IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 465 of 2026

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

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Approved for Reporting	Yes	No
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YASMEEN WD/O NADIRBHAI DEVANI D/O BAHADURALI HASAMBHAI JIVANI
Versus
RAJKOT MUNICIPAL CORPORATION

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Appearance:
MR. GAURAV A. GOGIA(14128) for the Petitioner(s) No. 1
MS KAJAL L KALWANI(6623) for the Petitioner(s) No. 1
MR. MN MARFATIA(6930) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

Date : 04/08/2026

ORAL JUDGMENT

1. By way of the present petition under Article 226 of the Constitution of India, the petitioner, who is the widow of the deceased employee, has approached this Court seeking a direction to the respondents to fix and release the family pension payable on account of the death of her husband with effect from 27.08.2025, together with the consequential arrears and interest thereon.

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2. Heard learned advocate Mr. Gaurav A. Gogia for the petitioner and learned advocate Mr. M. N. Marfatia for the respondent. Since the controversy involved in the present petition lies within a narrow compass and the issue is no longer res integra, with the consent of the learned advocates appearing for the respective parties, the petition is taken up for final hearing at the admission stage.

3. Rule. Learned advocate Mr. M. N. Marfatia waives service of notice of Rule for and on behalf of the respondent.

4. The following undisputed facts emerge from the record:

4.1 The petitioner is the legally wedded wife of late Shri Devani Nadirbhai Mahamadali, who was serving as a Line Man in the Electrical Department of the Rajkot Municipal Corporation.

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4.2 The petitioner's husband retired from service on 30.04.2024 upon attaining the age of superannuation, after rendering 30 years, 7 months and 16 days of qualifying service for the purpose of pension. It is an admitted position that, at the relevant point of time, there were certain matrimonial differences between the petitioner and her husband. However, the marriage between them continued to subsist and was never dissolved by a decree of divorce.

5. It is the case of the petitioner that the respondent has failed to process and sanction the family pension in her favour on the ground that, during his lifetime, the petitioner's husband had submitted an affidavit requesting the respondent-authority not to release any retiral dues to the petitioner. It is further the case of the respondent that the petitioner's name was not mentioned in the nomination form and, instead, the names of the couple's two sons were recorded as nominees. Aggrieved by the aforesaid action of the

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respondent, the petitioner has approached this Court by filing the present petition seeking the following reliefs:

> *"8(A) YOUR LORDSHIP may be pleased to admit and allow this petition.*
>
> *(B) YOUR LORDSHIP may be pleased to hold, declare and direct that the Petitioner is entitled to family pension on account of death of her husband from the date of his death i.e., 27.08.2025. And the Respondent Authorities be directed to grant the family pension to the Petitioner with interest @9%.*
>
> *(C) Pending admission, hearing and final disposal of this matter, Your Lordship be pleased to pass appropriate orders to not withheld the payment of family pension, payable to the Petitioner in Para-4 of PPO issued in relation to the deceased husband of the Petitioner.*
>
> *(D) YOUR LORDSHIP may be pleased to grant such other and further reliefs as the nature and circumstances of the case require in the interest of justice."*

6. Since the aforesaid facts are not in dispute, the short question that falls for consideration before this Court is whether the petitioner, being the legally wedded wife of the deceased employee, is entitled to the benefit of family pension, notwithstanding the fact that, during his lifetime, the deceased had informed the respondent-authorities that he did not intend to confer any retiral

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benefits upon his wife and had nominated his two sons in the nomination form.

7. The aforesaid question in my view has no longer *res integra.* The Division Bench of this Court in case between ***Abedakhatun Y. Malek V/s. Director of Pension and Provident Funds and Others reported in 2011 LawSuit(Guj) 1442*** has in identical facts and circumstances held as under:-

> *"7. We have carefully perused the record and proceedings along with the order dated 14-10-2010 passed by learned Single Judge as well page Nos. 20 (21A, 21B and 21C) and page Nos. 22 (Page Nos. 23A, 23B and 23C), referred in the said order. It appears that though the disputes were surfaced of route between the pensioner and the appellant, the marriage had subsisted and after completion of 27 years of married life, it appears that both had started living separately. The appellant had started living with her eight children and also the appellant had brought them up with love and concern. It further appears that the nomination given by the pensioner, i.e. late Mr. Yashinmiya Malek, to his nephew and niece does not have an bearing on the fixation of the family pension for which primarily, the wife is only entitled for. So far as the Rules are concerned, the learned Counsel for the appellant has drawn our attention to Rule 88(a)(i) of the Gujarat Civil Services (Pension) Rules, 2002, which describes family means -*
>
> > *"88(a)(i) Wife in the case of a male Government employee or husband in the case of a female Government employee, even if the marriage took*

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place before or after retirement of the Government employee."

The learned Assistant Government Pleader has not denied the above legal position.

8. The learned Counsel has also put reliance on various citations, which are as under :-

(1) Jodh Singh Vs. Union of India (UOI) and Another, 1980 4 SCC 306, in which, it has been held that, "benefit of special family pension admissible under Regulation 74 of the Pension Regulations for Indian Air Force admissible to wife of the officer only in the event of the death of the officer and such benefit would be the exclusive property of his widow and the officer is not entitled to make testamentary disposition of the same during his lifetime."

(2) Rampyari Bai v. Municipal Corporation and Another, 1987 (Supp) SCC 263, where in it was found that, "there was no valid marriage and therefore, there could be no valid nomination in favour of the petitioner by the deceased for payment of family pension" and so the Hon'ble Apex Court had not interfered with. By citing the said decision, the learned Counsel for the appellant has submitted that whether the marriage was valid one and it was subsistence at the time of death of the pensioner, is the main criteria to be considered while deciding the question of family pension and there appears force in it.

(3) Smt Violet Issaac and Others Vs. Union of India (UOI) and Others, 1991 1 SCC 725, wherein it has been held that:

"....The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme

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confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make an contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee...."

(4) G.L. Bhatia vs. Union of India and Another, 1999 5 SCC 237. Relevant Paragraphs 3, 4 and 5 reproduced hereunder :

"3. Under Rule 54 sub-rule (14)(b)(i) the expression "family"' has been defined thus :

"54. (14)(b)(i) Wife in the case of a male Government servant, or husband in the case of a female Government servant..."

4. Sub-rule (8)(ii) of Rule 54 states that :

"54 (8)(ii) If a deceased Government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child."

5. In the light of the aforesaid provisions and there being no divorce between the husband and wife even though they might be staying separately, the appellant-husband would be entitled to the family pension in terms of the rules as noted aforesaid and the authorities, therefore, committed error in not granting family pension to the appellant relying upon the nomination made by the deceased wife of the appellant. The impugned order is, accordingly, set aside and this appeal stands allowed."

9. We have considered the above-referred legal position and we are agreeable to the submissions made by the learned counsel for the appellant, and in our view, the same are squarely applicable to the present case on hand. It appears that during the life-time of deceased pensioner Mr. Yashinmiya U. Malek, his marriage was subsisted and till he expired, no divorce has taken place between the deceased pensioner and the appellant. It is important to note that family pension is provided by statutory provisions

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and notifications and circulars issued by the competent authority from time to time and the concerned officials are supposed to follow the same. In the computation for the claim of family pension, it would not be open to decide the issue of desertion and to attribute the cause of desertion because the issue of desertion is never a criteria for granting and denying the family pension. For grant of family pension, the only consideration would be that the claimant ought to be legally wedded wife or husband of the pensioner and he/she be alive on the date of death of the pensioner. Even if the pensioner has nominated third person excluding his wife, then also, the right of the legitimate wife/widow to claim family pension cannot be brushed aside.

10. Considering the overall aspect of the case and considering the entire welfare scheme to provide family pension, the present appeal deserves to be allowed, and hence, it is allowed. Order passed by the learned Single Judge in Special Civil Application No.12800 of 2010 dated 14-10-2010 is hereby set aside. Respondent No. 3 as well as respondent No. 2 are hereby directed to retransmit the family pension case papers, related to present appellant, if at all the same are lying with them, to respondent No. 1 and on receiving the same, the respondent No. 1 is directed to fix the family pension of the appellant from the date of death of her husband within a period of two months following all due procedure for the same."

8. Upon perusal of the aforesaid enunciation of law, it emerges that the Division Bench of this Court has categorically held that family pension is governed by statutory provisions. It has further been held that, for the purpose of grant of family pension, the only relevant

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consideration is whether the claimant is the legally wedded wife or husband of the pensioner and was alive on the date of the death of the pensioner. Even if the pensioner has nominated a third person, excluding his wife, the right of the legally wedded wife or widow to claim family pension cannot be defeated or brushed aside. Keeping in view the aforesaid proposition of law and the admitted facts of the present case, it is evident that the marriage between the petitioner and the deceased continued to subsist till the death of the petitioner's husband. Admittedly, during his lifetime, no divorce proceedings were instituted, nor was any decree of divorce obtained. In view of the aforesaid facts and circumstances, the ratio laid down by the Division Bench squarely applies to the facts of the present case, there being no distinguishable feature pointed out by the respondent so as to warrant a different view.

9. Mr. Marfatia, learned advocate appearing for the respondent, fairly conceded that the ratio laid down by

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the Division Bench of this Court in Abedakhatun Y. Malek v. Director of Pension and Provident Funds and Others (supra) governs the controversy involved in the present case and was unable to dispute its applicability.

10. In view of the foregoing discussion, the present petition deserves to be allowed and is accordingly allowed. The respondent-authorities are directed to fix and release the family pension payable to the petitioner as expeditiously as possible and, in any event, not later than three months from the date of receipt of this order. Upon fixation of the family pension, the consequential arrears shall also be paid to the petitioner within a further period of three months. Rule is made absolute.

(NIRAL R. MEHTA,J)

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