

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 18755 of 2013****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

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Approved for Reporting	Yes	No
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ISMAILBHAI MOHAMMEDBHAI AJMERI - DECEASED- THRU.- LEGAL
REPRESENTATIVE
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR NIRAD D BUCH(4000) for the Petitioner(s) No. 1
MRS. BHAVINI N. BUCH(5403) for the Petitioner(s) No. 1
MS NIDHI VYAS, ASSISTANT GOVERNMENT PLEADER for the
Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE MAULIK J.SHELAT**Date : 28/04/2026****JUDGMENT**

1. Heard Mr. Nirad D. Buch, learned advocate for the petitioner and Ms. Nidhi Vyas, learned AGP for the respondent No. 1.

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

“(A) YOUR LORDSHIP be pleased to issue an appropriate writ, order, direction quashing and setting aside the order passed by the respondent no. 2 dated 03-10-2013 in the interest of the justice;

(B) YOUR LORDSHIP be pleased to order pending admission and/or final disposal of this petition the order passed by the respondent no. 2 dated 03-10-2013 be stayed and the petitioner may be paid the retirement benefits including pension in the interest of justice;

(C) YOUR LORDSHIP be pleased to grant any other and further relief as may be deemed fit in the facts and circumstances of the interest of justice case in the interest of justice.”

3. The original petitioner was serving as a Senior Clerk in the office of respondent No. 2 and was convicted under provisions of the Prevention of Corruption Act, 1988 (hereinafter referred to as the “**Corruption Act**”). The respondent *vides* its impugned letter dated 03.10.2013 imposed a penalty of 100% pension cut by exercising its power under Rule 14(1)(1) of the Gujarat State Services (Discipline and Appeal) Rules, 1971 (hereinafter referred to as the “**Rules, 1971**”).

3.1. It appears that the order of conviction is challenged by original petitioner before this Court by way of Criminal Appeal No. 1166 of 2011 which is still pending for adjudication.

4. At this stage, instead of questioning the legality and

validity of the impugned order, Mr. Nirad Buch, learned advocate appearing for the petitioner would submit that during the pendency of the petition, the original petitioner died and his legal heir/widow of the petitioner is brought on record and as such in the aforesaid appeal, a Civil Application is filed to bring legal heirs of the petitioner, but the same is pending for adjudication. Therefore, Mr. Buch, learned advocate for the petitioner would submit that in a case where the legal heirs of the original petitioner succeed in the aforesaid appeal and order of conviction passed by the Special Court may be quashed and set aside, liberty may be granted in favour of the legal heirs of the original petitioner to make suitable representation to the respondent authority to review its impugned decision dated 03.10.2013.

5. Per contra, Ms. Vyas, learned AGP would submit that pursuance to the order of conviction and considering the provisions of Rules, 1971, the respondent authority has imposed appropriate punishment and as such as on date, the conviction awarded by the Special Court is not set aside by this Court in the aforesaid appeal. So, no interference is required by this Court.

6. Having heard learned counsels for the respective parties and having considered the fact that the original petitioner was convicted under the Corruption Act, at this

stage, it will not be appropriate for this Court to interfere with the impugned order of penalty dated 03.10.2013, whereby it ordered 100% pension cut.

6.1. Nonetheless, it is hereby observed that the impugned order came to be passed solely on the basis that the original petitioner was found convicted under the Corruption Act by the competent court.

7. Thus, in future, if the legal heirs of the original petitioner succeed in the aforesaid Criminal Appeal No. 1166 of 2011, and this Court quashes and sets aside the order of conviction passed by the Special Court, in that event, it will be open to them to approach the respondent to recall or modify its impugned order dated 03.10.2013. In those circumstances, the respondents herein are directed to decide such representation in accordance with law.

7.1 It goes without saying that in a case where any adverse order will be passed by the respondent authority on such representation, it is always open to the legal heirs of the original petitioner to challenge the same, in accordance with law, before the appropriate Court.

8. In view of the foregoing reasons, the present petition is not entertained at this stage, albeit reserving the

liberty in favour of the legal heirs of the original petitioner, as aforesaid.

9. Rule is discharged. There shall be no order as to costs.

(MAULIK J.SHELAT,J)

SYED SHAHANAZ