

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
DISTRICT- GANDHINAGAR

SPECIAL CIVIL APPLICATION NO. _____ OF 2023

In the matter under article 14, 16
and 226 of the Constitution of
India and in the matter issuance
of appropriate writ, order or
directions upon the respondent
authorities to release the pension
to the petitioner including the
difference of amount of pension
may be ordered to be paid to the
petitioner with 12% interest w.e.f.
01/06/2022

AND

In the matter relating to Gujarat
Civil Services (Pension) Rules
2002.

AND

IN THE MATTER BETWEEN:-

1. Dharmendra Rameshchandrabhai Bhatt
Male, Age- 59 years
Residing in Dwelling unit- 'Shivalay',
Ravi Randal Park-2, Nr. Shital Park Bus Stop
Opp. Spire-2, 150 ft. Ring Road,
Rajkot

...PETITIONER

VERSUS

1. The State of Gujarat
Notice to be served through
The Secretary, Education Department
Block No. 5, 7th Floor,
Sachivalaya, Gandhinagar.
2. The State of Gujarat
Notice to be served through
The Director, Pension & Provident Fund,
Block No.18, Dr.Jivraj Mehta Bhavan,
Gandhinagar-382010, Gujarat
3. Commissionerate of Schools
Having Office at-
9/1, Dr. Jivraj Mehta Bhavan,
Gandhinagar-382010
4. Director of Secondary Education,
Education Dept.-Gujarat State,
Block No. 5, Sachivalaya
Gandhinagar
5. Deputy Education Director (Secondary Division)
Having Office at- 9/1,
Dr. Jivraj Mehta Bhavan,
Gandhinagar-382010
6. District Education Officer, District Jamnagar
2nd Floor, Shri Dighvijaysinhji New School Building,
Nr. Khambhaliya Naka, Jamnagar

...RESPONDENTS

TO
THE HON'BLE THE CHIEF JUSTICE
AND HIS COMPANION JUSTICES OF
THE HIGH COURT OF GUJARAT, AT
SOLA-AHMEDABAD.

THE HUMBLE APPLICATION OF
THE APPLICATION ABOVE NAMED:

MOST RESPECTFULLY SHEWETH THAT:

1. The petitioner is a national and citizen of India and are entitled to the fundamental rights as guaranteed under part-III of the Constitution of India.
2. By way of preferring the present petition the petitioner invokes extra ordinary jurisdiction vested in the Hon'ble High Court under Article 226 of the Constitution of India and thereby pray for issuance of appropriate writ, order or direction upon the respondent authorities to release the pension of the petitioner, as despite the petitioner has already attained the age of superannuation on 31/05/2022, the pension is not released till today and despite, the services rendered by the petitioner, right from the initial services w.e.f. 02/08/1996 in secondary section of Shri Satya Sai Vidhyalaya of Jamnagar and subsequent service dated 12/06/2017 in Secondary Section which was the regular services and thereafter the petitioner had joined the services in the same school in Higher Secondary Section w.e.f. 01/06/2000 and had given resignation on 17/06/2005 and got appointment in secondary section of another school namely Shri Heerpara Kanya Vidhyalaya, Kalavad (Shitla) w.e.f. 18/06/2005, despite on 02/05/2006 (05/05/2006),

the General Provident Fund Account came to be opened and General Provident Fund Account was allotted for the petitioner that too by District Education Officer, Jamnagar and despite the petitioner was appointed as old and experienced teacher w.e.f. 18/06/2005 and even District Education Officer, Jamnagar had also passed order dated 21/02/2011 and the pay of the petitioner came to be protected as the pay of service of previous school was considered and pay fixation was done on granting 'protection' of pay i.e. in the pay of Rs. 6500, the entire services was treated as uninterrupted and continuous services, despite the petitioner attained the age of superannuation on 31/05/2022, though more than 13 months have already been passed, the petitioner is not granted the pension and therefore appropriate writ, order or directions may kindly be issued in this regard and the respondents may kindly be directed to release the pension of the petitioner w.e.f. 01/06/2022 and the difference of the same may kindly be ordered to be paid to the petitioner with 12% interest.

- 3.** Brief facts leading to the present petition are as under:-

- 3.1.** The petitioner came to be appointed on Ad Hoc basis as a teacher in Secondary Section of one Shri Satya Sai Vidhyalaya, Jamnagar on 02/08/1996.
- 3.2.** The petitioner came to be appointed on permanent basis w.e.f. 12/06/1997 in Shri Satya Sai Vidhyalaya, Jamnagar as teacher in Secondary Section, in the pay scale of Rs. 1400-2600.
- 3.3.** The petitioner states that on 01/06/2000, the petitioner was appointed / absorbed as a teacher in Higher Secondary Section of Shri Satya Sai Vidhyalaya, Jamnagar on the scale of Rs. 5500-175-9000. The petitioner had tendered resignation on 17/06/2005 as a teacher of Satya Sai Vidhyalaya, Jamnagar.
- 3.4.** The petitioner states that the petitioner thereafter came to be appointed as an experienced old teacher w.e.f. 18/06/2005 in the pay scale of 5000-8000. Hereto marked and annexed as **ANNEXURE-A** is a copy of the order of the appointment of the petitioner as old-experienced teacher in Shri Heerpara Kanya Vidhyalaya, Kalavad (Shitla).
- 3.5.** The petitioner states that on 02/05/2006 (05/05/2006), the concerned District Education Officer opened the General Provident Fund Account of the petitioner. Hereto marked and annexed as

ANNEXURE-B are the copies pertaining to the opening of the General Provident Fund Account of the petitioner.

3.6. The petitioner states that the concerned District Education Officer had also passed an order for pay fixation of the petitioner as the pay of the petitioner came to be protected w.e.f. 18/06/2005 i.e. the petitioner was placed in the pay scale of Rs. 6500 w.e.f. 18/06/2005. Hereto marked and annexed as **ANNEXURE-C (COLLECTIVELY)** are copies of the documents for pay fixation by which the petitioner came to be protected.

3.7. The petitioner state that thus the petitioner came to be appointed as an 'old-Experienced Teacher' w.e.f. 18/06/2005 in Shri Heerpara Kanya Vidhyalaya, Kalavad (Shitla) and his pay also came to be protected and therefore entire services rendered by the petitioner w.e.f. 12/06/1997 by which the petitioner was initially appointed in the regular services in Shari Satya Sai vidhayala, Jamnagar, the services of the petitioner w.e.f. 12/06/1997 and onwards were deemed to be considered as continuous services when the petitioner had got appointment on 18/06/2015 in Shri Heerpara Kanya Vidhyalaya, Kalavad (Shitla).

3.8. The petitioner states that the pay of the petitioner also came to be protected and pay fixation was done as the pay of the petitioner in respect of services of Shri Satya Sai Vidhayalaya upto 17/06/2005 was also protected and there was on break in services as on 18/06/2005, the petitioner was again appointed in Shri Heerpara Kanya Vidhyalaya, Kalavad (Shitla) wherein the petitioner had serviced continuously, interruptedly and had attained the age of superannuation on 31/05/2022.

3.9. The petitioner states that thus the entire services rendered by the petitioner right from 12/06/1997 and onwards till the date of superannuation i.e. on 31/05/2022 was continuous one and as the petitioner had completed pensionable services, the petitioner became eligible and entitled to get the pension w.e.f. 01/06/2022.

3.10. The petitioner states that even the respondent authorities had opened the General Provident Fund Account of the petitioner as the same was also got opened by the concerned District Education Officer and the account number was also allotted on 02/05/2006 (05/05/2006) and therefore the petitioner had deemed to have become eligible to get the pension. The various communications which has

taken place in respect of pension Case of the petitioner are annexed collectively as **ANNEXURE-D (Colly)**.

3.11. The petitioner states that despite the petitioner has attained the age of superannuation on 31/05/2022 and got eligible to get the pension from 01/06/2023, the petitioner has not been given the pension till today. The petitioner has made various representations in this regard. Some of such representations dated 27/01/2023, 12/04/2023, 20/04/2023, 13/05/2023 are hereto annexed as **ANNEXURE-E**.

3.12. It is submitted that even way back on 02/05/2022, the concerned Principal of Shri Heerpara Kanya Vidhyalaya, Kalavad (Shitla), had sent a communication dated 02/05/2022 wherein it was stated and certified that the services of the petitioner was pensionable one. Hereto marked and annexed as **ANNEXURE-F** is a copy of the communication dated 02/05/2022.

3.13. The petitioner states that the concerned authorities, District Education Officer had sent a communication dated 13/06/2022. Hereto marked and annexed as **ANNEXURE-G** is a copy of the communication dated 13/06/2022.

3.14. It is submitted that surprisingly and shockingly, instead of releasing of the pension that too with interest at 12% p.a. w.e.f 01/06/2022, the petitioner has received a communication dated 11/07/2023 by which the respondent authorities have mentioned that instead of making applicable new pension scheme, the old pension scheme was made applicable through opening of General Provident Fund Account and therefore such General Provident Fund Account was decided to be treated as 'Not Acceptable' and further order has been passed to affect recovery. Hereto marked and annexed as **ANNEXURE-H** is a copy of the communication dated 11/07/2023.

3.15. The petitioner states that the action of the respondent authorities of not releasing of the pension is absolutely illegal, illogical, arbitrary, violative of Article 14, 16 and 21 of the Constitution India and though the General Provident Fund Account was opened through the decision of the Dietrich Education Officer, Jamangar, it is absolutely shocking and surprising for the petitioner that without affording any opportunity of hearing, without even issuing any prior communication or without issuance of any show cause notice,

straightway the communication dated 11/07/2023 has been issued that too the same is in breach of principles of natural justice and the General Provident Fund Account was decided to be treated as 'Not acceptable', the said communication is violative of Article 14,16 and 21 of the Constitution of India and is violative of principles of natural justice and once the old pension scheme was made applicable to the petitioner, once General Provident Fund Account was ordered to be opened, after almost 15 years of opening of General Provident Fund Account, straightway the aforesaid decision has been taken and communication dated 11/07/2023 is sent and the same is illegal, illogical, arbitrary and violative of Article 14,16 and 21 of the Constitution of India and is violative of principles of natural justice quashed and set aside.

4. It is submitted that as per the policy which had remained in force and which has remained in force, the services rendered by the petitioner was already treated as pension able one that too as per various resolutions issued by the Government authorities and as the petitioner was appointed as old and experienced teacher w.e.f. 18/06/2005 and the pay of the petitioner for the services rendered prior to

18/06/2005 was also protected and the General Provident Fund account was opened and maintained till the date of superannuation, the petitioner was otherwise also treated as eligible and entitled to receive the pension, however, as the petitioner was subjected to great injustice as the pension is released till today though the petitioner has retired long back in 2022, and therefore appropriate writ, order and/or directions may kindly be passed and the action of the respondent authorities of not giving pension may kindly be quashed and set aside and the respondents may be directed to release the pension of the petitioner with immediate effect, and the entire services rendered by the petitioner w.e.f. 12/06/1997 and onwards till 31/05/2022 may kindly be ordered to be treated as pensionable services and the respondents may kindly be directed to release the pension to the petitioner and the same may kindly be ordered to be released with 12% interest from 01/06/2022 i.e. from the next day of attaining the age of superannuation. The petitioner states that the petitioner has served for a considerable long time and the petitioner has not been paid the retirement dues including encashment of earned leaves, as well as gratuity and other

consequential benefits / retirement dues and therefore the same may kindly be ordered to be paid with 12% interest from 01/06/2023.

5. That no other alternative efficacious remedy is available to the petitioner and hence the petitioner approaches this Hon'ble Court by way of preferring the present petition.
6. Except mentioned herein above, no other petition has been preferred by the petitioner in this Hon'ble Court or before Hon'ble Supreme Court with regard to the subject matter.
7. The petitioner craves leave to add, amend, alter or delete any of the paras mentioned in the memo of petition.
8. The petitioner, therefore, prays that this Hon'ble Court be pleased to –
 - A. Be pleased to admit this petition
 - B. Be pleased to pass appropriate writ, order and/or direction and be pleased to quash and set aside the communication dated 11/07/2023 as the same is illegal, illogical, arbitrary and violative of Article 14, 16 and 21 of the Constitution of India and is violative of principles of natural justice quashed and set aside and this Hon'ble Court be pleased to quash and set aside the action and decision of the

concerned respondent authorities of not releasing the pension of the petitioner from 01/06/2022,

- C.** Be pleased to pass appropriate writ, order and/or direction and the action and decision of the respondent authorities of not giving pension may kindly be quashed and set aside and the respondents may be directed to release the pension of the petitioner with immediate effect, and the entire services rendered by the petitioner w.e.f. 12/06/1997 and onwards till 31/05/2022 may kindly be ordered to be treated as 'pensionable services' and the respondents may kindly be directed to release the pension to the petitioner with effect from 01/06/2022 with 12% interest
- D.** Be pleased to pass appropriate writ, order and/or direction and direct the concerned authorities to make the payment of the retirement dues including encashment of earned leaves, as well as gratuity and other consequential benefits / retirement dues and the same may kindly be ordered to be paid with 12% interest with effect from 01/06/2023.
- E.** By way of interim order be pleased to pass appropriate writ, order and/or direction and direct the concerned authorities to make the payment of the retirement dues including encashment of

earned leaves, as well as gratuity and other consequential benefits / retirement dues and the same may kindly be ordered to be paid with 12% interest with effect from 01/06/2023, pending admission and final hearing of the present petition.

F. Be pleased to pass such orders as thought fit in the interest of justice.

AND FOR THIS ACT OF KINDNESS AND JUSTICE THE PETITIONER SHALL, AS IN DUTY BOUND, EVER PRAY.

AHMEDABAD.

N.K. MAJMUDAR

Dt. /08/2023 Advocate for the Petitioner

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

DISTRICT:- GANDHINAGAR

SPECIAL CIVIL APPLICATION NO. _____ OF 2023

Dharmendra Rameshchandrabhai Bhatt ..Petitioner

VERSUS

The State of Gujarat & Ors. ...Respondents

AFFIDAVIT

I, **DHARMENDRA RAMESHCHANDRABHAI BHATT,**

Male, aged-59 years, the petitioner herein, residing at the address mentioned in the cause title of this petition,do hereby on solemn affirmation and on oath state as under:

That the contents of Para- **1 to 4** of this petition are as per the information, which I received and the same are true and correct as per my personal knowledge and belief and I believe the same to be true and correct.

That the contentions and averments made in Paras- **5 to 7** of this petition are requirement of writ petition and the **prayer clause is Para- 8**. The same are true and I believe the same to be true correct.

That the annexures are the true copies of their originals.

*

Solemnly affirmed at_____

on this _____^{st/nd/rd/th} day of **AUGUST**, 2023.

* _____

D E P O N E N T

Contents of the application memo and of the affidavit
have been read over and explained to the Deponent in
Gujarati by me.

* _____

Identified by me

* _____

(SNM)

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
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Sr. No.	Annexure	Particulars	Pg. No.
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2.	A.	Copy of the order of the appointment of the petitioner as old-experienced teacher in Shri Heerpara Kanya Vidhyalaya, Kalavad (Shitla).	
3.	B.	Copies pertaining to the opening of the General Provident Fund Account of the petitioner.	
4.	C. (Colly)	Copies of the documents for pay fixation by which the petitioner came to be protected.	
5.	D.	Copies of the various communications which has taken place in respect of pension Case of the petitioner	
6.	E. (Colly)	Copy of some of such representations dated 27/01/2023, 12/04/2023, 20/04/2023, 13/05/2023	
7.	F.	Copy of the communication dated 02/05/2022	

8.	G.	Copy of the communication dated 13/06/2022.	
9.	H.	Copy of the communication dated 11/07/2023	

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SYNOPSIS

02/08/1996

- The petitioner came to be appointed on Ad Hoc basis as a teacher in Secondary Section of one Shri Satya Sai Vidhyalaya, Jamnagar on 02/08/1996.

12/06/1997

- Petitioner came to be appointed on permanent basis w.e.f. 12/06/1997 in Shri Satya Sai Vidhyalaya, Jamnagar as teacher in Secondary Section, in the pay scale of Rs. 1400-2600.

01/06/2000

- The petitioner states that on 01/06/2000, the petitioner was appointed / absorbed as a teacher in Higher Secondary Section of Shri Satya Sai Vidhyalaya, Jamnagar on the scale of Rs. 5500-175-9000. The petitioner had tendered resignation on 17/06/2005 as a teacher of Satya Sai Vidhyalaya, Jamnagar.

18/06/2005

- That the petitioner thereafter came to be appointed as an experienced old teacher w.e.f. 18/06/2005 in the pay scale of 5000-8000- appointment of the petitioner as old-experienced teacher in Shri Heerpara Kanya Vidhyalaya, Kalavad (Shitla).

02/05/2006 (05/05/2006)

- The petitioner states that on 02/05/2006 (05/05/2006), the concerned District Education Officer opened the General Provident Fund Account of the petitioner.

18/06/2005

- That the concerned District Education Officer had also passed an order for pay fixation of the petitioner as the pay of the petitioner came to be protected w.e.f. 18/06/2005 i.e. the petitioner was placed in the pay scale of Rs. 6500 w.e.f. 18/06/2005.

18/06/2005

- That thus the petitioner came to be appointed as an 'old-Experienced Teacher' w.e.f. 18/06/2005 in Shri Heerpara Kanya Vidhyalaya, Kalavad (Shitla) and his pay also came to be protected and therefore entire services rendered by the petitioner w.e.f. 12/06/1997 by which the petitioner was initially appointed in the regular services in Shari Satya Sai vidhayala, Jamnagar, the services of the petitioner w.e.f. 12/06/1997 and onwards were deemed to be considered as continuous services when the petitioner had got appointment on 18/06/2015 in Shri Heerpara Kanya Vidhyalaya, Kalavad (Shitla).

31/05/2022

- The pay of the petitioner also came to be protected and pay fixation was done as the pay of the petitioner in respect of services of Shri Satya Sai Vidhayalaya upto

17/06/2005 was also protected and there was on break in services as on 18/06/2005, the petitioner was again appointed in Shri Heerpara Kanya Vidhyalaya, Kalavad (Shitla) wherein the petitioner had serviced continuously, interruptedly and had attained the age of superannuation on 31/05/2022.

- Thus the entire services rendered by the petitioner right from 12/06/1997 and onwards till the date of superannuation i.e. on 31/05/2022 was continuous one and as the petitioner had completed pensionable services, the petitioner became eligible and entitled to get the pension w.e.f. 01/06/2022.

02/05/2006 (05/05/2006)

- That even the respondent authorities had opened the General Provident Fund Account of the petitioner as the same was also got opened by the concerned District Education Officer and the account number was also allotted on 02/05/2006 (05/05/2006) and therefore the petitioner had deemed to have become eligible to get the pension.
- The petitioner states that despite the petitioner has attained the age of superannuation on 31/05/2022 and got eligible to get the pension from 01/06/2023, the petitioner has not been given the pension till today.

02/05/2022

- It is submitted that even way back on 02/05/2022, the concerned Principal of Shri Heerpara Kanya Vidhyalaya, Kalavad (Shitla), had sent a communication dated 02/05/2022 wherein it was stated and certified that the services of the petitioner was pensionable one.

- That the concerned authorities, District Education Officer had sent a communication dated 13/06/2022.

11/07/2023

- Surprisingly and shockingly, instead of releasing of the pension that too with interest at 12% p.a. w.e.f 01/06/2022, the petitioner has received a communication dated 11/07/2023 by which the respondent authorities have mentioned that instead of making applicable new pension scheme, the old pension scheme was made applicable through opening of General Provident Fund Account and therefore such General Provident Fund Account was decided to be treated as 'Not Acceptable' and further order has been passed to affect recovery.
- That the action of the respondent authorities of not releasing of the pension is absolutely illegal, illogical, arbitrary, violative of Article 14, 16 and 21 of the Constitution India and though the General Provident Fund Account was opened through the decision of the District Education Officer, Jamnagar, it is absolutely shocking and surprising for the petitioner that without affording any opportunity of hearing, without even issuing any prior communication or without issuance of any show cause notice, straightway the communication dated 11/07/2023 has been issued
- By way of preferring the present petition the petitioner invokes extra ordinary jurisdiction vested in the Hon'ble High Court under Article 226 of the Constitution of India and thereby pray for issuance of appropriate writ, order or direction upon the respondent authorities to release the pension of the petitioner, as despite the petitioner has already

attained the age of superannuation on 31/05/2022, the pension is not released till today and despite, the services rendered by the petitioner, right from the initial services w.e.f. 02/08/1996 in secondary section of Shri Satya Sai Vidhyalaya of Jamnagar and subsequent service dated 12/06/2017 in Secondary Section which was the regular services and thereafter the petitioner had joined the services in the same school in Higher Secondary Section w.e.f. 01/06/2000 and had given resignation on 17/06/2005 and got appointment in secondary section of another school namely Shri Heerpara Kanya Vidhyalaya, Kalavad (Shitla) w.e.f. 18/06/2005, despite on 02/05/2006 (05/05/2006), the General Provident Fund Account came to be opened and General Provident Fund Account was allotted for the petitioner that too by District Education Officer, Jamnagar and despite the petitioner was appointed as old and experienced teacher w.e.f. 18/06/2005 and even District Education Officer, Jamnagar had also passed order dated 21/02/2011 and the pay of the petitioner came to be protected as the pay of service of previous school was considered and pay fixation was done on granting 'protection' of pay i.e. in the pay of Rs. 6500, the entire services was treated as uninterrupted and continuous services, despite the petitioner attained the age of superannuation on 31/05/2022, though more than 13 months have already been passed, the petitioner is not granted the pension and therefore appropriate writ, order or directions may kindly be issued in this regard and the respondents may kindly be directed to release the pension of the petitioner w.e.f. 01/06/2022 and the

difference of the same may kindly be ordered to be paid
to the petitioner with 12% interest

- Hence, the present petition...