

(2019) 01 GUJ CK 0127
In the Gujarat High Court

Case No : R/Special Civil Application No. 4823 Of 2004

R A Malagi

APPELLANT

Vs

Gujarat University Through Registrar

RESPONDENT

Date of Decision : 21-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 226, 227
Gujarat Civil Services [Pension] Rules, 2002 — Rule 80

Citation : (2019) 01 GUJ CK 0127

Hon'ble Judges : A.J. Shastri, J

Bench : Single Bench

Advocate : Sp Hasurkar, Bhargav Pandya

Final Decision : Dismissed

Judgement

1. The present petition under Article 226 of the Constitution of India is filed for the purpose of seeking the following relief :-

"7(A) Your Lordships may be pleased to allow this petition and further be pleased to issue a writ of mandamus or any other writ in the nature of writ of mandamus or any other appropriate writ or directions, for quashing and setting aside the judgment of the learned Tribunal dated 28.11.2003 only qua the aspect that the learned Tribunal has negative benefits to the petitioner's services which he has rendered in University of Karnataka and Pune University for the purpose of counting the same services in his total length of services for the pensionary benefits.

(B) Your Lordships may be pleased to hold and declare that it is no longer open for the respondent - University and Government to contend that services rendered by the petitioner in Karnataka University and Pune University cannot be taken into account for computing the total length of qualifying services and further be pleased to direct the respondent - University and the respondent - Government to modify pension order considering petitioner's services 39 years

for pensionary benefits instead of 23 years and further be pleased to direct the respondents to give consequential benefits including arrears of pension, interest and costs.

(C) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to direct the respondent University to comply with the order passed by the learned Tribunal in Application No. 17 of 2001 qua the relief granted by the learned Gujarat University Services Tribunal forthwith.

(D) Your Lordships may be pleased to pass any other and further order which may deem fit in the interest of justice."

2. The case of the petitioner is that he is the holder of Bachelor Degree in Arts with English language as a principal subject and was also awarded with two gold medals and subsequently, he also cleared Master of Arts from Karnataka University and further did advance Doctorate degree from Karnataka University in English literature. The petitioner joined the Government Polytechnic College, Pune, in the month of October, 1960 and subsequently jointed M.E.S. College, Pune, as Assistant Professor in English department and worked as such from July, 1961 to September, 1971. It is further the case of the petitioner that in September, 1971, when he joined the Karnataka University as a Reader in English with basic salary of Rs.950/- in the pay-scale of Rs.750-1250/- and after implementation of the recommendation of 'Sen Commission', the pay-scale were revised.

1. Lecturer - Rs.1200-1900/- 2.Reader - Rs/1600-2000/-

3. Professor - Rs.1500-2500/-

3. The petitioner has asserted further that pursuant to the advertisement for the post of Professor of English in the School of Languages, in the National Newspaper in the year 1977, pursuant to which the petitioner applied on 18.02.1977 for the said post and after following all the recruitment procedure, the petitioner came to be appointed as a Professor of English in the respondent University with effect from 01.09.1977. The said assignment/appointment was in the school of languages in the pay-scale of Rs.1500-2000/- with other usual allowances. It is the case of the petitioner that pay and other emoluments of other teachers who joined the Gujarat University from other University were protected, however, the respondent University did not grant pay protection to the petitioner which ultimately, lead the petitioner to this Court by way of Special Civil Application No. 3240 of 1979. At the relevant point of time, the respondent University advanced its action on the ground that since the petitioner is from outside the State of Gujarat, he is not entitled to similar terms. However, negating the contention, this Court, according to the petitioner has held that "such classification is not countenanced of Articles 14 and 16 of the Constitution of India". Based upon this decision which has been delivered on 06.10.1992, the respondent - Gujarat University submitted Letters Patent Appeal No. 30 of 1993 before this Court and such appeal came to be dismissed vide order dated

21.04.1993.

3.1. It is further the case of the petitioner that the petitioner rendered excellent meritorious services to the respondent - University, devoted all his best abilities to teach the students and on account of reaching the age of superannuation, the petitioner retired on 31.10.2000. It appears from the record that while preparing the pension papers of the petitioner, the services rendered by the petitioner in Karnataka University and Pune University were not clubbed for counting the services of pension benefit and instead considering 32 years services, merely 23 years have been counted which has led the petitioner to submit an application before the learned Gujarat Universities and Services Tribunal (hereinafter referred to as the "Tribunal"). The case of the petitioner was that his past services of Karnataka University and Pune University were to be considered and in similar situation in the case of Shri V.C. Shah, Shri V.M. Trivedi and Shri H.L. Raval were considered and extended the benefit by joining the previous services of other University in the present one. Resultantly, equal treatment could have been given. Based upon this, an application was submitted being Application No. 17 of 2001 which was submitted after reaching the age of superannuation and this application had been put up for adjudication before the learned Tribunal, Ahmedabad. The said application at length had been dealt with by the learned Tribunal as it appears and then vide judgment and order dated 28.11.2003, the application came to be dismissed. Hence, this judgment and order is made the subject matter of the present petition which appears to have been admitted on 19.04.2004 and after completion of the pleadings, it has been set down for final hearing before this Court.

4. Learned advocate Mr. S.P. Hasurkar appearing for the petitioner has vehemently contended that a serious error of law is committed by the learned Tribunal in passing the impugned judgment and order. While passing the judgment, the learned Tribunal has not considered the act, the observations which have been made about the services of the petitioner which were rendered in Karnataka as well as Pune Universities and, therefore, a serious error of jurisdiction is committed by the learned Tribunal which deserves to be corrected. Learned advocate Mr. Hasurkar has further submitted that the petitioner had applied through a national advertisement in the daily newspaper and, therefore, it was not a recruitment process for a restricted area. Had there been so, the petitioner would not have even applied for such employment. It has further been contended that there was no break in the services and pursuant to the recruitment, immediately, the services in the Gujarat University has been resumed and, therefore, no discrimination treatment is given to the petitioners. It has been vehemently submitted that these Universities which are recognized are ultimately governed by the UGC and, therefore, the past services of such length could not have been ignored. It has been submitted that looking to the definition contained in the BCSR of qualifying services, the previous service of the petitioner could not have been ignored, even the Government Resolution which has been relied upon has not demarcated the employment of other

University and the local University and, therefore, if the Government Resolution which is being relied upon if to be interpreted in the manner in which the authority wants, the same would run counter to the observations which has been made by the Division Bench of this Court. It has been submitted that in Pune University the petitioner had rendered services from June, 1961 to September, 1971 whereas in Karnataka University the petitioner has rendered services from September, 1971 to September, 1977 and without any break the petitioner has rendered services in the Gujarat University with effect from 01.09.1977 to 31.10.2010 and, therefore, the past services of 16 years if to be ignored, a serious injustice would be meted out to the petitioner. This is not the object for which the employment was invited by publishing nation wide advertisement. Learned advocate Mr. Hasurkar has further submitted that not only the observations made by the Division Bench of this Court of previous petitions but even few decisions which are relied upon would also clearly indicate that the same will have a barring upon the question raised in the petition. The same are as under :-

1. In the case of Abdul Motin v. v. Manisankar Maiti reported in AIR 2018 SC 3665 [:2018 (0) AIJEL-SC 6288] (para 14).

2. In the case of A. N. Sachdeva (Dead) by Legal Representatives & Ors. v. Maharshi Dayanand University Rohtak & Anr., reported in 2015 (10) SCC 117 (para 30).

3. In the case of Visitor, AMU & Ors. v. K.S. Mishra reported in 2007 (8) SCC 593 (para 12 and 13).

4. In the case of State of Uttar Pradesh v. Narendra Bahadur Singh reported in 2011 (12) SCC 474 [:2011 (0) GLHEL-SC 50495 (para 8 and 9).

4.1. By referring to the aforesaid decisions, learned advocate Mr. Hasurkar has vehemently contended that the learned Tribunal has committed serious error of law and material in nature while exercising the jurisdiction and, therefore, the finding which has been arrived at is perverse, the finding may not be allowed to be substantiated in the eye of law. Learned advocate Mr. Hasurkar has further submitted that the reasons which are assigned are not sufficient enough to substitute the conclusion and, therefore, the relief prayed for deserves to be granted with consequential direction to take up the grievance at the earliest by giving benefit of past services. It has further been contended that there is a hostile discrimination by the respondent authority in not counting the previous services of other universities which kind of services have been considered in respect of three persons who are specifically named and though appointed and without much giving importance to this issue, the learned Tribunal has brushed aside the grievance of the petitioner. When that be so, the ultimate conclusion arrived at is erroneous, perverse to the record, which deserves to be set aside by this Court. It has been contended that the pension by now still recognized as a property it cannot be hindered away in the manner in which the authorities have

dealt with and here is a question of 16 years of long length of service which cannot be given go-bye. The petitioner is also ready and willing to indemnify the authority by offering some suitable terms and conditions while reviewing the benefit and after submitting this, learned advocate Mr. Hasurkar has vehemently requested the Court to set aside the impugned order.

5. To meet with the stand taken by the learned advocate for the petitioner, learned AGP Mr. Bhargav Pandya has submitted that the Government Resolution which has been pressed into service is restricted and related to the State of Gujarat only which is not applicable in the case of the petitioner about his services of the different state. It has also not been clarified by the petitioner at any point of time even before the learned Tribunal whether his previous services were pensionable or not and no such document have been tendered that the services of the Karnataka and Pune Universities were pensionable and, therefore, after much belated stage and after the retirement of the petitioner and after receiving of due benefits, the petitioner cannot be allowed at this juncture the speculative litigation and, therefore, no serious error is committed by the learned Tribunal while exercising the case of the petitioner. Hence, no relief be granted.

5.1. In any case, the issue which has been raised by the petitioner is seriously a disputed questions of fact which was never raised before the learned Tribunal by clarifying that the other states services were whether pensionable or not. Further in the past, the resignation was tendered by the petitioner and, therefore, in light of such eventuality, whether the petitioner is entitled to seek pensionable benefit of such resigned services or not is also a question of fact which cannot be gone into in the extra ordinary jurisdiction of this Court. It has further been submitted that this almost similar issue has been dealt with by the Division Bench of this Court in Letters Patent Appeal No. 954 of 2015 and by referring to para 10 of the said decision, learned AGP Mr. Pandya has submitted that no case is made out by the petitioner. It has further been submitted that the learned Tribunal has considered every aspect which then was agitated by the petitioner and, therefore, now the petitioner cannot raise a point that it is not considered and dealt with by the learned Tribunal and once a particular conclusion has come up against the petitioner, the petitioner cannot raise a grievance and such conclusion and satisfaction may not be substituted in exercise of extra ordinary jurisdiction and looking to the peripheral jurisdiction, basically under Article 227 of the Constitution of India, this is not a fit case in which well reasoned conclusion of the learned Tribunal deserves to be disturbed or substituted. It is undisputedly emerging from the record that now the services of Pune and Karnataka Universities have become pensionable, but at the relevant point of time the services of the petitioner in Pune and Karnataka Universities, there was no pension available and therefore, what has been given to the petitioner in which 23 years tenure is a sufficient justification which cannot be set-at- naught. It has been further submitted that there is no point of hostile discrimination available to the petitioner since the petitioner is not similarly situated to those three ex-employees who is said to have been granted the benefit. In fact those

employees were in different universities within the State of Gujarat and were not from outside the State and, therefore, by considering their case in light of the Government Resolution and policy, the benefit was extended to them and the petitioner cannot be said to be similarly situated person. Hence, the question of Article 14 of the Constitution of India being violated is not available to the petitioner. Learned AGP Mr. Pandya has further submitted that a bare look at the order in question would clearly indicate that much pain has been taken by the learned Tribunal while arriving at an ultimate conclusion and, therefore, looking to the scope contained under Article 226 and Article 227 of the Constitution of India, the relief does not deserve to be granted. Accordingly, the petition being meritless the same deserves to be dismissed.

6. Having heard the learned advocates for the respective parties and having gone through the material on record, the Court is of the view that some of the circumstances, apparently visible on record, deserves some consideration while arriving at an ultimate conclusion.

7. From the reading of the judgment, it appears that the learned Tribunal while considering the relief of the petitioner has found that an attempt of misleading the learned Tribunal was made by the original petitioner by not disclosing certain material as agitated by the opponents and in para 21 it has been observed that the substantial amount which had stated to have been withheld was already released and accepted by the petitioner and, therefore, the learned Tribunal comes to the conclusion that an attempt is made to mislead the Court. The said observation since relevant is reproduced herein after :-

"21. It is disclosed that last pay certificate which is issued to the applicant indicates that the increment which the applicant is referring to have been withheld are released to him and inspite of that applicant has come out with strong contention and is trying to mislead the Tribunal."

7.2. It has also been found by the learned Tribunal that the services rendered in the past cannot be claimed and mixed in this application since much prior to filing of this application, pension amount has already been secured by the petitioner. It has also been found that the plea of discrimination is also not substantiated by the petitioner except a bare assertion and therefore, whatever was available was paid and accepted by the petitioner. The learned Tribunal has found specifically that with regard to three instances which have been observed, not only any documents have been produced but even no request was made before the learned Tribunal to permit oral evidence which has ultimately lead to a situation of belief that no case of discrimination is established. The relevant observations with regard to that contained in para 40 on analysis of pleadings arrived at is reproduced herein after.

"40. Firstly I deal with the aspect that whether the service rendered by the applicant with Pune & Karnataka Universities from 1961 to 1977 can be taken into consideration for the purpose of pension or not? As stated in this order,

much is said by the applicant by giving instances of few employees retired from the University which were extended such benefits. The same are pertaining to Shri V.C. Shah, Shri V.M. Trivedi, and Shri H.N. Raval. Except bare say in the affidavit in rejoinder, to accept the same no documentary evidence is produced on the record of the case. Not only that no witness is examined to prove this. Facts also remains that this statement made in affidavit in rejoinder is nothing but a new case made out with new facts by the applicant which he could have stated in his application at the time of filing of the same. In my considered opinion, there cannot be new pleadings in the rejoinder except pleadings in connection of reply filed by the opponent by way of defence. Here examples given regarding aforesaid persons are new pleadings. Facts remain that the same are not denied by the University. It appears that copy of this affidavit in rejoinder is not served on opponent no. 2, 4 and 5 who are concerned authorities for sanctioning pension. They are not extended an opportunity by the applicant by serving copy on them to explain this aspect. In that case applicant was supposed to prove the same before this Tribunal either by leading oral evidence in connection of averments made in rejoinder by way of producing some documents to accept the same and or to prove the same. Mere statement in the rejoinder is not enough and therefore, considering that facts are not proved, it is difficult for this Tribunal to compare the case of applicant with the case of aforesaid named persons for the purpose of examining that whether Articles 14 and 16 guaranteed to the applicant, admittedly about equal protection of law and equality before law are being violated or not?"

7.3. It has also been found clearly from the order in question that by virtue of the Government Resolution dated 15.10.1984 and that effect of Clause 6 of Government Resolution dated 26.09.1989, both these Clauses make it clear that the services rendered in the institution named in the same are getting grant-in-aid from the state government and only that can be considered as a qualifying services and categorically it has been observed by the learned Tribunal that there is no provision in any of the aforesaid two Government Resolutions that the services rendered in the University/College outside the State of Gujarat can be taken into consideration as qualifying services for the purpose of fixing pension to be paid from the treasury of the State of Gujarat. Para 42 has analyzed the Government Resolution which aspect since dealt with reproduced herein after :-

"42. In G.R. Dated 15/10/84, it appears by way of clause (6) whereas in G.R. Dated 26/9/89 also it appears by way of clause (6). Both these clauses make it clear that service rendered in the institution named in the same which are getting grant-in-aid from Government can be taken into consideration as a qualifying service for the purpose of pension. Needless to say that both G.Rs., are issued by the Education Department of Government of Gujarat and therefore word 'Government' is required to be given the meaning of 'Government of Gujarat' . Admittedly, G.R., is by Government of Gujarat and therefore, it will be applicable to it and in any case word 'Government' cannot be construed as including State Government and/or Union Government. In that case of the

circumstances, it appears to me that if one has rendered service in the institution/college/department which gets grant-in-aid from State of Gujarat where pension scheme has been applied then only the service rendered can be taken into consideration as qualifying service. There is no provision in any of aforesaid two G.Rs., that service rendered in the University/college, out of State of Gujarat can be taken into consideration as qualifying service for the purpose of fixing pension to be paid from the treasury of State of Gujarat. Not only that while decision Application No. 48/98 being case of Fakubeg Adambeg Inamdar, the Tribunal has taken the view that service rendered out of State of Gujarat can be taken into consideration for the purpose of senior scale and selection grade but not for the purpose of fixing pension. This Tribunal has taken the view, as disclosed by opponent no. 5, in its reply & the same is not denied by the applicant by filing any rejoinder or by pointing out to this Tribunal that how the applicant differs from the aforesaid case decided by this Tribunal. No provision in support of applicant's case on this point, is pointed out for applicant even from opponent's Uni.'s Law. In that case of the circumstances and in absence of any provision to the effect that service rendered out of State of Gujarat can be considered as qualifying service for the purpose of pension, it is difficult for this Tribunal to accept the prayer made that effect."

7.4. The learned Tribunal then, has come to the conclusion after considering the decision which was delivered in the Letters Patent Appeal No. 30 of 1993 dated 21.04.1993 and then has clearly opined that the services rendered by the applicant from the year 1961 to 1977 with Pune and Karnataka Universities cannot be taken into consideration as qualifying services for the purpose of pension to be paid from the treasury of the State of Gujarat and, therefore, this conclusion which has been arrived at by the learned Tribunal is based upon the document on record, based upon pleadings of both the sides and based upon the appreciation and analysis of the relevant Government Resolutions. Further it has been found that the petitioner has not shown any specific statutory provisions or any rule which is empowering the learned Tribunal to consider the services of the other states particularly, when there is a fresh employment in an autonomous body like the university which is governed by its own rules and the said procedure.

8. Now these are the conclusions arrived at by the learned Tribunal in exercise of its statutory functions which appears to have been acted will within the scope of its authority and as such whether these conclusions whether perverse or not to be further examined by considering the decisions which have been pressed into service by either side and hence in such exercise, the Court is first considering the decisions which have been cited by the learned advocate for the petitioner, The first decision which has been relied upon is a decision delivered by the Apex Court in the case of Abdul Motin (supra) which case is dealing with the appointment of the post of Principal and the relevant qualification is required of such procedure of recruitment. The main question whether P.hd., degree issued by the Open University and another P.hd., degree issued by a formal conventional

University must be treated at par, having so issued under the uniform standards prescribed by the University Grant Commission (UGC) Act and in that context, the Apex Court had dealt with a issue. Hence, the facts of this case are quite distinct from the case on hand and, therefore, the analogy is not to be stretched to that extent particularly, when the Court is examining as to whether any patent irregularity or manifest injustice is meted out to the petitioner by the learned Tribunal and, therefore, the scope of Articles 226 and 227 of the Constitution of India is not possible to be stretched to that extent particularly, when the learned Tribunal in its statutory function has dealt with and undertaken such exercise of analysis. There seem to be no perversity in the conclusion arrived at by the learned Tribunal. As a result of this, this decision is not of any avail to the petitioner.

8.1. Yet another decision which has been brought to the notice is in the case of S.S. Patel (*supra*) in which also the question with regard to the applicability of the pension scheme and in that context whether the services even temporary or officiating rendered in non-government aided colleges will be considered as qualifying services or not, but this is again not dealing with an issue involved in the present case as clubbing of past services was not agitated for a pretty long period after joining the Gujarat University by the petitioner.

8.2. Yet another decision which has been relied upon by the learned advocate for the petitioner is in the case of State of Uttar Pradesh v. Narendra Bahadur Singh (*supra*) which on the contrary held in favour of the respondent authority rather than helping the petitioner. Para 9 which appears to be relevant for deciding the present issue, hence quoted hereinafter.

"9. It is revealed from the records placed before us that the respondent no. 1 was working as Legal Assistant from 1st September 1970 to 10th September, 1973. He, however, submitted an application which was forwarded under letter dated 12th August, 1973. In the said letter, it was clearly indicated that if the respondent no. 1 was selected to the post for which he as submitted an application in that event he would have to resign from the post of Legal Assistant in the Agricultural Marketing Section and that his lien would not be maintained in the Department. Therefore, clearly, as revealed from the records, the appointment of the respondent no. 1 to the post of Legal Assistant in Krishi Utpadan Mandi Parishad was a fresh appointment in which post he joined on 9th November, 1973 and worked till 1st May, 1975. as soon as the resignation was accepted and he joined the new post for all practical purposes, the respondent no. 1 became an employee of the new employer namely, Krishi Utpadan Mandi Parishad and was guided by their service conditions. There is no dispute with regard to the fact that the post which he was holding in Krishi Utpadan Mandi Parishad was a non-pensionable post. Even thereafter the respondent no. 1 applied for appointment to the post of Munsiff. He appeared in the selection and thereafter joined the post of Munsiff which was again a fresh appointment. There is no documentary evidence placed on record to indicate that at the time of his

appointment as Munsiff his past services were protected. That being the position, the respondent no. 1 would not be entitled to the benefit of the past services to be counted for the purpose of his pension. The judgment and order passed by the High Court therefore, cannot be affirmed which is set aside and the contention of the respondent no. 1 in the writ petition is held to be unsustainable and therefore rejected."

8.3. The learned advocate for the petitioner has then relied upon the decision in the case of A.N. Sachdeva (supra), wherein the issue prima facie appears to be somewhat similar but while examining the said decision at length, the facts are altogether different from the present one. In the said case, it was observed by the Court that the employees of Punjab University were allocated to Kurukshetra University and it is not in dispute that the present MD University used to be a regional center of Kurukshetra University, prior to its establishment and apart from that the said University being the regional center, the employees CPF contribution was transferred to the pension fund as expressly accepted by the concerned person and, therefore, no doubt the pension is practically a compensation for loyal services rendered in the past and it has got its own significance, but the fact that the petitioner has accepted a fresh employment in the present respondent authority being autonomous body, the petitioner is not entitled to request for clubbing the services essential. The said decision is a decision based upon the fact and there is a clear distinction considered in CPF scheme as well as pension scheme and, therefore, when in that case the Government of Haryana while modifying the pension scheme as agreed in pension date 24.12.2001 for clubbing the services of the employees of the Punjab University/Kurukshetra University on retirement from MD University as qualifying services and in that context which is specifically referred to in para 11 of the said judgment, the observations have been made by the Court which apparently is not possible to be stretched by this Court in exercise of extra ordinary jurisdiction particularly, when the legality and validity of the learned Tribunal exercising the jurisdiction is not examined. On the contrary, in para 5 as well as in para 6 and 8 some observations are not possible to be taken in aid in the case of the petitioner which has clarified that the services rendered by the employee elsewhere such as Central Government/State Government/Autonomous body, the same cannot be counted towards the qualifying services for pension purpose. When that be so, the said decision is based upon a particular stand of the State Government. In that the ratio laid down is not possible to be applied here where the facts are altogether different. The Court is of the considered opinion that if there is a slight change in the fact or one additional fact exists, the same would make the world of difference in applying the ratio laid down in a particular decision therefore, the judgment which has been relied upon by the learned advocate for the petitioner is of no avail to the petitioner.

8.4. Yet another decision which has been relied upon is in the case of Visitor, AMU (supra) wherein also the Court was dealing with the separate statute as of

Benaras Hindu University and the Statute of University particularly Statute 61 was analyzed by the Court and then passed a suitable observation, whereas here it has been made it clear even by the learned Tribunal that no provisions of whatsoever nature is shown before the learned Tribunal which can permit the learned Tribunal to hold in favour of the petitioner and here is also not clarifying that the petitioner's services were either transferred from other state with the consent or administration and therefore, in absence of any cogent material having not been produced no fault is possible to be found of the learned Tribunal to exercise at length the jurisdiction which is vested in it.

9. In that context of the aforesaid situation and the facts lead before the Court, which is apparently visible that what has been relied upon by learned AGP Mr. Pandya has got some impact upon the present controversy in the case of Letters Patent Appeal No. 954 of 2013 dated 13.09.2013, the Court was confronted with a situation of almost similar nature and in the same, the Court has specifically dealt with an issue and the relevant observations contained in para 8, 9, 10, 11 and 11.1 are making it clear that what has been claimed by the petitioner of clubbing past services of outside State of Gujarat is not permissible and therefore, there is no error committed by the learned Tribunal while exercising its extra ordinary jurisdiction. The said observations contained in para 8, 9, 10, 11 and 11.1 are reproduced hereinafter :-

8. After hearing the learned counsel for the parties and after going through the aforesaid resolution issued by the State of Gujarat, we find substance in the contention of Mr. Baxi that the aforesaid notification does not enable the respondent before us to get pension even for the period of service rendered in the State of Maharashtra without the contribution of the said State. So far as the service rendered in the State of Gujarat, we are at one with the learned Single Judge that in this case, the service rendered by the respondents should be treated to be 10 years in terms of sub-rule (3) vide added explanation of Rule 80 of the Gujarat Civil Services [Pension] Rules, 2002 which provides that in calculating the length of qualifying service, fraction of a year equal to 6 months and above shall be treated a complete year and reckoned as qualifying service period. Thus, the respondent is entitled to get pension for that period based on his service in the State of Gujarat by virtue of the Resolution quoted above.

9. However, for the service rendered by the respondent from the year 1970 till 4th January, 1987 in the State of Maharashtra, we find that learned Single Judge was not justified in holding that even for the above period, the State of Gujarat has liability to pay the pension by virtue of the above resolution even without payment of the proportionate pension amount by the State of Maharashtra.

10. In this appeal arising out of the Special Civil Application filed by the respondent, we find that this court has no territorial jurisdiction to consider the question whether the State of Maharashtra is liable to pay the pension for the period the respondent served as a teacher in the schools in that State from the year 1970 till January 1987, as no part of cause of action for such a claim has

arisen within the territorial limit of this High Court. We, consequently, have refrained ourselves from enquiring in to that aspect.

11. We, accordingly, partly allow this appeal by modifying the order impugned by directing the appellants to pay pension in respect of 10 year's service rendered by the respondent in the schools in the State of Gujarat indicated above in accordance with law with interest at the rate, in accordance with the policy of the Government of Gujarat, prevailing from time to time within two months. The amount of interest shall also be paid within a period of two months from today.

11.1 We make it clear that this order will not stand in the way of the respondent in seeking appropriate remedy before the appropriate forum for his claim of pension for the period served by the respondent in the State of Maharashtra.

9.1. Additionally the material on record and the conclusion arrived at by the learned Tribunal in co-relation with the decisions which have been pressed into service lead to a situation where there appears to be no apparent error committed nor any manifest injustice is meted out on the contrary, the petitioner's conduct was found to be not justifiable to exercise extra ordinary jurisdiction, particularly when the same was examined by the learned Tribunal. The scope of exercising extra ordinary jurisdiction is not wherein so easily any conclusion of statutory authority can be substituted unless and until there seem to be any perversity or material irregularity. Considering this proposition which has been laid down by the Apex Court in the case of Satya Pal Anand v. State of Madhya Pradesh & Ors., reported in (2016) 10 SCC 767, relevant observations of which are in Para.25 and 26, this Court is unable to dislodge the finding arrived at by the learned Tribunal. The said observations are reproduced hereinafter :-

"25. It is a well established position that the remedy of Writ under Article 226 of the Constitution of India is extraordinary and discretionary. In exercise of writ jurisdiction, the High Court cannot be oblivious to the conduct of the party invoking that remedy. The fact that the party may have several remedies for the same cause of action, he must elect his remedy and cannot be permitted to indulge in multiplicity of actions. The exercise of discretion to issue a writ is a matter of granting equitable relief. It is a remedy in equity. In the present case, the High Court declined to interfere at the instance of the appellant having noticed the above clinching facts. No fault can be found with the approach of the High Court in refusing to exercise its writ jurisdiction because of the conduct of the appellant in pursuing multiple proceedings for the same relief and also because the appellant had an alternative and efficacious statutory remedy to which he has already resorted to. This view of the High Court has found favour with Justice Dipak Misra. We respectfully agree with that view.

26. The other view of Justice V. Gopala Gowda, however, is that it was the duty of the High Court to answer the matters in issue because of the unilateral registration of the Extinguishment Deed by the Society without authority and a nullity. Ordinarily, if the party had not resorted to any other remedy provided by

law and had straightway approached the High Court to question the action of the statutory Authority of registering a document improperly and in particular in disregard of the prescribed procedure, that would stand on a different footing. In the present case, however, the appellant not only entered into a compromise deed with the Society and the subsequent purchaser but also resorted to statutory remedy. Having entered into a compromise deed, it is doubtful whether the appellant can be heard to complain about the irregularity in the registration of the Extinguishment Deed, if any. It is noticed that the appellant has not disputed the execution of the compromise deed, nor has he paid any heed to the notice given by the other party to refund the amount accepted by him in furtherance of the compromise deed. No Court can be party to a speculative litigation much less the High Court in exercise of writ jurisdiction. Having said this it must necessarily follow that the Writ Petition filed by the appellant deserved to be dismissed, as was rightly dismissed by the High Court."

9.2. In view of the aforesaid circumstance, no case appears to have been made out so convincingly which would permit this Court to grant any relief. Accordingly, the petition stand dismissed as meritless does not deserve to be entertained.

10. Additionally this issue which has been raised by the learned counsel appears to have not been agitated is yet another circumstance which would not permit the Court to dwell much upon it. Hence, the Court is of the considered opinion that no relief prayed for deserves to be granted. The other issues of the original application submitted by the petitioner have been taken care of and as such the Court is not called upon to examine the same. Resultantly, the petition stands dismissed. Rule is discharged with no order as to costs.