the case and their date of retirement and filing of the petition, there does not appear to be any gross or inordinate delay. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. The Supreme Court in the case of **Union of India vs. Tarsem Singh**, reported in (2008) 8 SCC 648 has observed as under :-*

“7. To summarise, normally a belated served related claim will be rejected on the ground of delay and laches (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 reopening 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 refixation 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. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the 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.



6. *Way back in 1974, a Constitution Bench of the Supreme Court in the case of **RS Deodhar vs. State of Maharashtra**, reported in AIR 1974 SC 259, has taken the view that the rule which says that a Court may not inquire into belated or stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion, and there is no inviolable rule that whenever there is delay the Court must necessarily refuse to entertain the petition. Each case must depend on its own facts. Applying the principles as explained by the Supreme Court on the issue of delay, and taking note of the fact that by granting reliefs as prayed for, I am not disturbing the rights which have accrued to others by reason of delay in filing the petition, the reliefs as prayed for deserves to be granted. Had it been such a case, probably the Court would be justified in not entertaining the petition on the ground of delay. However, in the present case, the petitioners hailing from lower strata of society having put in years of service are claiming for their pensionary rights.*

7. *In this view of the matter, the petition deserves to be allowed and the same is allowed. The respondents are directed to entertain the claim of the petitioners for fixation of their pension and allow them the pensionary benefits by treating them to have completed ten years of qualifying service. Since the petitioners have retired, on their making suitable approach in writing to the concerned authorities (respondents Nos. 1 and 4), within a period of one month, necessary orders in their favour would be passed to enable them to obtain pension within outer limit of three months from the date of receipt of the representation. Their pension be fixed from the due date and arrears to be also paid to them.*

Rule is made absolute to the aforesaid extent. There shall be no order as to costs.”

7. *I may quote the order passed in the Letters Patent Appeal No.1552 of 2009 decided on 13th September, 2012 as under:*

“1. We have heard Mr G.M. Amin, learned counsel for the appellant, Mr H.S. Munshaw, learned counsel appearing for respondent No.1, Mr Rakesh R Patel, learned AGP for respondents No.2, 4 and 5 and Mr R C Jani, learned counsel appearing for respondent No.3. This LPA has been filed challenging the judgment of the learned Single Judge dated 30.1.2009 passed in Special Civil Application No.7066 of 1999.

2. The appellant was appointed as Tube Well Operator in work charge establishment on 17.10.1968 in the service of Ahmedabad Jilla Panchayat,



Ahmedabad. Respondent No.3 – Gujarat Water Resources Development Corporation (for short, 'Corporation') was created w.e.f. 8.6.1978. Thereafter services of the employees of Ahmedabad Jilla Panchayat (for short, 'Panchayat') stood transferred to the newly created Corporation and the employees including the appellant was treated on deputation as per Government Resolution dated 14.10.1981. It was also provided in this Resolution that services of the employees transferred from the Panchayat shall be treated to be on deputation with the Corporation till they are absorbed in the services of the Corporation. In the year 1981, options were invited and the appellant opted for pension and absorption in the services of the Corporation and he was absorbed in service on 14.12.1981. The appellant retired on 13.12.1996. The appellant claimed pension from the respondent-Panchayat on the ground that the appellant has worked for a period of 10 years in the Ahmedabad Jilla Panchayat and those employees who were working for a period of 10 years or more were entitled to pension from the Panchayat. It is not disputed that from 14.12.1981 when the appellant was absorbed in services of the Corporation no pension was payable to him.

*3. The argument of Mr H.S. Munshaw, learned counsel appearing for respondent No.1 is that the appellant's services were transferred to the Corporation on 8.6.1978 and, therefore, on that date, the appellant had not completed 10 years' service which is qualifying service for grant of pension with the Ahmedabad Zilla Panchayat. According to the learned counsel for the petitioner, he was on deputation with the Corporation till 13.12.1981 and, therefore, his services till 13.12.1981 has to be treated in his parent cadre i.e. Ahmedabad Jilla Panchayat. This question came up for consideration before the learned Single Judge of this Court in Special Civil Application No. 6690 of 1989 in the case of **Narubha Mahobatsinh Jhala v. District Development Officer & Ors.** decided on 11.8.2000 wherein the learned Single Judge took the view that till the work-charged employees of Ahmedabad Jilla Panchayat were absorbed in the services of the Corporation he was on deputation with the Corporation and, therefore, he has to be treated to be an employee of the Ahmedabad Zilla Panchayat and if he has completed 10 years of service prior to his absorption in the services of the Corporation then he would be entitled for pension. Operative portion of the order dated 11.8.2000 is reproduced hereunder:*

“As a result of the discussion above, the petition succeeds and is hereby allowed. Respondents Nos. 1 and 3 - i.e. Panchayat Department represented through the District Development Officer and Director of Pension and Provident Fund, Government of Gujarat, are directed to entertain the PANCHAYAT claim of the petitioner for fixation

of his pension and allow him pensionary benefits by treating him to have completed ten years of qualifying service. Since the petitioner retired in 1988, on his making suitable approach in writing to the concerned authorities respondents Nos. 1 and 3, within a period of one month, necessary orders in his favour would be passed to enable him to obtain pension within outer limit of three months from the date of receipt of representation. His pension be fixed from the due date and arrears to be also paid to him.”

*This decision of the learned Single Judge was affirmed in LPA No. 831 of 2000 in the case of **District Development Officer & Ors. v. Narubha Mahobatsinh Jhala** decided on 12.1.2005. Para No.5 of the said decision is reproduced as under:*

“5. Under the circumstances, when the learned Chief Justice of this Court allowed the petition of the original petitioner and directed the present appellant No.1-District Development Officer, Ahmedabad and original respondent No.3-The Director of Pension and Provident Fund, Government of Gujarat at Ahmedabad to entertain the claim of the petitioner for fixation of his pension and allowing him pensionary benefits treating him to have completed 10 years of qualifying service, then on peculiar facts and circumstances of the case, we would not like to interfere with such order in our Letters Patent Jurisdiction.”

The above decision became final and binding on the respondent - Panchayat namely Ahmedabad Jilla Panchayat. Therefore, the controversy involved in this case is squarely covered by the aforesaid decision and since the appellant remained on deputation with the Corporation till 13.12.1981 and joined services of Ahmedabad Jilla Panchayat in the year 1968, he completed more than 10 years of qualifying service and so he is entitled to pension from Ahmedabad Jilla Panchayat, consequently the appellant shall be paid. Therefore, Ahmedabad Jilla Panchayat, has to forward papers to respondent No.2 for payment of pension to the appellant.

4. Learned Single Judge has dismissed the writ petition filed by the appellant-petitioner on the ground that the petitioner should have claimed and challenged that he had completed more than 10 years' service in the year 1981 itself. According to learned Single Judge, the cause of action for getting his service calculated arose to the petitioner in the year 1981 and, therefore, the writ petition was barred by delay and laches. In paras 8,9 and 10 of the order, the learned Single Judge has observed as under:

“8. Heard the learned Advocate for the respective parties.

Admittedly earlier the petitioner was in Panchayat Department. It is only because of option given to him the petitioner was taken in the respondent Corporation. Admittedly, even according to the petitioner, the respondent is not entitled to pension after the period of 1981. Thus the claim of the petitioner is prior to 1981 which is claimed in the present petition. Even looking to the clauses of the Resolution of 1981 it is clear that the petitioner had no objection in opting the service with the Corporation, otherwise, the petitioner would not have got the employment as his services would have been terminated or retrenched.

In any case, the cause of action as contended in the petition is of the year 1981 and there is a gross delay in filing the petition which cannot be condoned in view of the settled legal position.

In the case of Shiv Dass v. Union of India and others, reported in AIR 2007 SC 1330 it is held that if petition is filed beyond reasonable period, say three years, normally Court would reject the same or restrict the relief. The learned Advocate had unsuccessfully argued that the cause of action has arisen in the year 1995, but on the facts it is otherwise.

9. It is required to be noted that in the year 1981 it would have been retrenchment and not a retirement, and therefore the petitioner would not have become eligible for pension.

10. In the premises aforesaid, I do not find any merits in this petition. This petition is, therefore, dismissed.”

In our opinion, the view taken by the learned Single Judge is not correct. The cause of action arose to the petitioner after retirement when the respondents failed to count his service of 10 years from 1978 till 1981 prior to the petitioner's absorption of service in the Corporation. Prior to it there was no question of payment of any pension. Therefore, the petitioner could not have raised any grievance for counting of service in 1981 itself. For the aforesaid, the order of the learned Single Judge cannot be maintained and deserves to be set aside. We may make it clear that barring this the appellant will neither raise any other claim nor the respondent will entertain any such claim on the part of the appellant.

5. In the result this appeal succeeds and is allowed. The judgment of the learned Single Judge dated 30.1.2009 passed in Special Civil Application



No.7066 of 1999 is set aside. We hold that the appellant has actually worked with the respondent No.1 Ahmedabad Jilla Panchayat from 17.10.1968 to 13.12.1981 and he was entitled to pension from respondent No.1 as he has completed more than 10 years of qualifying service. The pension papers shall be prepared by respondent No.1 and sent to respondent No.2 within a period of 8 weeks from today and respondent No.2 shall in turn pass appropriate orders for payment of pension within a further period of 12 weeks. Parties shall bear their own costs.”

12. As noticed hereinabove, the decision dated 17.03.2016 had been affirmed by the Division Bench vide decision dated 28.02.2017 in Letters Patent Appeal No. 307 of 2017 and paras 13,14,15,16 being relevant for the present purpose are reproduced herein below for benefit:

“13. Having considered the submissions canvassed on behalf of the learned advocates appearing for the parties and having gone through the material produced on petitioners record, were it appointed emerges in the that the District Panchayat or in the Irrigation Department and because of the Resolution dated 08.06.1978 all the activities pertaining to tubewells/irrigation which were made under the Panchayat/Government, were transferred to the Corporation and entire staff including the petitioners came to be transferred to the Corporation and thereafter on 14.10.1981 resolution was issued respondent Government, whereby the options were invited and those employees who did not exercise their options were treated to be the employees of the Corporation. The concerned petitioners have served with the Corporation and on attaining the age of superannuation, they retired from service. At the time of retirement, the Corporation has granted all the retiral benefits including CPF, leave encashment, gratuity, etc. Thus, we are of the view that the direction issued by the learned Single Judge to the appellant Corporation to pay the pensionary modified by benefits clarifying is required that the to be appellant Corporation is not liable to pay the pensionary benefits to the petitioners. Orders accordingly.

14. However, so far as the appellant District Panchayat in Letters Patent Appeal No.307 of 2017 is concerned, the original petitioner in the said petition served with the District Panchayat for more than 8 years and 7 months. However, because of the resolution passed by the Government, services of the said petitioner were transferred to the Corporation and he was absorbed in the Corporation. The contention of the learned advocate Mr.



Munshaw that the petitioner has not completed qualifying service of 10 years is misconceived, as for calculating the qualifying service, the services rendered by the petitioner from the date of his initial appointment till the date of his retirement is required to be counted. However, it is to be clarified at this stage that when the petitioner has completed service of 8 years and 7 months, he is entitled to the benefit of pension for the said purpose of qualifying service is required period service to and his be for the continuous taken into consideration. Thus, we are of the view that all the petitioners benefits for are the eligible period for for pensionary which they have worked with the State Government or the District Panchayat, as the case may be.

15. At this stage, it is also required to be noted that the similar issue has been decided b23515y the Division Bench of this Court in an order dated 07.03.2011 passed in Letters Patent Appeal No.1552 of 2009 and order dated 10.04.2015 passed in Letters Patent Appeal No.1374 of 2011 and allied matters.

16. In view of t23515he aforesaid discussion and in view of the reasons recorded by the learned Single Judge, Letters Patent Appeal No.307 of 2017 is dismissed. Whereas, other Letters Patent Appeal filed by the Corporation are partly allowed by clarifying that the appellant Corporation is not liable to pay the pensionary benefits concerned petitioners, but the concerned District Panchayat and the the State Government, as the case may be, are liable to pay the pensionary benefits to the concerned petitioners. The other appeals are accordingly disposed of with aforesaid modification in the order of the learned Single Judge. Consequently, civil applications also stand disposed of.”

13. It would be apposite to reiterate at this stage that the there has been no contest on the fact that the employee in the aforementioned decision were identically situated to the late husband of the petitioner herein. It would thus, appear that the entitlement of the persons like the late husband of the petitioner had been upheld by the learned Coordinate Bench vide decision as far as back dated 11.08.2000 in Special Civil Application No.6690 of 1989 and whereas the said decision had also been affirmed by the Division Bench in Letters Patent Appeal No.831 of 2000. It also appears that the said view had been followed by another learned Coordinate Bench



vide judgment dated 07.03.2011 in Special Civil Application No.5925 of 2001 affirmed by the Division Bench in Letters Patent Appeal No.1552 of 2009. The said view had further been followed by the learned Coordinate Bench vide judgment dated 17.03.2016 in Special Civil Application No.16887 of 2014, affirmed by Division Bench vide decision dated 28.02.2017 in Letters Patent Appeal No.307 of 2017.

Thus, while decision dated 10.10.2024, whereby the learned Coordinate Bench had taken a different view and dismissed writ petition by an identically situated employee, is a decision by Bench of co-equal strength and in normal circumstances would be binding on this Court, yet since in identical situation, learned Coordinate Benches and the Hon'ble Division Benches have taken a view different than the view taken by Coordinate Bench in decision dated 10.10.2024 and since the earlier decisions being binding on this Court both on the ground of being decisions earlier than decision dated 10.10.2024 and also because there are decisions of Division Benches, therefore, this Court is bound by the said decisions.

There is no gainsaying to this Court that the decision of the learned Coordinate Bench as confirmed by the Division Benches are binding upon this Court. Judicial discipline and propriety require this Court to follow the decision of the learned Coordinate Benches and Division Benches, which are of earlier date than the decision dated 10.10.2024.

14. In so far as the aspect of delay, it would appear that the issue of delay not be a relevant factor in so far as recurring benefit are concerned, is also no more *res integra* and as such had been raised by the respondent before the learned Coordinate Bench in Special Civil Application No.6690 of 1989 decision on 11.08.2000, the same could be discernible from the quoted portion hereinabove, where the learned Coordinate Bench having referred

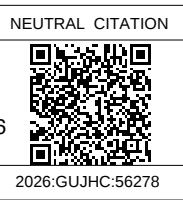


to the decision of the Hon'ble Supreme Court in case Union of India Vs. Tarsem Singh and in the case of R.S. Deodhar Vs. State of Maharashtra reported in 2008(8) SCC 644 and AIR 1974 SC 259 respectively has observed that the grant of pension could not be refused or rather the Court would not have justified in not entertaining a case for grant of pensionary benefit on the ground of delay, more particularly since it is continuing and recurring / successive wrong.

15. Hence, the submissions of learned AGP that the present petition should not be entertained relying upon the decision dated 10.10.2024 by the learned Coordinate Bench in Special Civil Application No.6490 of 2024 cannot be countenanced.

16. In so far as the second issue raised by the learned AGP that the period of arrears be circumscribed inasmuch as the benefits of arrears be paid to the petitioners only for period of three years prior to the writ petition, to this Court, such a submission cannot be countenanced.

17. While the law on this aspect is undoubtedly clear, more particularly the decision of the Hon'ble Supreme Court in case of Tarsem Singh referred to hereinabove, observing as much, yet to this Court, such an issue is neither open for the State to contend nor it is open for this Court sitting as a Single Judge to adjudicate. The reasons for this Court being that in the entire group of petitions referred to hereinabove, up till the last order of this Court dated 03.11.2023 in a group of writ petitions, where identical prayers had been sought and granted, at no point of time herein before, the State has raised this issue. Again neither the Coordinate Benches nor the Division Bench as the case may be has touched upon such an issue. When the employees identically situated to the late husband of the petitioner have received the entire benefits i.e. from the date of retirement / entitlement till



the date of payment, there is no reason for this Court to even delve into that aspect. Furthermore, it also appears to this Court that the the submissions on the part of State would be precluded by the doctrine of constructive *res judicata* i.e. to say that when the State had not sought for circumscribing the benefits for all these years in all the writ petitions referred to hereinabove starting from writ petitions of the year 1989, it is too late in the day for the State to now raise an issue of circumscribing the arrears of pensionary benefit in case of the present petitioners. Hence, to this Court, said submission cannot be countenanced and is hereby rejected.

18. Having regard to the observations made hereinabove, to this Court, it would appear that the following observations would meet with the ends of justice.

- (a) The period of services rendered by the late father of the petitioners with the Irrigation Department, is directed to be treated the period of qualifying services for the purpose of pension i.e. the period between 26.06.1967 till 14.10.1981. The respondents, more particularly the respondent Nos.2 and 3 are directed to calculate the pension as would have been available to the late husband of the original deceased petitioner from the date of retirement till the date of his demise and family pension to the petitioners after the date of demise of the late husband of the original deceased petitioner.
- (b) The exercise of calculating the pension and family pension and the arrears thereof, shall be completed within a period of four months from the date of receipt of this judgment and whereas the arrears shall be paid to the petitioners within such period.



- (c) The petitioners would be entitled to payment of family pension on regular basis thereafter.
- (d) It is clarified that in case, any amount of CPF has been paid to the late husband of the original deceased petitioner / petitioner for the period, when service of the petitioner rendered by the land husband of the original deceased petitioner with Irrigation Department, then said amount shall be adjusted from the arrears of pension and whereas the remaining amount of arrears, if any, shall be paid to the petitioner as directed hereinabove.
- (f) In case, a set off is to be given, appropriate opportunity shall be afforded to the petitioner for questioning the calculation.
- (g) The above exercise including payment of arrears to be completed within a period of 8 weeks from the date of decision is uploaded on the portal of the Gujarat High Court.

With this observations and directions, the present petition stands disposed of as allowed.

Y.N. VYAS

(NIKHIL S. KARIEL,J)