

(2016) 02 GUJ CK 0022

In the Gujarat High Court

Case No : Special Civil Application Nos. 14953, 13820, 14483, 15178, 15308, 15316 to 15319, 15330 to 15333, 15335 to 15345 and 19118 of 2015

Chandravadan Ramanlal Vora

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 03-02-2016

Acts Referred:

Citation : (2016) 02 GUJ CK 0022

Hon'ble Judges : Sonia Gokani, J.

Bench : Single Bench

Advocate : Mukund M. Desai, Advocate, for the Appellant; Manisha Lavkumar, Government Pleader and Rashesh Rindani, Ld. AGP, for the Respondent

Final Decision : Allowed

Judgement

Sonia Gokani, J.—1. Since this group of petitions raises the identical questions of facts and law, they are being decided by this common judgment.

2. The challenge in this group of petitions principally is to the inaction on the part of the respondents in not paying pension to the petitioners, who have retired after April 01, 1980 from the post of Readers and who are otherwise entitled to the General Provident Fund (for short, "GPF") and pension as provided under the Government Resolution dated October 15, 1984 and, therefore, the present petitions. For the sake of convenience, the facts are taken from Special Civil Application No. 14953 of 2015, which in a capsulised form are as under:

3. The petitioner joined his services as Tutor Demonstrator in the Science College on April 10, 1970 on completion of due process of selection. He had applied for the post of Lecturer advertised by the Gujarat University and was, accordingly, appointed on June 15, 1982.

4. Pursuant to the advertisement of the Gujarat University for filling in the vacant posts of Readers in the School of Science, once again, he was required to undertake the entire selection process. After completion of the said de novo

process of selection, he was initially appointed on probation period of two years vide order dated July 07, 1990. The appointment was given to him specifically mentioning that the GPF, Pension and other benefits are admissible.

5. It is averred by the petitioner that he had undergone the process of selection once again when he came to be appointed as a Professor on September 07, 1998. It is, thus, the say of the petitioner that he had joined the service after April 01, 1982 on due selection process. Therefore, the petitioner would be covered under Clauses 4 and 6 of the Government Resolution dated October 15, 1984, which is made effective with effect from April 01, 1982. It is further his say that his appointment as reader and Professor in the respondent-College is a new and fresh appointment approved by the State Government and, therefore, on the respective posts of Reader and Professor, as the appointment was made prior to April 01, 1982, this would amount to "recruitment" and the pension scheme would automatically be effective in the case of the petitioner.

6. By way of the said Government Resolution dated October 15, 1984, a scheme was introduced for Teaching and non-Teaching Staff in Affiliated Colleges. It is also averred by the petitioner that this issue has been decided while dealing with Special Civil Application No. 29461 of 2007 on June 16, 2008, by this Court and, therefore also, the petitioner needs to be accorded the same treatment as has been given to the petitioners of the said petition.

6.1 The petitioner has sought to rely upon various authorities to substantiate his stand and eventually has sought for the following substantial reliefs:

"11(b) To quash and set aside the respondent's action and inaction in not considering the case of the petitioner for pension by passing appropriate orders declaring him to be entitled to receive pension and further be pleased to declare that the petitioner's recruitment and appointment as Reader and Professor with effect from 7.7.90 and 7.9.98 is fresh recruitment therefore, he is entitled to pension as per the provisions of G.R. and further be pleased to direct the respondent to grant pension to the petitioner forthwith by considering the service rendered by him by issuing writ in the nature of mandamus or certiorari or any other appropriate writ, order or direction so deemed fit and proper.

(c) Be pleased to direct the respondent authorities to give benefits of GPF scheme by transferring account of applicant to GPF and further to give benefits of pension scheme under Resolution dated 15.10.1984 within 3 months from the date of order and further be pleased to direct the respondent authorities to start monthly pension immediately to serve the purpose of justice.

(d) To issue a writ in the nature of mandamus or any other appropriate writ order or direction, directing the respondent to pay all pensionary benefits to the petitioner with 18% interest p.a. with effect from the date he retired."

7. At this stage, it would be profitable to place on record the details qua all the petitioners, which in the tabular form are as under:

8. The petitioners have submitted along the line of the memorandum of the petition and has urged that the issue is squarely covered by various decisions and, therefore also, on the ground of parity, the petitioners are required to be awarded pension and other benefits. It is emphasised that in Special Civil Application No. 740 of 2013, the employee concerned was the Principal to whom the benefit of pension scheme was made available and such order is confirmed by the Appellate Bench while dealing with Letters Patent Appeal No. 982 of 2015, whereas in Special Civil Application No. 7173 of 1991, the employee was a Lecturer and his appointment after 1987 is considered a fresh appointment, which has been confirmed in Letters Patent Appeal No. 981 of 2015. It is further urged that in Letters Patent Appeal No. 1213 of 2010, the definition of the word "recruitment" is considered as given in Clause 4 of the Government Resolution dated October 15, 1984, the word "automatically" would mean without giving any option and hence, every recruitment made after the year 1982 would be covered under the pension scheme.

9. Ms. Manisha Lavkumar, learned Government Pleader appearing with the learned Assistant Government Pleader Shri Rashesh Rindani appearing for the respondent-State, would not dispute the fact that the issue is essentially and predominantly covered by various decisions of this Court, however, they have seriously contended that the promotion of employees in any cadre is not a fresh appointment and, therefore, it undoubtedly involves the entire process of selection and, therefore, it may look as if a person needs to undergo the process of examination, interview and then appointment on the promotional post, but that surely would not mean that it is a fresh appointment.

10. Having thus heard both the sides and having also considered extensively various decisions, which are pressed into service, at the outset, it can be noticed that for selection of the Teaching Staff as per the UGC guidance, the issuance of public advertisement is must. Once a person applies under the said mode, a duly constituted selection committee is required to be formed, which comprises of the Subject Expert, Government Nominee, who is a Joint Director of the Education Department, Management Nominee and a Nominee of the Vice-Chancellor as per the Government Resolution dated November 23, 1976. Clause 15 of the very Government Resolution mandates prior approval.

11. The Government Resolution dated September 14, 1988, at this stage if is referred to, Clause 6 thereof provides for recruitment to the post of Lecturers, Readers and Professors in universities and colleges shall be on the basis of merit through all India advertisement and selection, provided that Lecturers who fulfill the criteria prescribed in the said scheme will be eligible for promotion to the posts of Readers. The minimum qualification required for appointment to the post of Lecturers, Readers and Professors will be those prescribed by the UGC from time to time. The Career Advancement System (for short "CAS") is provided in Clause 10 of the said Government Resolution, which provides that every lecturer who has completed eight years of service after regular

appointment, would be placed in the Senior Scale. Consistently satisfactory performance appraisal reports are also needed. He/she has to participate in two refresher courses/summer institutes, each of approximately 4 weeks" duration or engage in other appropriate continuing education programmes of comparable quality as may be specified by the UGC.

12. Clause 11 provides for eligibility criteria of a Lecturer for promotion to the post of a Reader in a senior scale.

13. Clause 12 of the said Government Resolution dated September 14, 1988, provides for the process of selection for promotion to the post of a Reader by the Selection Committee to be set up under the Statutes/Ordinances of the University concerned or other such Committees set up by the appointing authorities in accordance with the guidelines to be laid down by the UGC. It further provides that the post of Readers will be created for this purpose by upgrading a corresponding number of posts of Lecturers in the Universities and Colleges.

14. Instead of further dilating any issue relating to the CAS and the aspect of promotion under the said Scheme, it would be sufficient to notice that for the post of Lecturers in the Universities, the criteria are prescribed for selection and recruitment vide the said Government Resolution.

15. So far as pension scheme for teaching and non-teaching Staff of the Universities is concerned, it can be seen from the record that the pension scheme for the first time was introduced on October 15, 1984, making Revised Pension Rules, 1950, admissible to the Government servants to the teaching staffs of non-government colleges and universities with effect from April 01, 1982.

16. In the earlier pension scheme, which was meant for the secondary and higher secondary schools in 1971, the employees were to opt for either GPF or the CPF (Contributed Provident Fund) on the retirement. Clause 1(c) of the Government Resolution dated October 15, 1984 defines the "teaching staff" and Clause 4 of the very Government Resolution mentions that any staff recruited after April 01, 1982, is automatically covered by pension scheme (GPF) and is not allowed to opt for CPF. Clause 6 of the said Government Resolution dated October 15, 1984, mentions that all the previous service i.e. April 01, 1982, is to be computed and clubbed while computing qualifying length of service which is 33 years for being entitled to full pension. Likewise, Clause 11 of the said Government Resolution mentions that pension papers and service book are to be maintained and necessary endorsement are to be made by the Registrar in case of university and Principal for colleges, however, the service book is not given to the employee concerned. Clause 12 of the said Government Resolution mentions that until the pension papers are finally prepared, the employee is entitled to receive only part pension. Statutory benefits have been extended to the teaching and non-teaching staff of the University, non-government grant-in-aid colleges

and institutions bringing them at par with the employees of the State Government.

17. This Court in Special Civil Application No. 12620 of 2003, in the case of State of Gujarat and others v. Dr. S.G. Trivedi, Retd. Reader Physics Division and another, was concerned with the challenge of the decision of the Gujarat University Service Tribunal denying pension to the petitioner therein and the issue was as to whether he joined service on October 01, 1984 and, whether he would be deemed to have been in service right from the year 1964 requiring his option pursuant to the Government Resolution dated October 15, 1984. It was held that having joined the service in University on July 08, 1985, the petitioner therein would be governed by the pension scheme as per Government Resolution dated October 15, 1984. Non-exercising of the option, therefore, was not taken as a factor to disentitle the petitioner therein from receiving pensionary benefits. The petitioner therein though was appointed on October 10, 1985 and though had specifically opted for CPF scheme and requested that he does not want to switch over to pension scheme, it was emphasised that those who had been appointed in the service prior to April 01, 1982, shall need to exercise such option as to whether to continue to CPF scheme. It was insisted that on the persons failing to exercise option, his preference for continuous coverage under the CPF scheme, would not entitle him to any pensionary benefits.

18. The Tribunal since had allowed the application and held the petitioner entitled to receive pension and other benefits pursuant to the pension scheme introduced by the Government for teaching staff of the University and colleges by October 01, 1984. The State had challenged the same.

19. It would be profitable to reproduce the relevant paragraph of the said decision which reads as under:

"9. Having considered rival submissions it would appear that the crucial question is whether respondent No. 1 can be stated to have joined services of the University on 01-10-1984 or right from the time he was discharged from his duties in private affiliated aided college. If it is found that respondent No. 1 joined services of South Gujarat University only on 01-10-1984 and the earlier services of respondent No. 1 cannot be said to have any bearing on question of applicability of the pension scheme pursuant to Government Resolution dated 15-10-1984, his case for receiving pension would get a boost. On the other hand, if it is found that respondent No. 1 who had served in private affiliated aided college right from 1964 and switched over to the university services on 01-10-1984 after tendering technical resignation, joined his duties immediately on the next date in the University Services and that therefore, respondent No. 1 should be treated to have been in service prior to 01-04-1982, the State Government would be justified in contending that Tribunal erred in granting pensionary benefits to the respondent No. 1.

10. There is however, considerable force in the submissions made by the learned

advocate Shri Joshi that under identical situation, Learned Single Judge of this Court had made pensionary benefits available to the teacher in the case of Dr. Nalini V. Dave v. Government of Gujarat & ors(Supra).

11. In the said case also the petitioner had discharged duties in various colleges right from 1966 to 08-07-1985 when after getting relived from the private college, she joined as a Lecturer in the Department of Commerce in Saurashtra University on the very same date. In the said case also her earlier service came to be considered continuous for the purpose of her total length of service including pensionary benefits. Accordingly the entire service was considered as qualifying service for the purpose of pensionary benefits. Despite this factual aspect, Learned Single Judge of this Court found that Government Resolution cannot be interpreted so as to mean that the petitioner therein would be disentitled from receiving pension for not having exercised option. It was held that having joined the service in University on 08-07-1985, she would be governed by pension scheme as per Government Resolution dated 15-10-1984. Non-exercising of the option therefore, was not taken as a factor to disentitle her from receiving pensionary benefits.

12. The ratio laid down in case of Dr. Nalini V. Dave v. Government of Gujarat & ors(Supra) would squarely apply in the present case also. The respondent No. 1 herein had discharged duties in private colleges from 1966 to 01-10-1984. Having resigned from his services he immediately joined as Reader in South Gujarat University on 01-10-1984. Thus on 01-10-1984 when he joined University Services only option available to him was to be governed by the pension scheme as held by this Court in the case of Dr. Nalini V. Dave v. Government of Gujarat & ors(Supra). He therefore, had no option to exercise. His misconceived communication dated 10-10-1985 therefore, cannot be taken to be the factor against him to deny the pensionary benefits. If it is found as has been so in case of Dr. Nalini V. Dave v. Government of Gujarat & ors(Supra) that for such of the teachers who joined services after 01-04-1982 even with past background of employment in private colleges, option of continuing in CPF Scheme was not in existence and that pension scheme applied compulsorily and automatically, the assertion of the respondent No. 1 that he wishes to continue in the CPF Scheme would be of no consequence. The factor that the employer stopped contributing towards Provident Fund of the respondent No. 1 is one more indication of the stand of the University.

13. Therefore, following the decision in case of Dr. Nalini V. Dave v. Government of Gujarat & ors(Supra), I find that the Gujarat Universities Services Tribunal committed no error in allowing the application of the respondent No. 1. I am conscious of the fact that there are some arguable points raised by the State Government. One of the relevant facts which appears attractive is that respondent No. 1 not only joined University Service immediately after tendering resignation from private college, but also got all benefits of continuation of entire service for the purpose of qualifying service for post-retirement benefits. The

question therefore, immediately arises is whether respondent No. 1 can be said to have joined service on 01-10-1984 as is contended by the learned advocate for respondent No. 1 or whether he should be deemed to have been in service right from 1964 so as to require him to exercise his option pursuant to Government Resolution dated 15-10-1984. One more relevant aspect here is that the resolution makes pension scheme applicable not only to the teaching staff of the University but to all the members of the teaching staff of private affiliated aided arts, commerce and science colleges in which respondent No. 1 was employed prior to his appointment in the South Gujarat University. However by the principles of precedence and judicial discipline, I am bound by the decision rendered by Learned Single Judge and respectfully following the ratio laid down therein, I find that it is not necessary to disturb the decision of the University Tribunal. The petition is therefore, rejected. Rule is discharged with no order as to costs. Interim relief is vacated."

20. In the case of Dr. Nalini K. Dave v. Government of Gujarat and others, reported in , 2005 (3) GLH 656, the Court has held that the payment of pension is not a grace from the master but a right of the employee upon completion of qualifying service and the technical objections cannot be permitted to deprive a pensioner of his dues. The question was as to whether it was necessary for the petitioner to opt for a pension scheme, which was challenged in the Letters Patent Appeal.

"9. It appears that the peculiar aspects and special circumstances obtainable in the present case are, also, not seriously considered and properly examined and appreciated by respondent No. 3-University. The question of exercise of option could be raised when there is something to be opted for out of more than one options. In the present case, so far as the first spell of 19 years of actual service in the College for the period 15.6.1966 to 8.7.1985, as a Lecturer is concerned, admittedly, it had only one Scheme and that too, C.P.F. There was, therefore, no question of exercising any option. Likewise, during the period of service from 8.7.1985 till the date of Voluntary Retirement on 31.12.2000 in the Department of Commerce of respondent No. 3-University, there was, also, compulsory scheme of pension. There, also, there was no question of exercising any option, particularly, when compulsory scheme was in existence.

10. It is in this context, it must be appreciated that there was no any fault or inaction or omission or commission on the part of the petitioner, which would disentitle the right to claim the pension, much less the dispute of raising the option Form, of late. Even assuming that there is a delay in exercise of the option, then also the available rights to pension, in this set of circumstances and special facts, cannot be allowed to thwart. Needless to reiterate that the Court is vitally concerned and the main anxiety of the process of the decision-making and judicial adjudication has been to do justice and to undo injustice suffered, and thereby, render substantive justice, which cannot be eclipsed by a processual or technical objection. Delay in such a fact situational reality could never

tantamount to a defeating factor against the entitlement of right to pension. It is a celebrated proposition of law that in such circumstances and in such special factual realistic profile, the expiry of time, specified in the Resolution or delay in submission of the Option Form, cannot defeat the Liberalised Scheme of Pension."

This Court in the said decision, thus, allowed pension to the petitioner therein with interest.

21. In the decision of this Court rendered on June 16, 2008 in the case of S.S. Patel v. Director of Pension and Provident Fund and others, while dealing with Special Civil Application No. 29641 of 2007, the Court by referring to the decision in the case of Dr. Nalini K. Dave (supra) directed the authority to pay the retiral dues. The Court was of the opinion that if the Government Resolution dated October 15, 1984, is perused, the preamble provides that the pension, gratuity and other retirement benefits admissible to the Gujarat State Government servant under the Revised Pension Rules, 1950, be made applicable to the full time teaching staff of the universities under the Education Department and in affiliated and aided non-Government Arts, Science, Commerce and Education Colleges in the State, as amended from time to time. Emphasising on various clauses of the said Government Resolution, the Court was of the opinion that Clause 6 confers benefit upon employees of all previous services whether temporary officiating or permanent, either in one or more than one Non-Government aided colleges, University Department, Higher Secondary School who are being paid Grant-in-aid from Government.

22. The Court also concluded that the basic purpose of Clause 6 is to complete minimum years of qualified pension service for all existing and recruited employees before 1.4.1982 and retired between 1.4.1982 to 15.10.1984 and recruited after 1.4.1982, like the petitioner, clause 6 cannot be pressed into service for exercising option for the scheme by both pre and post 1.4.1982 recruitees, otherwise even clause 4 will be rendered nugatory. In no uncertain terms, it held that failure to exercise an option for the post April 01, 1982 period, the recruitee cannot come in his way as the same would make him vulnerable for benefits of previous services as per clause 6 of the said Government Resolution and that would be against the spirit and object of the scheme and also would be creating artificial, arbitrary and discriminatory dividing line amongst university teaching staff not found in clause 6. The petitioner was automatically governed by pension scheme by G.R. dated 15.10.1984 and, thus, Clause 6 is unambiguous and benefits of all previous services are not restricted to optee only.

23. This decision of the learned Single Judge in the case of S.S. Patel (supra) came to be challenged by way of intra-court appeal being Letters Patent Appeal No. 1151 of 2008 by the Director of Pension and Provident Fund and others, wherein the Division Bench has referred to various observations and findings of the learned Single Judge and confirmed the decision rendered by the learned Single Judge vide judgment dated September 08, 2014.

24. In yet another decision of a Division Bench of this Court in the case of Maheshbhai H. Bhatt v. Secretary and others, rendered on February 07, 2014, while dealing with Letters Patent Appeal No. 1213 of 2010 and connected Civil Application, the Division Bench was dealing with an issue whether the petitioner would be covered by the pension scheme without exercising option for his service rendered in grant-in-aid college. The petitioner therein was appointed as an accountant in L.M. College of Pharmacy initially and thereafter, he was promoted to the post of Office Superintendent on November 09, 1989 and was posted in L.D. Arts College. While in service, he was dismissed on January 04, 1995. He challenged his order of dismissal before the Gujarat Affiliated Colleges Services Tribunal at Ahmedabad and on June 26, 2002, a compromise pursis was tendered before the Tribunal. The College Management withdrew the order of dismissal on a condition that he would opt for Voluntary Retirement and on such pursis, the Tribunal passed an order. As the Government official had not signed the said pursis, he needed to approach the Tribunal for implementation. Such approach was criticized by the Tribunal and further observations were made on July 09, 2003 against the Government officers. Pending such proceedings before the Tribunal, the petitioner preferred Special Civil Application No. 21986 of 2005 before this Court, praying for release of his pension. He withdrew his application before the Tribunal and the Government when passed a detailed speaking order holding that the petitioner was required give his option for switching over from Contributory Provident Fund Scheme to the pension scheme and as such option was not given, he continued to be governed by the CPF scheme and, therefore, he cannot claim the pension. Such decision was challenged by the appellant employee and this Court held in favour of the employee. It would be profitable to regurgitate the relevant paragraphs of the said decision, which read as under:

"3. Before advertng to the rival contentions, we may notice that till 9th November 1989, when the petitioner was brought over from L.M Pharmacy College to L.D Arts College, there was no pension scheme applicable to the aided pharmacy colleges. In L.M Pharmacy College, therefore, the petitioner was covered by CPF Scheme without any option.

4. On 3rd July 1987, the Government issued a Resolution promulgating a pension scheme for the full time non-teaching staff of the affiliated and aided non-Government Arts, Science, Commerce and Education Colleges in the State with effect from 1st April 1982. Such pension scheme was applicable to those members of non-teaching staff of the said colleges who were in service as on 1st April 1982 and recruited thereafter. For the members of the existing staff recruited before 1.04.1982 and those of the employees, who had retired after 1st April 1982, but before the date of the G.R i.e., 3rd July 1987, option was given whether to continue in CPF Scheme or switch-over to the pension scheme. Those employees who had been recruited after 1st April 1982, there was no option and they were automatically governed by the pension scheme.

4.1 Relevant portion of the said Pension Scheme reads as under:--

"1. a] For the purpose of this scheme -

(1) A non-Government College includes non-Government affiliated Arts, Science, Commerce and B.Ed. Colleges receiving grant-in-aid and managed by the private body and affiliated with the Universities by the competent authority.

b] for the purpose of pensionable pay, pay means and includes:

1) Pay in the approved prescribed scale of pay;

2) Personal pay granted to save from loss of pay due to revision of pay scale of due to pay fixation.

2. xx xx xx

3. i) Members of the existing staff recruited before 1.4.1982 and those staff who have retired on or after 1.4.1982 and prior to the date of issue of this resolution should exercise their option within the period of one year from the date of issue of this resolution either to continue in Contributory Provident Fund scheme or to come under this Scheme. The option once exercised shall be final.

The option should be exercised in writing in the form prescribed [Appendix A] and communicated to the Director of Higher Education. The members of the staff who do not exercise the option within stipulated period shall be deemed to have opted for the retention of the benefit admissible to them before 4.4.1982.

Where a member of the staff who was entitled to exercise an option in accordance with this Resolution died on any date on or from 1st April 1982 and on or before expiry of the date before which he had to exercise option without exercising it, his family may be given the benefit of these rules or may be allowed the benefit of CPF scheme, whichever is more favourable to them. The pension sanctioning authority should work out the benefits admissible under both the alternatives (ie., the CPF and the Revised Pension Rules, 1950) as admissible under this government resolution after taking into account the quantum of CPF as well as family pension and prepare pension papers accordingly with necessary sanction.

4. The members of the staff recruited on or after 1st April 1982 shall automatically be governed by this scheme. Such staff will not be allowed to opt for contributory provident fund scheme.

5. xx xx xx

6. In computing the length of qualifying service for pension under this scheme, all previous service whether temporary officiating or permanent either in one or more than one non-Government aided colleges, University, Department, Higher Secondary School who are being paid Grant-in-Aid from Government shall be taken into account. The period of break in service will not be considered as qualifying service ie., actual service rendered will be considered as qualifying services.

4.2 We may also notice that on 22nd March 1993, Government issued a resolution making pension scheme for the full-time teaching and non-teaching staff of the non-Government Degree and Diploma Colleges in the State. This pension scheme was made applicable with effect from 1st April 1989. Similar options as in the G.R dated 3rd July 1989 were made available to the employees who were in service on 1st April 1989 and thereafter whether to be retired in CPF scheme or switch-over to the pension scheme.

4.3 On the basis of such facts, counsel for the appellant vehemently contended that the Government committed a serious error in rejecting the petitioners request for pension. In L.D Arts College, the petitioner was a fresh recruit and therefore was automatically included in the pension scheme. He did not have to exercise any option. In fact, no such option was available to him. He further submitted that the learned Single Judge committed an error in holding that the petition was belated. In support of his contentions, counsel relied on the decision of Supreme Court in case of K. Narayanan v. State of Karnataka, reported in , AIR 1994 SC 55, wherein, it was observed that the term recruitment includes promotion and deputation.

5. On the other hand, learned AGP Shri Gandhi supported the judgment of the learned Single Judge and submitted that the petitioner had not exercised pension option. He made a belated claim. The petition was, therefore, rightly rejected.

6. From the materials on record, it is clear to us that the appellant was entitled to his post-retiral benefits. What these post retiral benefits include is a more complex question, to which we would devote more discussion later. At this stage, we may recall that the appellant-petitioner was at one stage dismissed from service by the employer ie., L.D Arts college management. This happened in the year 1995. He challenged his dismissal before the Tribunal. Before the Tribunal, the employee as well as the employer entered into a compromise. The employee offered to resign in lieu of his dismissal. The employer thereupon agreed to withdraw the order of dismissal. This is precisely what the parties recorded in their compromise pursis. In such pursis dated 26th June 2002, the parties jointly declared that the college management agreed to withdraw the order of dismissal on condition that the petitioner would opt for voluntary retirement from 4th January 1995 ie., the date of dismissal. It is also recorded that on the basis of such voluntary retirement, the management would prepare the papers for the petitioner to claim post retiral benefits. It was on this compromise pursis that the Tribunal passed its order dated 18th July 2002. The Tribunal accepted the compromise, allowed the parties to act accordingly and also directed the management to release the benefits of the petitioner within the time prescribed and in case, the management is required to forward such bills to the Government, it would do so forthwith and the Government would sanction such bills within the time prescribed.

6.1 Though the Government was not a signatory to the compromise pursis entered into between the petitioner and the college, it was a party to the

proceedings before the Tribunal. As noted above, the Government Pleader was present when the order was passed by the Tribunal. In any case, such order was never challenged by the Government. Under the circumstances, the appellant-petitioner would be entitled to receive all the post-retiral benefits as if he had retired voluntarily with effect from 4th January 1995."

25. The Court, thus, held that there was no option available prior to April 01, 1982 and those who were recruited on or after April 01, 1982, had not to exercise any option and they would be automatically governed by the pension scheme and, therefore, cannot be denied the benefit of pension scheme only on the ground that they had not exercised the option. It was further held that promotion also would mean recruitment as entire exercise for promotion was after due process and, therefore, the employee should be given pensionary benefits on calculating the total length of service as early as possible within the prescribed time limit, after deducting the amount already paid towards the CPF.

(Emphasis supplied)

26. A reference would also be required of the decision of this Court in the case of Banuben Rameshbhai Dhakkan v. State of Gujarat thro Secretary and others, rendered on January 22, 2015 while dealing with Special Civil Application No. 740 of 2013, wherein the Court was considering the similar question in relation to the petitioner therein who was a Lecturer in J.J. Kundaliya Commerce College for a period from August 12, 1974 to August 30, 1995. However, the person concerned resigned and got appointment as Principal in a college, wherein the respondent therein appointed the petitioner therein vide appointment letter dated June 29, 1995 with effect from July 01, 1995, which was approved by the University. However, on his retirement on October 31, 2012, the petitioner has been denied the benefit of pension under the Government Resolution dated October 15, 1984 on the ground that the petitioner therein did not exercise the option for pension scheme within the time stipulated as required by the said Government Resolution, making reference to the decision rendered by this Court in Special Civil Application No. 12214 of 2005 rendered on August 07, 2013, the Court held that there is fresh appointment after the said Government Resolution and, therefore, the benefits flowing from the said Government Resolution are required to be granted to the petitioner therein. The Court also made a reference of the said decision having been confirmed by the Division Bench in Letters Patent Appeal No. 447 of 2014 and accordingly held thus:

"14. Impugned order dated 15.9.2012 at Annexure-A is quashed and set aside. The petitioner is held entitled to the benefit of pension (GPF scheme) under the resolution dated 15.10.1984 with effect from the date the petitioner joined as Principal from 1.4.1996. The respondents are directed to give benefit of GPF scheme to the petitioner by transferring the account of the petitioner from CPF to GPF if the petitioner is not paid any amount from CPF account, however if the petitioner has received any amount from her CPF account, the petitioner shall be entitled to the benefit of pension scheme under the resolution dated 15.10.1984

only on petitioner depositing such amount with the respondent No. 2. For such purpose, the respondent No. 2 shall intimate the petitioner within a period of one month from the date of receipt of this order to deposit the amount of CPF received by her for the period of service after 1.4.1996. After the petitioner receives such intimation, she shall deposit the CPF amount within a period of one month thereafter with the respondent No. 2. The respondent Nos. 1 and 2 shall then complete the exercise of transferring the CPF amount to GPF account and finalize the pension case of the petitioner within a period of three months. However, if the petitioner has not received any CPF amount, the respondent Nos. 1 and 2 shall complete the exercise of transferring the CPF amount to GPF account and finalize the pension case of the petitioner within a period of three months from the date of receipt of this order.

Rule is made absolute to the aforesaid extent."

27. The said order was challenged by the State by way of preferring inter-court appeal being Letters Patent Appeal No. 982 of 2015. The Division Bench referred to the decision rendered on July 02, 2015 by the Division Bench of this Court in the case of State of Gujarat Thro Secretary v. Bhupendra Vallabhdas Chudasama and another, while dealing with Letters Patent Appeal No. 981 of 2015, confirmed the decision rendered by the learned Single Judge.

"3.1 In view of the above and for the reasons stated above and aforesaid direct decision of the Division Bench of this Court on the very issue, it cannot be said that the learned Single Judge has committed any error in quashing and setting aside the communication/order dated 15.09.2012 and in holding that the petitioner shall be entitled to the pension/GPF Scheme as per the G.R. dated 15.10.1984, however subject to her depositing/redepositing the amount of CPF received by her. However, it is clarified that the period of service prior to 01.04.1982 shall be counted only for the purpose of pensionable service and not for any other purpose."

28. This Court in the case of Bhupendra Vallabhdas Chudasama rendered on April 16, 2014 while dealing with Special Civil Application No. 7173 of 2012, had extensively dealt with the decision in the case of S.S. Patel (supra), to hold in favour of the petitioner that the benefit of the said Government Resolution would be applicable in the case of those who have been employed on the post on or after April 01, 1982 period automatically.

The aforesaid decision in the case of Bhupendra Chudasama (supra) was challenged by the State in an intra-court appeal being Letters Patent Appeal No. 981 of 2015, wherein the Division Bench of this Court has confirmed the order passed by the learned Single Judge while dealing with Special Civil Application No. 7173 of 2012. It would be profitable to reproduce the relevant paragraphs of the said decision, which read as under:

"6.0 Heard learned advocates appearing for respective parties at length. Having heard learned advocates appearing for respective parties, the following three

questions are posed for consideration of this Court.

1. Whether an employee like the original petitioner who has been appointed after the G.R. dated 15.10.1984 can be denied the pension/pensionary benefits under the G.R. dated 15.10.1984 on the ground that he had not exercised the option for GPF?

2. Whether past services of such an employee is required to be counted for qualifying services for pension?

3. Whether the past services is required to be counted/considered for fixation of the pension or for qualifying services for pension only?

[6.1] While considering the aforesaid questions/issues, the G.R. dated 15.10.1984 is required to be considered which reads as under:

Pension scheme for the teaching staff in the non Govt. affiliated college and in the Universities

Government of Gujarat, Education Department Resolution No. NGC-1582/9505(84)-KH, Sachivalaya, Gandhinagar, Dated the 15th October, 1984

RESOLUTION:--

The question of application of pension, gratuity and other retirement benefits to the members of teaching staff of the university under Education Department and in affiliated and aided non-government colleges in Gujarat was under consideration of the Government for some time past. After careful consideration, Government is now pleased to direct that the pension, gratuity and other retirement benefits admissible to the Gujarat State Government servants under the Revised Pension Rules, 1950 contained in the Appendix XIV-C to BCSR Rules, Volume II, as amended from time to time, the family pensions scheme sanctioned in Government Resolution, Finance Department No. FPS-1071-J dated 1.1.72 as amended from time to time should be made applicable to the full time teaching staff of the universities under the Education Department and in affiliated and aided non-government Arts, Science, Commerce and Education Colleges in this State with effect from 1.4.1982

1.a) for the purpose of this scheme

(1) University means universities under Education Departments established by the Acts.

(2) A non-Government college includes non-Government affiliated Arts, Science, Commerce and B.Ed. colleges receiving grant-in-aid and managed by the private body and affiliated with the universities by the competent authority, as such for the purpose of grant-in-aid from State Government.

b) for the purpose of pensionable pay, pay means and includes:

- (1) pay in the approved prescribed scale of pay,
- (2) additional pay for additional academic and professional qualification admissible under the orders issued by Government from time to time,
- (3) personal pay granted to save from less to pay due to revision of pay scale or due to pay fixation.

Note:-- If a member of staff during the last three years of his service has been absent from duty on leave with allowances, his pay for that period should be taken what it would have been, had he been on duty at any time during the first six months of period of leave.

Provided that the benefit of higher officiating or temporary pay should be given only if it is certified that member of the staff concerned would have continued to hold the higher officiating or temporary appointment but for his proceeding on leave.

c) Teaching staff means a full time professor, Asstt. Professor, reader, lecturers in universities and Principal, Lecturer, Tutor, demonstrator and also physical training instructors, Librarians etc. working in non-Government aided colleges who are receiving University Grants Commission scales.

2. The Director of Higher Education or the officer authorized by him shall be competent authority to sanction pension, gratuity, family pension and other retirement benefits admissible under the scheme.

3.i) Existing staff retired before 1.4.82 and these members of the staff who have retired on or after 1.4.82 and prior to the date of issue of this resolution should exercise their option within the period of one year from the date of issue of this resolution either to continue in Contributory Provident Fund scheme or to come under this scheme. The option once exercised shall be final.

The option should be exercised in writing in the form prescribed (appendix-A) and communicated to the Director of Higher Education. The members of the staff who do not exercise the option within stipulated period shall be deemed to have opted for the retention of the benefit admissible to them before 1.4.82.

Where a member of the staff who was entitled to exercise an option in accordance with this Resolution died on any date on or from 1.4.82 and on or before expiry of the date before which he had to exercise option without exercising it, his family may be given the benefit of these rules or may be allowed the benefit or CPF Scheme, whichever is more favorable to them. The pension sanctioning authority should work out the benefits admissible under both the alternatives (i.e. the CPF and the Revised Pension Rules, 1950 as admissible under this government resolution) after taking into account the quantum of CPF as well as family pension and prepare pension paper accordingly with necessary sanctions.

ii) The member of the staff who have opted for the pension scheme shall join

GPF scheme concurrently as in the case of Government employees and their share in the GPF together with interest thereon shall be credited to their GPF account. The general provident fund shall be kept with Government and on retirement, the amount shall be paid to them in accordance with the rules.

iii) The amount of contribution paid by the University or management of Non-Government aided colleges and institutions mentioned in para 6 of this resolution together with interest thereon standing at the credit of the member of teaching staff opting for pension scheme, after they exercise their option for pension scheme should be credited to the State Government within a period of two months under the head of account XLVIII Contribution and Recoveries towards pension and other retirement benefit after the correctness of amount is verified and certified by the Director of Higher Education.

iv) Where the members of staff eligible for the scheme have retired/resigned after 1.4.82 to the date of the issue of this Government Resolution and who have received their CPF amount including the management or university contribution and Governments share together with the interest thereon desires to opt pension scheme as admissible under this Government Resolution should execute undertaking as in Appendix B alongwith an option as provided under this scheme. In such cases the amount received on account of Universities Managements contribution, Governments share and interest earned thereon by the member shall be adjusted against the arrears of pension and amount of D.C.R.G. admissible under this scheme. If the amount so received exceeds the amount of arrears pension/DCRG payable to him, the balance amount shall be paid by him immediately in the Government Treasury.

4. The member of the staff recruited on or after 1st April, 1982 shall automatically be governed by this scheme. Such staff will not be allowed to opt for contributory provident fund scheme.

5. The members of teaching staff who have completed five yeas of continuous service will be treated as holding permanent post substantively for the purpose of this scheme.

6. In computing the length of qualifying service for pension under this scheme, all previous service whether temporary officiating or permanent either in one or more than one non-government aided colleges, University Department, Higher Secondary School who are being paid Grant-in-aid from Government shall be taken into account. The period of break in service will not be considered as qualifying service i.e. actual service rendered will be considered as qualifying services.

7. The general provisions of chapter XI of BCSR Rules Vol.I will be applicable in granting retirement benefits to the member of the staff member of the staff under this scheme except where otherwise provided.

8. The age of superannuation retirement for the existing staff covered under the

scheme shall be 60 (sixty) years. The age of superannuation retirement for the staff that may be recruited on and from 1.10.1984 shall be 58 years for which universities should be requested to take necessary action to amend the relevant statutes/Rules Regulations accordingly.

9. The benefit of the revised rates of temporary increase in pension and minimum pension sanctioned to Government Pensioner under G.R.F.D. No. NVN-1082-1074-P dated 1.4.1982 as amended/amplified/modified from time to time shall be extended to the members of the staff who are eligible and opt the pension scheme under this Government Resolution.

10. The employee who got the retirement benefit of C.P.F. and gratuity etc. for the services rendered by him in earlier institutions before joining the other institution shall have to be refunded and credited to Government.

11. The pension papers of the members of the staff entitled to pension, gratuity etc. under the scheme should be prepared in case of college staff by the principal of the college on the basis of the service record maintained by the college concerned. The pension papers of the members of the staff entitled to this scheme in university should be prepared by the Registrar of the university on the basis of the record maintained by the university. The entries in the service books of the staff will be made and attested by the principal of the college and in case of principal, by the management of the college concerned and the Registrar in case of university staff and such entries should be verified by the Director of Higher Education or the officer authorized by him and a certificate of verification recorded in the service book. The Director of Higher Education should sanction the pension gratuity etc. and forward the pension papers duly completed to the Director of Accounts and Treasuries. The pension gratuity etc. so sanctioned will be payable from the Government Treasuries. The Director of Accounts and Treasuries will pre-audit the claim and issue a pension payment order and/or gratuity payment order on the Treasury, from which the pensioner desires to draw pension gratuity etc. under intimation to Director of Higher Education.

12. The grant of anticipatory pension or gratuity to such members of the staff as are governed by the scheme shall be regulated as per Government Resolution, Finance Department No. PEN-1069-1874-J, dated 17th June, 1969 and BCSR Rule 214 and pension and/or gratuity will be authorized/drawn and remitted or disbursed by the pension sanctioning authorities.

13. The expenditure on account of payment of pension under the scheme will be debited to the head 266...Pension and other retirement benefits "

14. This issue with the concurrence of the Finance Department vide its note dated 27.9.1984 on this departments file of even number.

By order and in the name of the Governor of Gujarat.

K.B. Makwana Under Secretary to Government of Gujarat, Education Department"

From the aforesaid it appears that prior to 01.04.1982 the GPF Scheme/Pension Scheme and other retirement benefits admissible under the Gujarat State Government Servants was not applicable/admissible to the full time teaching staff of the University under the Education Department and in affiliated and aided non-government Arts, Science and Commerce Colleges in the State. By G.R. dated 15.10.1984, the State Government came out with a pension scheme for the teaching staff in the non-government affiliated colleges in the universities and by the G.R. dated 15.10.1984, which was made effective from 01.04.1982, the pension, gratuity and other retiral benefits admissible to the Gujarat State Government servants under the Revised Pension Rules, 1950 contained in Appendix XIV-C to BCSR Rules, Volumes II, as amended from time to time, the family pensions scheme sanctioned in Government Resolution, Finance Department No. FPS-1071-J dated 01.01.1972 as amended from time to time is made applicable to the full time teaching staff of the universities under the Education Department and in affiliated and aided non-Government Arts, Science, Commerce and Education Colleges in this State with effect from 01.04.1982. As noted hereinabove, the said scheme is made applicable with effect from 01.04.1982. If Clause 3 is perused, two types of employees were to exercise option viz. (1) members of the existing staff recruited before 01.04.1982 and (2) those staff who have retired on or after 01.04.1982 and prior to the date of issue of the G.R. dated 15.10.1984, even the period of one year from the above date, whether to continue in CPF or to go under the pension scheme and such option was to be final. The reason for giving such option by the aforesaid two types of employees was because at the time and prior to the issuance of the G.R. dated 15.10.1984 which was made effective from 01.04.1982, the employee had no opportunity whatsoever, whether to opt for pension or for any other scheme and/or such employee should be governed by the prevailing system of CPF. Clause No. 4 of the G.R. dated 15.10.1984 makes it very much clear that member of staff recruited on or after 01.04.1982 shall automatically be governed by the said scheme and such staff will not be allowed to opt for CPF. Therefore, all the employees recruited on or after 01.04.1982 shall automatically be governed by the Pension Scheme under the G.R. dated 15.10.1984 and only those employees who were recruited prior to 01.04.1982, meaning thereby the existing staff recruited before 01.04.1982 and those who have retired on or after 01.04.1982, but prior to the date of the issuance of the G.R. dated 15.10.1984 were required to exercise the option as to whether they would like to continue in CPF or to go under the pension scheme as per the G.R. dated 15.10.1984. Under the circumstances, as such the employee who was recruited after 01.04.1982 was not required to exercise any option as there was no such need under the G.R. dated 15.10.1984 to exercise such option by such employees who are recruited after 01.04.1982. Therefore, the contention of learned Government Pleader that the original petitioner was required to exercise option for pension and as at the time of joining original respondent No. 4 College i.e. in the year 1987, he did not give any option and therefore, the petitioner is not entitled to the pension under the G.R. dated 15.10.1984 cannot be accepted and is hereby rejected. On fair

reading of the entire G.R. dated 15.10.1984, it is observed and held that any staff and/or employee of the University under the Education Department and in affiliated and aided non-government Arts, Science and Commerce Colleges in the State, appointed/recruited after 01.04.1982 shall automatically be governed by the G.R. dated 15.10.1984 and shall be entitled to the pension scheme automatically and they are not required to give any option.

[6.2] Now, so far as question Nos. 2 and 3 posed for consideration of this Court referred to hereinabove i.e. with respect to past services of such an employee is concerned, as such Clause 6 of the G.R. dated 15.10.1984 is very clear. Clause 6 of the G.R. dated 15.10.1984 confers benefits upon an employee of all previous services whether temporary, officiating or permanent, either in one or more than one non-government aided colleges, University Department, Higher Secondary School, who were being paid Grant-in-aid from Government, shall be taken into account for computing the length of qualifying service for pension under the said scheme. Therefore, all previous services whether temporary, officiating or permanent either in one or more than one non-government aided colleges, University Department, Higher Secondary School, who were being paid Grant-in-aid from the Government was required to be taken into account for computing the length of qualifying service for pension. For example if the qualifying service for pension is 10 years and after getting appointment after 01.04.1982 an employee does not have the qualifying service of 10 years, however his previous service prior to 01.04.1982 whether temporary, officiating or permanent either in one or more than one non-government aided colleges, University Department, Higher Secondary School who were being paid Grant-in-aid is counted and thereafter it is found that he is fulfilling the qualifying service for pension, in that case, his past services is required to be counted and/or taken into account for computing the qualifying length of service for pension. However, his previous service is not required to be considered for any other purpose other than for computing the length of qualifying service for pension i.e. for fixation of pension etc. Therefore, on fair reading of Clause 6 of the G.R. dated 15.10.1984, it is observed and held that all the previous services of the employee who has been appointed after 01.04.1982, is required to be counted and/or taken into account for computing the qualifying length of service for pension only.

[6.3] Identical question came to be considered by the learned Single Judge in the case of S.S. Patel (Supra). On interpretation of the very G.R. dated 15.10.1984, it is observed that so far as the width and amplitude of Clause 6 of the G.R. dated 15.10.1984 is concerned, it confers benefits upon employees of all previous service whether temporary, officiating or permanent either in one or more than one non-government aided Colleges, University, Higher Secondary School who are being paid grant-in-aid from Government, shall be taken into account for computing the length of qualifying service for pension under the said scheme. Considering Clause 3 and 4 of the aforesaid G.R. dated 15.10.1984 it is further observed that the member of the staff recruited on or after 01.04.1982 was not supposed to exercise an option since he was to be automatically

governed by the scheme.

We are in complete agreement with the view taken by the learned Single Judge referred to hereinabove.

[7.0] In view of the above, it cannot be said that the learned Single Judge has committed any error in directing the appellants to consider the previous service of the original petitioner i.e. for the period between 27.06.1968 to 17.11.1969 and 15.06.1970 to 30.06.1975 for computing the length of qualifying service for pension. However, as clarified hereinabove, the aforesaid previous service is required to be counted/considered and/or to be taken into consideration for computing the length of qualifying service only and not for computation of the pension and/or fixation of the amount of pension, as prior to 01.04.1982, the GPF Scheme/pension scheme was not applicable at all and it is made applicable with effect from 01.04.1982 and therefore, the past service/previous service is required to be taken into account only for computing the length of qualifying service for pension as per Clause 6 of the G.R. dated 15.10.1984. It is required to be noted that in the present case as such even if his previous service is not taken into account for fixation of the pension and/or for quantification of the amount of pension, the amount of pension is not likely to be changed. As observed hereinabove, the original petitioner was mainly denied the pensionary benefits/GPF Scheme as per the G.R. dated 15.10.1984 mainly on the ground that at the time when the original petitioner joined original respondent No. 4 College/institution, he did not exercise the option for the pension scheme, which as observed and held hereinabove the original petitioner was not required to exercise such an option."

29. There is yet another decision of this Court rendered on August 07, 2013 in the case of L.P. Joshi v. State of Gujarat and another, while dealing with Special Civil Application No. 12241 of 2005, wherein the prayer was made by the petitioner to avail the benefit of the GPF Scheme and to treat the petitioner as newly appointed person on the post and this Court held that the transfer of the petitioner from CPF to GPF is automatic. The petitioner therein was also a Lecturer in Arts and Commerce College. He resigned from his service on July 02, 1991 on getting new appointment which was approved by the North Gujarat University. He was then selected in Arts and Commerce College vide order dated April 26, 1994, which was sanctioned by the Commissioner of Higher Education. It was his case that since he was covered under the pension scheme, a request was made to transfer his entitlement from CPF to the GPF. He was denied such benefit. He sent his option form for GPF, however, it was rejected on the ground that time limit for exercising such option had expired. It was the say of the then respondent-authority that as per Clause 3(1) after introduction of Government Resolution dated October 15, 1984, the existing staff members recruited before April 01, 1982, were required to exercise option within a period of one year from the date of coming into effect of the said Government Resolution. The said limit was extended for a further period of one year upto March 31, 1986 and

thereafter, vide Government Resolution dated October 11, 1988, the said time limit for exercising the option was extended for a further period of three months from the date of the said Government Resolution. Once again such time limit was extended for an additional period of two months vide Government Resolution dated September 17, 1991. However, those who did not opt for joining the GPF scheme, were held not entitled for the same.

As against the said order, an intra-court appeal being Letters Patent Appeal No. 447 of 2014 was preferred, which ultimately came to be dismissed confirming the order passed by the learned Single Judge. It would be beneficial to reproduce the relevant paragraph of the said decision, which reads as under:

"4. We have gone through the facts of the case, and therefore, after going through the reply and more particularly Page-50 of the Paper Book, it is amply clear that the Respondent had already exercised his option. We are, therefore, unable to accept the submission made by Mr. Sharma that since, the Respondent had not exercised the option, he cannot be granted the benefit of GPF Scheme. Aforesaid submission of Mr. Sharma requires to be rejected also on the ground that the Respondent joined services with Ambaji Arts College, Ambaji, on 02.07.1991, i.e. after the issuance of GR of 1984. The above aspect further becomes clear from the observations made by the learned Single Judge at Paras-11 and 12 of the impugned judgment, which is reproduced herein below:

"11. As per the resolution of the Government for Pension Scheme, only those teachers who were recruited prior to 01.04.1982 were required to exercise option to be governed by the Pension Scheme. Since the appointment of the petitioner from 02.07.1991 in Ambaji Arts College at Ambaji was after his resignation from the earlier college, the petitioner could not have been considered as recruited prior to 01.04.1982. For the purpose of Pension Scheme, the petitioner shall be required to be considered as recruited after 01.04.1982 and would thus stand governed by the Pension Scheme.

12. Reliance placed by the respondent No. 2 on Clause No. 8 of the resolution dated 15.10.1984 for refusing the request of the petitioner to take in GPF Scheme is on wrong reading of the resolution dated 15.10.1984. The respondent No. 2 in impugned order dated 16.03.2005 has stated that as per Clause 8 of the resolution dated 15.10.1984 those teachers appointed prior to 1984 change the college or university on getting appointment as Principal are required to be treated as an employee of existing establishment and their age of retirement shall be 60 years. Such is wrong reading of Clause 8 of the resolution dated 15.10.1984. Clause 8 of the said resolution reads as under:--

The age of superannuation retirement for the existing staff covered under the scheme shall be 60 years. The age of superannuation retirement for the staff that may be recruited on or from 1984 shall 58 years for which universities should be requested to take necessary action to amend the relevant statute.

5. From the record, it also transpires that there are two different retirement ages

for two different category of employees. Since, the Respondent resigned from his earlier service with a private college in the year 1991, he became a new entrant, and therefore, the learned Single Judge rightly concluded that the GR dated 15.10.1984 will not apply to him. The learned Single Judge has considered the entire material placed before him and has passed the impugned judgment and order, quashing and setting aside the order of Appellant No. 2 by passing and we are unable to persuade ourselves that any other view of the matter, than, the one taken by the learned Single Judge can be taken.

6. Insofar as the reliance placed on by Mr. Sharma on a decision of the Apex Court in the case of KENDRIYA VIDYALAYA SANGATHAN v. JASPAL KAUR, 2007 (0) GLHEL-SC 39427 is concerned, same would not apply to the facts of the case on hand for the reason that the employee, in the said case, had clearly exercised her option, showing her willingness to continue with CPF Scheme, and therefore, the Apex Court rightly held that once having exercised option to avail benefits of CPF Scheme, the employee cannot be permitted to claim the benefits under GPF Scheme by changing her option, at a later stage.

7. As regards the decision in the case of RAJASTHAN STATE ROAD TRANSPORT CORPORATION v. PRESIDENT, RAJASTHAN ROADWAYS UNION, 2012(0)GLHEL-SC 52110, relied on by Mr. Sharma is concerned, in that case the employee, who had expired in harness, had not exercised the option for availing the benefits of GPF Scheme, though, the notification for the same was issued to all the departments, and therefore, the Apex Court held that the family members of the deceased employee, who had received benefits under CPF Scheme, cannot be granted the benefits of GPF Scheme, which is not the case with the present Respondent. Hence, this decision will also not help the case of the appellant in any manner.

8. However, the decision of the learned Single Judge in the case of SS PATEL v. DIRECTOR OF PENSION & PROVIDENT FUND & ORS., rendered in Special Civil Application No. 29641 of 2007 and relied on by Mr. Sheth, learned Advocate for the Respondent, would squarely apply to the case of the present respondent. In that case, the learned Single Judge held that, since, the petitioner had entered into the service with the institution, which was governed by pension Scheme, after the issuance of G.R. Of 1984, he was entitled to get the benefits of pension scheme.

9. In the result, the appeal fails and is summarily DISMISSED.

10. Since, the main matter is dismissed, civil application shall not survive and it also stands DISPOSED OF, accordingly."

30. This Court in the decision rendered on February 27, 2015 in the case of Uma V. Chudasama v. State of Gujarat and others, while dealing with Special Civil Application No. 11473 of 2013, was required to deal with once again the very issue and after referring to the decision in the case of Dr. Nalini K. Dave (supra) and S.S. Patel (supra) and other decisions, the Court held thus:

"5. Having heard the learned advocates for the parties, it appears that the petitioner was initially appointed as lecturer vide order dated 24.10.1980 at Annexure-A in MS University, Vadodara on probation for a period of two years. Subsequently, she was confirmed on the said post with effect from 24.11.1982 as per order at Annexure B. It appears that thereafter, vide order dated 5.2.1986, the petitioner was appointed on the post of reader. In the appointment order at annexure C for the post of reader, application of the petitioner for the post of reader as also report of selection committee dated 22.1.1986 are referred. Relying on the selection report referred in appointment order, learned Advocate Mr. Chauhan submitted that the appointment of the petitioner on the post of reader is required to be considered as fresh appointment after 1.4.1982, i.e. cut off date mentioned in the resolution dated 15.10.1984, However, what is required to be considered is whether the petitioner was a member of teaching staff of the very same university prior to 1.4.82. If the petitioner is to be treated as a member of teaching staff prior to 1.4.1982, then, the petitioner was required to exercise option for pension scheme.

6. The phrase teaching staff is given meaning in clause (c) of clause (1) of the Resolution dated 15.10.1984 which reads as under:

"(c) Teaching staff means a full time professor, Assistant Professor, Reader, Lecturers in Universities and Principal, Lecturer, Tutor, Demonstrator and also physical training instructors, librarians etc. working in non-Government aided colleges who are receiving University Grants Commission Scales;"

7. Clause 4 which is relevant for our purpose reads as under:

"4. The member of the staff recruited on or after 1st April, 1982 shall automatically be governed by this scheme. Such staff will not be allowed to opt for contributory provident fund scheme."

8. As per clause 4, any member of the staff recruited on or after 1st April, 1982 shall stand automatically governed by the pension scheme and such member shall not be allowed to opt for the CPF Scheme.

9. As far as the case of the petitioner is concerned, the petitioner could be said to be a member of teaching staff as per the above referred sub clause (c) right from the date she was first appointed on 24.10.1980 as undisputedly the petitioner was working as full time lecturer.

10. It is not in dispute that till the petitioner retired on 14.6.2012, the petitioner continued with the CPF Scheme and in fact, got all the benefits of pay fixation, length of service, leave salary etc. on the basis of her original date of appointment of 24.10.1980. After two years of her retirement, the petitioner has now claimed benefit of pension under the resolution dated 15.10.1984. At such belated stage, such prayer cannot be accepted especially when the petitioner has already got benefits of CPF and other benefits on the basis of her initial date of appointment and especially when she could be considered as a member of

teaching staff from her initial date of appointment.

11. None of the judgments relied by learned Advocate Mr. Chauhan shall have application to the facts of the case of the petitioner. In the case of Dr. Nalini V. Dave (supra), though the petitioner in the said case made repeated sincere efforts before the concerned authorities for the purpose of exercising option and to get benefit of pension scheme, she was denied the benefit of pension scheme. On account of taking no action by the concerned authority for long time, the Court held that the petitioner in the said case was not responsible for delay and she was not made aware about benefit of available under the pension scheme.

12. In the case of S.S. Patel (supra), the petitioner had joined the service as reader on 6.10.88 and the claim was to consider his past services for the purpose of pension benefits. The Court on construction of clause 6 of the scheme, held that the petitioner therein was entitled to the benefits of past services. However, in the said case, undisputedly, the petitioner was recruited after 1.4.82 and in fact after issuance of the Resolution dated 15.10.1984.

13. In Special Civil Application No. 740 of 2013, the petitioner of the said petition had resigned from earlier institution and joined another institution in the year 1995 wherefrom she retired. In such fact situation, the Court held that her appointment in another institution was to be considered as fresh appointment after the cut off date of 1.4.1982 and she was automatically covered by the pension scheme and there was no question of exercising option by her.

14. In the case on hand, since the court finds that the petitioner could be said to be a member of teaching staff even prior to 1.4.1982, the petitioner would not stand automatically governed by the pension scheme.

15. For the reasons stated above, the petition is dismissed. Notice is discharged."

This decision of the learned Single Judge was challenged before the Division Bench of this Court by way of an intra-court appeal being Letters Patent Appeal No. 1019 of 2015. The Division Bench allowed the appeal by holding that the issue is squarely covered by the decision of this Court rendered on July 27, 2015 and held that the petitioner would be entitled to the pension under the GPF Scheme as per the Government Resolution dated October 15, 1984 and the entire service, including services prior to April 01, 1982 would be necessarily counted for the purpose of pension scheme with a rider that if he has already received the amount of CPF, the same shall be firstly repaid to the respondent-authority and, thereafter only, the benefit would flow from the GPF scheme.

31. Reverting to the facts of the present case, the petitioner joined his services as Tutor Demonstrator in the Science College on April 10, 1970 on completion of due process of selection. He had applied for the post of Lecturer advertised by the Gujarat University and was, accordingly, appointed on June 15, 1982. Pursuant to the advertisement of the Gujarat University for filling in the vacant posts of Reader in the School of Science, once again he was required to

undertake the entire selection process. After completion of the said de novo process of selection, he was initially appointed on probation period for two years vide order dated July 07, 1990. The appointment was given to him specifically mentioning that the GPF, Pension and other benefits are admissible. It is also the say of the petitioner that he had gone through the entire process of selection once again when he came to be appointed as a Professor on September 07, 1998. It is, thus, the say of the petitioner that he had joined the service after April 01, 1982 on undergoing due selection process. Therefore, the petitioner would be covered under Clauses 4 and 6 of the Government Resolution dated October 15, 1984, which is made effective with effect from April 01, 1982.

Not only there is no requirement of his giving any option as his appointment is after April 01, 1982 and his entitlement would be automatic so far as his claim of pension is concerned. Each time when he was appointed, he had undergone the very process which led to his appointment. In the decisions discussed hereinabove, this issue is at length discussed and decided and hence, the issue is no longer res integra. Particular reference of the judgment in the case of Maheshbhai H. Bhatt (supra) and the decision in the case of Banuben Rameshbhai Dhakkan (supra), at this stage, would be necessary. These decisions also take into account the observations rendered in the case of S.S. Patel (supra) and Dr. Nalini K. Dave (supra).

32. The issue of fresh recruitment and whether promotion to the post of a Principal/Professor would amount to recruitment is also, as discussed above, squarely covered by various decisions referred to hereinabove, more particularly, in the decision in the case of Maheshbhai H. Bhatt (supra) the petitioners, therefore, deserve to be granted the benefit of the pension scheme without there being any necessity to opt for such scheme specifically. As the appointment of the petitioner on the post of Lecturer was in the post April 01, 1982 period, it would not require this Court to adjudicate in this group of petitions, the issue as to whether the promotion would amount to recruitment or not. Although the Supreme Court in the case of K. Narayanan (supra) has held that the term "recruitment" includes promotion and deputation; and the said issue, as such, is not required to be adjudicated upon as all the petitioners are already covered by the settled position of law. Although, that particular issue also has been extensively adjudicated upon by this Court.

33. For the foregoing reasons, all the petitions succeed and the same are, accordingly, allowed. The respondent-authority is directed to grant benefit of pension scheme to all the petitioners in view of Government Resolution October 15, 1984, from the date of their respective retirement, along with interest at the rate of 9% per annum.

In case of those petitioners, who have not refunded/repaid the amount of Contributed Provident Fund, only after repayment/refund of such amount of Contributed Provident Fund by the concerned petitioners, in case of such petitioners, the amount of pension shall be paid to the respective petitioner.

Insofar as the petitioners who have refunded/repaid the amount of Contributed Provident Fund are concerned, they shall be entitled for interest on the amount of pension from the date of their repaying/refunding the amount of Contributed Provident Fund.

Disposed of accordingly. There shall be, however, no order as to costs.