



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 21884 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT *Sd/-*

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Approved for Reporting	Yes	No
		✓

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FARZANABANU MOHAMMADHANIF SHAIKH WD/O
MOHAMMADHANIF ABDULSAMAD SHAIKH
Versus
AHMEDBAD MUNICIPAL CORPORATION & ORS.

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Appearance:

AAKASH D MODI(7449) for the Petitioner(s) No. 1
MR EE SAIYED(725) for the Respondent(s) No. 3,4
MR HS MUNSHAW(495) for the Respondent(s) No. 1,2
MR SIKANDER SAIYED(3458) for the Respondent(s) No. 3,4

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 20/02/2026

ORAL JUDGMENT

[1] Heard Mr. Aakash D. Modi, learned advocate for the petitioner, Mr. H.S.Munshaw, learned advocate for respondent Nos.1 & 2 as also Mr. Sikander Saiyed, learned advocate for respondent Nos.3 & 4, at length.

[2] **RULE** returnable forthwith. Mr. Munshaw, learned advocate as also Mr. Sikander Saiyed, learned advocate, waive service of notice of Rule for and on behalf of the respective respondents.



[3] The present Writ Petition is filed under Articles 14, 21 and 226 of the Constitution of India, seeking the following reliefs:-

“15 (A) Your Lordships may kindly be pleased to issue a Writ of Mandamus and/or any other appropriate Writ, direction or order to quash and set aside order dated 17/18.05.2019 passed by the respondent No.2 Authority which is at Annexure-M to this petition.

(AA) Your Lordships may kindly be pleased to issue the Writ of Mandamus or any other appropriate Writ Order or direction to quash and set-aside order dated 14.05.2024 passed by the respondent NO.2 Authority which is Annexure-Q to this petition.

(B) Your Lordships may kindly be pleased to issue a Writ of Mandamus and/or any other appropriate Writ, direction or order to direct the present respondent corporation to extend the benefit of family pension and other incidental benefits to the present petitioner being legal heirs- widow of the deceased employee, as per the pension scheme of the Ahmedabad Municipal Corporation.

(C) Your Lordships may kindly be pleased to direct the present respondent corporation to pay the amount of arrears of pension from the date of the death of the deceased employee, alongwith interest @ 12% p.a. to the present petitioner.

(D) Pending admission, hearing and final disposal of this petition, Your Lordships may kindly be pleased to direct the present respondent corporation to pay provisional pension to the present petitioner.

(E) Your Lordships may kindly be pleased to pass any other further Order/s as are deemed fit, just and proper in the facts and circumstances of the case and in the interest of justice.”

[4] The short controversy is germane to this matter in



regard to the refusal of petitioner's claim by the Ahmedabad Municipal Corporation (for short '***the Corporation***') to receive a family pension upon demise of her husband who was a permanent employee of the Corporation.

[5] As per the case of the petitioner, one Mr. Mohammadhanif Abdulsamad Shaikh (hereinafter referred to as '***the deceased employee***'), married with petitioner on 05.12.2007 as per the rituals of Muslim law. The *Nikah Nama* is also submitted by the petitioner before the respondent - Corporation to claim benefits of family pension upon death of the deceased employee on 16.01.2011. Prior to marriage with the petitioner, the deceased employee married with one Rehanabanu, who died on 15.07.2007. Out of said wedlock (1st marriage), respondent Nos.3 & 4 were born.

[5.1] There appears some dispute as regards receipt of retiral dues between the petitioner as well as respondent Nos.3 & 4, happen to be children of deceased employee. The family settlement appears to have been arrived at between the parties, thereby, petitioner received a sum of Rs.2,00,000/- and rest of the retiral dues received by respondent Nos. 3 & 4 - children of deceased employee. So far as claim of family pension is concerned, the stance of the respondent - Corporation is clear that due to non-proving the legal marriage by the petitioner with the deceased employee, the same cannot be granted.

[5.2] The petitioner appears to have first approached this Court challenging such decision by way of Special Civil

Application No.16014 of 2016, wherein following order has been passed on 08.04.2019:-

"1.In the writ petition, the petitioner has prayed for issuance of appropriate writ, direction and order directing the respondent to extend the benefit of pension and other benefits to the petitioner being legal heir - wife of the deceased employee, as per the Pension Scheme of the Ahmedabad Municipal Corporation.

2. The brief facts of the case are as under:

3. It is the case of the petitioner that her husband Mohammadhanif Abdulsamad Shaikh, who was working in the Estate Department (Central Zone) of the Ahmedabad Municipal Corporation, as a Labourer, has passed away on 16.01.2011, while he was on duty.

3.1Late Mohd. Shaikh got married with Rehanabanu as per Muslim Rites and Rituals. Rehanabanu had passed away on 15.07.2007. Out of the wedlock of Rehanabanu and Mohd. Shaikh, one female child namely Fojia and one male child namely Mohammed Sohel Shaikh were born. The age of Fojia Imrankhan Pathan is 27 years and the age of Mohammed Sohel Shaikh is 26 years. Fojia is already married and she is residing with her husband and Mohammed Sohel Shaikh is also married and he is also residing separately with his family.

3.2 It is the case of the petitioner that she got married with Mohd. Shikh on 05.12.2007 as per the Muslim Rites and Rituals after the death of the first wife viz. Rehanabanu.

4. Learned advocate Mr.Akash Modi for the petitioner has submitted that the petitioner has already married on 05.12.2007, after the death of Rehanabanu, the first wife of Mohd. Shikh, hence she is entitled to family pension.

5. *He has submitted that respondent authority has not doubted the marriage of the petitioner with Mohd. Shikh and hence, as per the decision of the Division Bench of this Court in the case of Wallington Moses Macwan Vs. Municipal School Board, 2013(2) GLR 1510, the petitioner cannot be denied the family pension only on the ground that her name was not nominated by her late husband.*
6. *Learned advocate Mr.H.S.Munshaw for the respondent Corporation, upon instructions of the Deputy Chief Accountant(General) Preetha Sunil, has submitted that the Succession Certificate is required to be produced by the petitioner so that the pensionary benefits can be conferred. He has submitted that since there was no nomination of the petitioner and the corporation was not aware about the marriage of the employee Mohd. Shaikh with the petitioner, the petitioner cannot be straight way conferred the benefit of family pension as there might be other legal heirs who are entitled to family pension as per the provision of Section 91 of the Gujarat Civil Services (Pension) Rules, 2002 (GCSR).*
7. *In response of the aforesaid submissions, learned advocate for the petitioner has submitted that the production of Succession Certificate cannot be insisted upon for receiving family pension as it is neither the debt nor the security of the deceased employee. In support of his submissions, he has placed reliance on the Division Bench judgment of the High Court of Kerala at Ernakulam dated 09.07.2014 passed in Writ Application No.556 of 2014 in Writ Petition (Civil) No.29316 of 2013. As regards the contentions raised by the learned advocate Mr.Munshaw for raising of the claim of the other legal heirs, he has invited the attention of this Court to the Memorandum of Understanding (MoU) dated 13.06.2011 entered between the petitioner and the legal heirs of the first wife Rehanabanu and has submitted that as per the aforesaid MoU, the petitioner would be entitled to the family pension.*

8. *Heard the learned advocates for the respective parties.*
9. *It is not in dispute that the employee of the respondent Corporation viz. Mohd. Shiakh had passed away on 16.01.2011 and he was earlier married to one Rehanabanu, who had also passed away on 15.06.2007. It is the case of the petitioner that she married Mohd. Shaikh, after the death of his first wife on 05.12.2007 and accordingly, in support of her case, she has also produced Nikahnama of the same date.*
10. *It is also not in dispute that the respondent Corporation was not aware about the marriage of the petitioner with late Mohd. Shiakh, who had passed away on 16.01.2011, and the name of the petitioner is not entered in the nomination form of claiming the family pension, by the husband of the petitioner. The Division Bench of this Court in the case of Wallington Moses Macwan(supra), while examining almost similar facts, has observed that “merely the because the name was not mentioned in the nomination form is not justifiable ground to deny family pension unless the factum of marriage or relationship of husband and wife was at doubt.”*
11. *In the instance case, the respondent Corporation was not aware about the marriage of the petitioner with Mohd. Shikh and, hence, they are unable to form any opinion on the same. There is also the MoU, which is produced by the petitioner which is also not known to the respondent Corporation.*
12. *Under the circumstances, the respondent Corporation is hereby directed to examine the legality of the marriage/Nikahnama, which is produced by the petitioner as well the contents of the MoU. The respondent is hereby directed to pass an appropriate order, after verifying the aforesaid aspects. In case, it is found that the marriage of the petitioner with late Mohd. Shikh and the MoU is genuine and the legal heirs do not have any objection to the grant of family pension to the petitioner, the appropriate orders shall*

be passed granting family pension and other retirement benefits to the petitioner. It is clarified that the respondent shall not insist for Succession Certificate. As held by the Division Bench of the High Court of Kerala at Ernakulam, the Succession Certificate is not required and cannot be insisted upon for receiving the family pension as it is neither the debt nor the security of the deceased employee or pensionary.

12.1 Necessary Orders shall be passed by the respondent Corporation within a period of three(3) months from the date of receipt of the copy of the writ of this order.

13. The present petition stands disposed of in the aforesaid terms. Rule is made absolute to the aforesaid extent. Direct service is permitted.”

(emphasis supplied)

[5.3] Thereafter also, the Corporation did not change its stand, rather, relied upon the statement of brother and children of the deceased, thus, concluded that petitioner is unable to prove her marriage with deceased employee. Hence, the present petition.

[5.4] This Court, in this matter vide its order dated 15.03.2024, passed the following order:-

“1. Heard learned Advocate Mr.Aakash Modi for the petitioner, learned Advocate Mr.Rajesh Chauhan for the respondent Corporation and learned Advocate Mr.Kaustubh Shrivastav appearing for learned Advocate Mr.Sikander Saiyed for respondents No.3 and 4.

2. By way of this petition, the petitioner has challenged an order dated 17.5.2019 by the respondent Corporation, more particularly in compliance of the direction of this Court vide order dated 8.4.2019, whereby the Corporation was directed to consider and examine the legality of marriage/Nikahnama

etc., between the present petitioner and her late husband, who was also the father of respondents No.3 and 4 herein. It would appear that vide the impugned order, while the respondent Corporation has declared that the petitioner is not the legally wedded wife of the employee more particularly stating that the Nikahnama is not registered and on ground of certain affidavit filed by other relatives, yet prima facie to this Court it would appear that certain documents, which were required to be considered by the concerned authority had not been placed which may have resulted in prejudice to the present petitioner. It would appear that the petitioner before this Court is relying upon a proceeding initiated by her before the learned Magistrate under Section 125 of Cr.P.C., and whereas it would also appear that in the said proceeding, the deceased husband had filed an affidavit, whereby the factum of marriage had not been denied.

2.1. It would also appear that respondents No.3 and 4 in their affidavit before this Court are relying upon a declaration, whereby the petitioner is alleged to have waived her right and whereas in the affidavit as well as in the declaration, the factum of marriage between the petitioner and the late husband is not expressly denied. Under such circumstances, it would appear that in absence of the requisite documents placed before the authority concerned, the petitioner may probably have been prejudiced and whereas since the issue concerns grant of retiral benefits, therefore, the petitioner is required to be afforded one more opportunity.

3. Under such circumstances, at this stage, the following directions as passed :-

3.1. The respondent Municipal Corporation to decide afresh as regards the marriage of the petitioner with the late employee, as directed by this Court vide order dated 8.4.2019 at paragraph 12;

3.2. The petitioner is at liberty to produce all relevant documents relied upon by her and whereas no documents other than the documents produced before



the concerned authority shall be appreciated by this Court in case the petitioner is aggrieved by the order of the authority;

3.3. It would also be open for the respondents No.3 and 4 to apply for being heard and whereas, if any application is made, even the respondents No.3 and 4 shall also be afforded appropriate opportunity;

3.4. The respondent Corporation shall decide the issue, strictly in accordance with the Rules and extant Policy of the State/Corporation, within a period of four weeks from the date of receipt of this order and whereas, the decision taken by the concerned authority shall be placed before this Court on the next date. List on 21.6.2024."

(emphasis supplied)

[5.5] Apropos to the aforesaid order, upon granting an opportunity of hearing and to allow the petitioner to submit fresh evidence in support of her claim, finally the Corporation again maintained its earlier decision vide its order dated 14.05.2024. The main reasons assigned by the respondent - Corporation can be summarized thus:

- i. *Nikah Nama* produced on record is not registered.
- ii. There is no joint photograph of the petitioner with deceased employee, provided.
- iii. Even the service book does not mention the name of the second wife i.e. the petitioner.
- iv. The deceased employee had never informed the Corporation that he has a second marriage.
- v. The children of deceased employee have no knowledge about *Nikah* of petitioner with deceased

employee.

- vi. The family members of the deceased employee do not confirm the second marriage of the deceased employee with petitioner.

[6] This Court, vide its order dated 17.02.2026, passed the following order:-

"1. Heard Mr. Aakash D. Modi, learned advocate for the petitioner and Mr. Kirit Patel, learned advocate appearing on behalf of Mr. Munshaw, learned advocate for the respondent - Corporation.

2.1 Mr. Modi, learned advocate for the petitioner would submit that despite repeated directions issued by this Court in the first round and during the pendency of this petition, the respondent-Corporation has overlooked material documentary evidence submitted before it to substantiate the claim of the petitioner that she was a legally wedded wife of late Mohammad Hanif Shaikh, who was working with the respondent-Corporation. It is further submitted that during his lifetime, the petitioner being his legally wedded wife filed an application before the Family Court, Ahmedabad being Sessions Application No. 1310 of 2009 seeking maintenance, wherein the husband of the petitioner being opponent in Para-4 of his reply categorically admitted the legal marriage of the petitioner with him. As there was a settlement between the parties, the said application came to be withdrawn. Apart from the said documentary evidence along with Nikahnama, but the affidavit of the Kazi, who solemnized the marriage of the petitioner with late Mohammed Hanif Shaikh is also submitted, which appears to have been ignored by the respondent-Corporation. It is further submitted that there was a family arrangement taken place between the petitioner and respondent Nos. 3 and 4, happen to be children of the first wife of deceased late Mohammad Hanif Shaikh, wherein also, status of the petitioner being legally wedded wife of Mohammad Haneef Shaikh is not disputed.

2.2 Mr. Modi, learned advocate for the petitioner, would submit that despite overwhelming evidence produced before the respondent Corporation, ignoring all such, it has denied the legitimate claim of the petitioner to receive pensionary benefits.

3. Per contra, Mr. Patel, learned advocate for the respondent-Corporation, would submit that after considering the evidence produced before the competent authority of the Corporation, appropriate decision was taken, whereby it has been held that the petitioner is unable to prove that she is the legally wedded wife of late Mohammad Haneef Shaikh. It is submitted that family members of the deceased including his brother do not admit such second marriage of late Mohammed Hanif Shaikh with the petitioner. It is submitted that in absence of such registration of marriage, i.e. Nikahnama, there is no other documentary evidence including the government documents like Ration Card, Aadhar Card, etc. It is not proved by the petitioner that she is the legally wedded wife.

4.1 Today, this Court, upon hearing the learned advocates for the respective parties, could have decided the lis, but it is reported to this Court that Mr. Sikander Saiyed, who appeared on behalf of respondent Nos. 3 and 4 i.e. children of late Mohammad Hanif Shaikh is on sick note, although, a joint Vakalatnama is filed with Mr. E.E. Saiyed, learned advocate, who also represent respondent Nos.3 and 4, is neither on sick note nor leave note, but to give one last opportunity, the matter is adjourned to 20.02.2026, to be listed on the top of the board.

4.2 It is made clear that on the next date of hearing, no sick note or leave note of learned advocate for the respondent will be entertained.”

(emphasis supplied)

[7] Now, when the matter was taken up for hearing, Mr.



Sikander Saiyed, learned advocate for respondent Nos.3 & 4 would submit that there is no justifiable evidence on record to substantiate the claim of the petitioner as regards her marriage with father of respondent Nos.3 & 4. It is submitted that there is a suppression of material fact by the petitioner before this Court, as not disclosed in this petition, that due to settlement between the parties, she has received Rs.2,00,000/- from respondent No.4.

[7.1] It is further submitted that, in absence of any material on record to prove that petitioner is the legally wedded wife, she may not be entitled to receive any benefits of pension.

[8] *Per contra*, Mr. Aakash D. Modi, learned advocate for petitioner as also Mr. H.S.Munshaw, learned advocate for respondent Nos.1 & 2, would not like to make any more submissions than what has been recorded by this Court vide its above referred order dated 17.07.2025. In view of above, no more submissions are recorded of the respective learned advocates.

[9] Heard learned advocates for the respective parties and upon perusal of the documents made available on record, it appears that there was a *Nikah Nama* executed by Kazi whose affidavit is also submitted by the petitioner, which appears to have been overlooked by the Corporation, rather, insisted that it is not registered. Nothing has been pointed out to this Court, that such *Nikah Nama* requires compulsory registration as per Muslim Law. In absence of any such requirement, it would not appropriate on the part of the



officials of the Corporation to ask the proof of registration of marriage from petitioner. The petitioner appears to be a housewife and not qualified, who at relevant point of time left by the deceased employee.

[10] It is unfathomable that in absence of photograph of couple as not produced before the Corporation, it can reach to conclusion that marriage was never solemnized. Likewise, it is highly improper and unjust on part of the Corporation to say that during lifetime, the deceased employee never informed about his second marriage with petitioner and in his service book, no name of the petitioner entered into, than it would assume that petitioner is not the legally wedded wife of the deceased employee. Had there been nomination of petitioner in service record of the deceased employee and or by any means, the deceased employee during his lifetime informed the Corporation about his second marriage, such controversy would not at all arise.

[11] Be that as it may, the petitioner, during the lifetime of the deceased employee, who happens to be her husband, filed a criminal complaint before the Vatva Police Station, Ahmedabad being C.R.No.I-248 of 2009 under Sections 323 and 498(A) of the Indian Penal Code wherein charge-sheet came to be filed by the Police on 16.10.2009 against the deceased employee. After that, the Trial Court concerned framed the charge against the deceased employee on 13.12.2010. Nonetheless, due to death of accused - the deceased employee, the Criminal Case No.3087 of 2009 arising out of said complaint, came to be disposed by the Trial

Court as 'Abated'.

[12] Apart from the aforesaid, the petitioner appears to have filed maintenance application under Section 125 of the Code of Criminal Procedure against the deceased employee before the Family Court, Ahmedabad being Misc. Application No.1310 of 2009 wherein while submitting written statement / reply, the deceased employee, in para-4 of his reply, has categorically admitted that he married with the petitioner. For ready perusal, para-4 of the said reply filed by the deceased employee during his lifetime, in aforesaid maintenance application, reads thus: -

"The marriage with the applicant took place through Nikah ceremony, but the fact that the applicant was performing the sacred duties of marriage, is false."

[13] Thus, in view of the aforesaid documentary evidences made available on record before the Corporation, after the order passed by this Court on 15.03.2024, as referred hereinabove, the Corporation has erroneously overlooked such overwhelming documentary evidence which, in fact, constitutes material evidence to substantiate petitioner's claim that she is the legally wedded wife of the deceased employee. When there is a clear admission of factum of marriage with petitioner by the deceased as referred herein above, there is no other evidence ought to have been required by the Corporation, to consider the claim of the petitioner for family pension.



[14] At the same time, the stand of respondent Nos.3 & 4 taken before this Court cannot be justified, inasmuch as they are major children of deceased employee and not entitled to receive any family pension. So far as submission of Mr. Saiyed, learned advocate that there is suppression of material fact by the petitioner in this petition as not disclosed the fact that she has received Rs.2,00,000/- from respondent No.4 is concerned, according to my view, there is no suppression of material fact by the petitioner, inasmuch as the grievance made by the petitioner in this petition is essentially against the Corporation which has not considered her claim to grant family pension. A settlement which has been arrived at between the private parties i.e. petitioner and respondent Nos.3 & 4 herein, would not have any bearing as regards entitlement of the petitioner to receive family pension. Hence, I don't find any substance in the argument of Mr. Saiyed, learned advocate for respondent Nos.3 & 4 and the same is hereby rejected. Needless to say, that mere non-disclosure of the said fact by petitioner is not disentitled to sustain her claim against the Corporation. Rather, it appears that due to family arrangement-agreement - MOU dated 13.06.2011, the respondent No. 3 & 4 not only accepted the factum of marriage (Nikah) of petitioner with their father - the deceased employee but as such are beneficiary of the post death benefits of the deceased employee like gratuity, leave encashment etc., received from the Corporation. Had there been no such MOU, they would not have received said benefits, which otherwise receivable by his the legally wedded wife, i.e., petitioner. Once the post death benefits received



from the Corporation, it would not lie in mouth of the respondent Nos.3 & 4 to challenge petitioner's status, i.e., Not the legally wedded wife of the deceased employee (their father).

[15] In view of the aforesaid facts, observations, discussion and for the foregoing reasons, I am of the firm view that the impugned decision of the Corporation suffers from grave irregularity. As such, it is an erroneous one and none of its reasons are sustainable in law; therefore, it requires to be quashed and set aside. Accordingly, it is hereby quashed and set aside. Consequently, I pass the following order.

[15.1] The Corporation is hereby directed to treat the petitioner as the legally wedded wife of the deceased employee - Mohammadhanif Abdulsamad Shaikh. The Corporation is further directed to prepare the family pension papers of the petitioner and pass appropriate order to grant her family pension. The arrears of family pension shall be paid to the petitioner on or before 15th May, 2026; failing which, petitioner shall be entitled to receive the arrears of family pension with interest at the rate of 6% p.a. from 16th May, 2026 until their actual realization.

[16] Needless to observe that upon making the payment of arrears of family pension, regular pension shall also be paid to the petitioner by the Corporation without fail.

[17] In view of the foregoing conclusions, the present petition is allowed to the aforesaid extent. Rule is made absolute



accordingly. There shall be no order as to costs.

Direct service is permitted.

Lalji Desai

Sd/-
(MAULIK J.SHELAT,J)