

State Of Gujarat vs Kalhans Harial Patel on 2 May, 2019

Equivalent citations: AIRONLINE 2019 GUJ 45

Author: Anant S. Dave

Bench: Anant S. Dave, Biren Vaishnav

C/LPA/2259/2017

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 2259 of 2017
In R/SPECIAL CIVIL APPLICATION NO. 8764 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2259 of 2017
With
R/LETTERS PATENT APPEAL NO. 258 of 2017
In
SPECIAL CIVIL APPLICATION NO. 14953 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2017
In R/LETTERS PATENT APPEAL NO. 258 of 2017
In
SPECIAL CIVIL APPLICATION NO. 14953 of 2015
With
R/LETTERS PATENT APPEAL NO. 811 of 2017
In
SPECIAL CIVIL APPLICATION NO. 15052 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2017
In R/LETTERS PATENT APPEAL NO. 811 of 2017
In
SPECIAL CIVIL APPLICATION NO. 15052 of 2015
With
R/LETTERS PATENT APPEAL NO. 1357 of 2017
In
SPECIAL CIVIL APPLICATION NO. 15338 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2017
In R/LETTERS PATENT APPEAL NO. 1357 of 2017
In
SPECIAL CIVIL APPLICATION NO. 15338 of 2015
With
R/LETTERS PATENT APPEAL NO. 2260 of 2017
In
SPECIAL CIVIL APPLICATION NO. 8762 of 2016

With
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In R/LETTERS PATENT APPEAL NO. 2260 of 2017
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R/LETTERS PATENT APPEAL NO. 2261 of 2017
In
SPECIAL CIVIL APPLICATION NO. 5006 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2261 of 2017
In
SPECIAL CIVIL APPLICATION NO. 5006 of 2016
With
R/LETTERS PATENT APPEAL NO. 2263 of 2017
In
SPECIAL CIVIL APPLICATION NO. 12378 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2263 of 2017
In
SPECIAL CIVIL APPLICATION NO. 12378 of 2015
With
R/LETTERS PATENT APPEAL NO. 2264 of 2017
In
SPECIAL CIVIL APPLICATION NO. 8761 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2264 of 2017
In
SPECIAL CIVIL APPLICATION NO. 8761 of 2016
With
R/LETTERS PATENT APPEAL NO. 2265 of 2017
In
SPECIAL CIVIL APPLICATION NO. 5009 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
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In
SPECIAL CIVIL APPLICATION NO. 5009 of 2016
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SPECIAL CIVIL APPLICATION NO. 9629 of 2016
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With
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In R/LETTERS PATENT APPEAL NO. 2267 of 2017
In
SPECIAL CIVIL APPLICATION NO. 5008 of 2016
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In
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R/LETTERS PATENT APPEAL NO. 2270 of 2017
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SPECIAL CIVIL APPLICATION NO. 9603 of 2016
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In R/LETTERS PATENT APPEAL NO. 2270 of 2017
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In
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With
R/LETTERS PATENT APPEAL NO. 2273 of 2017
In
SPECIAL CIVIL APPLICATION NO. 9607 of 2016
With
R/LETTERS PATENT APPEAL NO. 2274 of 2017
In
SPECIAL CIVIL APPLICATION NO. 8043 of 2015
With
R/LETTERS PATENT APPEAL NO. 2275 of 2017
In
SPECIAL CIVIL APPLICATION NO. 8763 of 2016
With
R/LETTERS PATENT APPEAL NO. 2276 of 2017
In
SPECIAL CIVIL APPLICATION NO. 10822 of 2016
With
R/LETTERS PATENT APPEAL NO. 2277 of 2017
In
SPECIAL CIVIL APPLICATION NO. 9605 of 2016
With
R/LETTERS PATENT APPEAL NO. 2278 of 2017
In
SPECIAL CIVIL APPLICATION NO. 8758 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
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SPECIAL CIVIL APPLICATION NO. 9607 of 2016
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In R/LETTERS PATENT APPEAL NO. 2274 of 2017
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SPECIAL CIVIL APPLICATION NO. 8758 of 2016
With
R/LETTERS PATENT APPEAL NO. 2279 of 2017
In
SPECIAL CIVIL APPLICATION NO. 9602 of 2016
With
R/LETTERS PATENT APPEAL NO. 2280 of 2017
In
SPECIAL CIVIL APPLICATION NO. 9609 of 2016
With
R/LETTERS PATENT APPEAL NO. 2281 of 2017
In
SPECIAL CIVIL APPLICATION NO. 9627 of 2016
With
R/LETTERS PATENT APPEAL NO. 2282 of 2017
In
SPECIAL CIVIL APPLICATION NO. 9604 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017

In R/LETTERS PATENT APPEAL NO. 2279 of 2017
In
SPECIAL CIVIL APPLICATION NO. 9602 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2280 of 2017
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SPECIAL CIVIL APPLICATION NO. 9609 of 2016
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With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2282 of 2017
In
SPECIAL CIVIL APPLICATION NO. 9604 of 2016
With
R/LETTERS PATENT APPEAL NO. 2283 of 2017
In
SPECIAL CIVIL APPLICATION NO. 8766 of 2016
With
R/LETTERS PATENT APPEAL NO. 2284 of 2017
In
SPECIAL CIVIL APPLICATION NO. 9606 of 2016
With
R/LETTERS PATENT APPEAL NO. 2412 of 2017
In
SPECIAL CIVIL APPLICATION NO. 6317 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2283 of 2017
In
SPECIAL CIVIL APPLICATION NO. 8766 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2284 of 2017
In
SPECIAL CIVIL APPLICATION NO. 9606 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2412 of 2017
In

SPECIAL CIVIL APPLICATION NO. 6317 of 2015
With
R/LETTERS PATENT APPEAL NO. 94 of 2018
In
SPECIAL CIVIL APPLICATION NO. 3250 of 2009
With
R/LETTERS PATENT APPEAL NO. 2180 of 2017
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In
SPECIAL CIVIL APPLICATION NO. 10293 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2018
In R/LETTERS PATENT APPEAL NO. 94 of 2018
In
SPECIAL CIVIL APPLICATION NO. 3250 of 2009
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2180 of 2017
In
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With
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In R/LETTERS PATENT APPEAL NO. 2291 of 2017
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With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2292 of 2017
In
SPECIAL CIVIL APPLICATION NO. 10293 of 2015
With
R/LETTERS PATENT APPEAL NO. 2293 of 2017
In
SPECIAL CIVIL APPLICATION NO. 6465 of 2016
With
R/LETTERS PATENT APPEAL NO. 2294 of 2017
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SPECIAL CIVIL APPLICATION NO. 15301 of 2015
With
R/LETTERS PATENT APPEAL NO. 2295 of 2017
In
SPECIAL CIVIL APPLICATION NO. 10376 of 2015
With
R/LETTERS PATENT APPEAL NO. 2296 of 2017
In
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SPECIAL CIVIL APPLICATION NO. 2183 of 2016
With
R/LETTERS PATENT APPEAL NO. 2299 of 2017
In
SPECIAL CIVIL APPLICATION NO. 9076 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2293 of 2017
In
SPECIAL CIVIL APPLICATION NO. 6465 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2294 of 2017
In
SPECIAL CIVIL APPLICATION NO. 15301 of 2015
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CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
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SPECIAL CIVIL APPLICATION NO. 10376 of 2015
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CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2296 of 2017
In
SPECIAL CIVIL APPLICATION NO. 7218 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2297 of 2017

In
SPECIAL CIVIL APPLICATION NO. 12198 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2298 of 2017
In
SPECIAL CIVIL APPLICATION NO. 2183 of 2016
With
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In R/LETTERS PATENT APPEAL NO. 2299 of 2017
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R/LETTERS PATENT APPEAL NO. 2300 of 2017
In
SPECIAL CIVIL APPLICATION NO. 7573 of 2015
With
R/LETTERS PATENT APPEAL NO. 2301 of 2017
In
SPECIAL CIVIL APPLICATION NO. 7557 of 2015
With
R/LETTERS PATENT APPEAL NO. 2302 of 2017
In
SPECIAL CIVIL APPLICATION NO. 10309 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2300 of 2017
In
SPECIAL CIVIL APPLICATION NO. 7573 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2301 of 2017
In
SPECIAL CIVIL APPLICATION NO. 7557 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2302 of 2017
In
SPECIAL CIVIL APPLICATION NO. 10309 of 2015
With
R/LETTERS PATENT APPEAL NO. 2303 of 2017
In
SPECIAL CIVIL APPLICATION NO. 10099 of 2015
With

R/LETTERS PATENT APPEAL NO. 2304 of 2017
In
SPECIAL CIVIL APPLICATION NO. 9228 of 2015
With
R/LETTERS PATENT APPEAL NO. 2305 of 2017
In
SPECIAL CIVIL APPLICATION NO. 3047 of 2016
With
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SPECIAL CIVIL APPLICATION NO. 11201 of 2015
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R/LETTERS PATENT APPEAL NO. 2308 of 2017
In
SPECIAL CIVIL APPLICATION NO. 7026 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2303 of 2017
In
SPECIAL CIVIL APPLICATION NO. 10099 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2304 of 2017
In
SPECIAL CIVIL APPLICATION NO. 9228 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2305 of 2017
In
SPECIAL CIVIL APPLICATION NO. 3047 of 2016
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2306 of 2017
In
SPECIAL CIVIL APPLICATION NO. 10150 of 2015
With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2307 of 2017
In
SPECIAL CIVIL APPLICATION NO. 11201 of 2015

With
CIVIL APPLICATION (FOR STAY) NO. 2 of 2017
In R/LETTERS PATENT APPEAL NO. 2308 of 2017
In
SPECIAL CIVIL APPLICATION NO. 7026 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE
and
HONOURABLE MR.JUSTICE BIREN VAISHNAV

=====

1 Whether Reporters of Local Papers may be allowed to

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see the judgment ?

- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?

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STATE OF GUJARAT & 4 other(s)
Versus
KALHANS HARIAL PATEL & Others

=====

Appearance:

MS MANISHA LAVKUMAR SHAH, GOVERNMENT PLEADER
with MR RASHESH RINDANI, AGP for the Appellant(s) No.
1,2,3,4,5

MR SN SHELAT, SENIOR COUNSEL WITH MR SJ GAEKWAD,
ADVOCATE, MR BHASKAR TANNA, SENIOR ADVOCATE
WITH MR DHARMESH SHAH, ADVOCATE, MR JAYRAJ
CHAUHAN, ADVOCATE FOR MR MUKUND M DESAI, MR.
BHUSHAN OZA, MR. UTPAL PANCHAL, MS. AVANI PANDYA
AND MR. MITUL SHELAT, MR. SIDDHARTH DAVE AND MR.
P.A. MEHD, ADVOCATES for the Respondent(s) No. 1

MR AD OZA, MS VD NANAVALI, ADVOCATES FOR
Respondent No. 2

=====

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE ANANT S. DAVE
and
HONOURABLE MR.JUSTICE BIREN VAISHNAV

Date : 02/05/2019

CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE BIREN VAISHNAV)

1. Pension is not a 'bounty'. Several rounds of litigation, though have concluded the issue on hand, present respondents - Senior Citizens who have rendered selfless service in the academic field as members of the teaching and non-teaching staff have been deprived of their right of earning pension. Though, unequivocally held by catena of decisions of the Apex Court as well as this Court, which this judgement only reiterates, respondents - original petitioners have had no option other than to be compelled to litigate for their rights because the State which is considered as a model employer still resists their claim for pension on the ground that such members had not exercised their options for pension.

2. In these batches of appeals before us, judgements rendered in four separate batches of petitions filed by the original petitioners - teaching/non teaching staff of different educational institutions are under challenge before us. They are :

(I) Letters Patent Appeals No. 258 of 2017, 811 of 2017 and 1357 of 2017 arising out of a judgement rendered by a learned Single Judge (Coram : Hon'ble Ms. Justice Sonia Gokani) dated 03.02.2016.

(II) Letters Patent Appeal No. 2412 of 2017 arising out of the judgement of the learned Single Judge (Coram :

Hon'ble Mr. Justice N.V. Anjaria) dated 01.08.2016. (III) Letters Patent Appeals No. 94 of 2018, 2180 of 2017, 2291 to 2308 of 2017 arising out of the judgement of the learned Single Judge (Coram : Hon'ble Mr. Justice J.B. Pardiwala) dated 29.06.2017.

(IV) Letters Patent Appeal No. 2259 of 2017 and Letters Patent Appeals No. 2260 & 2261 of 2017 with Letters Patent Appeal No. 2263 of 2017 to Letters Patent Appeal No. 2284 of 2017 arising out of the judgement of the learned Single Judge (Coram : Hon'ble Ms. Justice Sonia Gokani) dated 11.07.2017.

3. The facts of the respective lead petitions as set out by the learned Single Judges in their respective judgements are reproduced hereinbelow, in order to avoid duplicity.

3.1 In Letters Patent Appeals where the order dated 03.02.2016 is under challenge, the lead petition was Special Civil Application No. 14953 of 2015, the facts of which 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 :

Sr. No. Name of Applicant Date of Birth Date of Appointment Designation at the time of First Appointment

1. 14953 Shri 10.07.1970 Tutor- (1) Lecturer / 2015 Chandravad Demon- on an Ramanlal strator 15.06.1982 Vora (2) Reader on 07.07.1990 (3) Professor on 07.09.1998

2. 15052 Prof. Shri 26.12.1978 Lecturer (1) Reader on / 2015 Amardutta 25.08.1985 Brahmdutta Vyas (2) Professor on 07.02.2000

3. 13820 Shri 17.06.1975 Lecturer (1) Again as / 2015 Bhagwatipra Lecturer on sad 13.06.1980 Muljibhai Brahmbhatt (2) Reader on 16.09.1991 (3) Professor on 07.02.2000

4. 14483 Shri 15.06.1967 Lecturer (1) Principal / 2015 Chhotubhai on Devjibhai 01.11.1994 Patel

5. 15178 Shri 22.05.1980 Lecturer (1) Reader on / 2015 Pavankumar 30.12.1985 Bajinath Sahai (2) Professor on 13.07.2000

6. 15308 Shri 03.03.1981 Lecturer (1) Reader on / 2015 Hasmukhcha 30.12.1985 ndra Shanubhai (2) Professor Patel on 07.09.1998

7. 15316 Shri 18.08.1973 Lecturer (1) Again as / 2015 Ashvinkumar Lecturer on Ramniklal 04.10.1979 Jani (2) Reader on 27.06.1984 (3) Professor on

08.07.1991

8. 15317 Shri September Lecturer (1) Reader on / 2015 Nathabhai , 1981 20.07.1996 Ramabhai Patel (2) Principal on 30.05.1998

9. 15318 Shri 23.01.1980 Lecturer (1) Reader on / 2015 Subhashcha 25.03.1986 ndra Jayantilal (2) Professor Bhatt on 29.01.1997 10 15319 Shri 07.07.1984 Lecturer (1) Reader on / 2015 Indravadan 21.07.1986 Lilachand Kothari (2) Professor on 17.12.1997 11 15330 Shri 08.12.1972 Lecturer (1) Reader on / 2015 Harikrishna 31.12.1979 Chandulal Trivedi (2) Professor on 22.08.1988 12 15331 Shri 30.07.1979 Lecturer (1) Reader on / 2015 Kanhaiyalal 17.04.1996 Kishenchand Makhija 13 15332 Shri 01.02.1978 Lecturer (1) Reader on / 2015 Rajnikant 13.04.1985 Muljibhai Patel (2) Professor on 05.06.1995 14 15333 Ranjanben 20.02.1978 Lecturer (1) Reader on / 2015 Gordhanbhai 24.06.1986 Patel (2) Professor on 29.01.1997 15 15335 Kusumben 15.06.1964 Lecturer (1) Principal / 2015 Chotubhai on Desai 30.05.1989 16 15336 Shri 11.06.1972 Lecturer (1) Principal / 2015 Ghanshyamp on rashad 23.09.1996 Chhotulal Sanadhya 17 15337 Shri 15.06.1964 Lecturer (1) Principal / 2015 Shirishkuma on r Ramanlal 22.06.1995 Dave 18 15338 Shri 15.06.1967 Lecturer (1) Principal / 2015 Ishwarbhai on Lallubhai 01.02.1995 Patel 19 15339 Jyotiben 16.08.1980 Lecturer (1) Principal Maganlal on / 2015 Nayak 18.08.2003 20 15340 Shri Jayanti 15.06.1971 Lecturer (1) Principal / 2015 Maganlal on Nayak 01.06.1998 21 15341 Minoo Hiraji 01.10.1977 Lecturer (1) Principal / 2015 Perabia on 14.02.1983 22 15342 Shri 16.06.1980 Lecturer (1) Principal / 2015 Pravinchand on ra Himmatlal 01.10.1987 Bhathawala 23 15343 Shri 01.06.1980 Lecturer (1) Principal / 2015 Arvindkumar on Govindji 18.02.2005 Mehta 24 15344 Shri 19.06.1963 Lecturer (1) Principal / 2015 Govindlal on Bansilal 06.08.1982 Shah 25 15345 Shri 01.07.1971 Lecturer (1) Principal / 2015 Girishchandr on a Hiralal 30.10.2002 Bhatt 26 19118 Smt.Behroz 01.05.1961 Lecturer (1) Reader on / 2015 Hosi Elavia 20.06.1979 (2) Professor on 27.05.1991 3.2 In Letters Patent Appeal No. 2412 of 2017 which was preferred challenging the decision rendered in Special Civil Application No. 6317 of 2015 dated 01.08.2016, the facts were as under:

"2. By filing the present petition the petitioner has prayed for-(i) to grant the pension and declare that the petitioner's recruitment as Principal with effect from 03rd May, 1997 is after 01st April, 1982, therefore, he is entitled to pension as per the provisions of G.R. and further direct the respondent to grant pension to the petitioner forthwith by considering all the service rendered by him in various educational institution as qualifying services for receiving pension and (ii) to pay all pensionary benefits to the petitioner with 18% interest p.a. with effect from the date he was retired.

3. The details of the service career of the petitioner is that he started his career as Tutor, subsequently appointed as Lecturer and worked in different colleges, and lastly at Navgujarat Commerce College, Ahmedabad and thereafter from 09th February, 1997 at Sardar Vallabhbhai Commerce College, Ahmedabad. In the same S.V. Commerce College, Ahmedabad, the petitioner was appointed as Principal and he worked on the post of Principal from 03rd May, 1997 till he retired on 31st March, 2001.

3.1 The appointment of the petitioner on the post of Principal was by regular selection. The State Government through Director of Education approved the

appointment by order dated 14th August, 1997. It is stated by the petitioner that before joining as Principal at the S.V. Commerce College, he had given resignation as per the University statute, therefore his appointment was fresh appointment as a Principal of the College. It is the case of the petitioner that in light of Resolution dated 15th October, 1984 of the Education Department, petitioner's case is directly covered for grant of pension.

3.3 In Letters Patent Appeals No. 94 of 2018 and allied matters, the facts as per the lead Special Civil Application are that the petitioners/respondents were full time teaching and non-teaching employees of different Universities of the State of Gujarat and the colleges affiliated with the Universities of the State of Gujarat. The petitioners were constrained to approach the Court as they were not extended the benefit of the Pension Scheme and the opportunity to exercise that option was denied on the ground of financial implications. The learned Single Judge relying on the decision of the Hon'ble Supreme Court in the case of Union of India and Others vs. D.R.R Sastri [(1997) 1 SCC 514 directed that the State Government allow the petitioners to exercise the option and grant the benefit of pension in view of the Government Resolution dated 15.10.1984.

3.4 In Letters Patent Appeal No. 2259 of 2017 and group matters, the learned Single Judge referred to facts of Special Civil Application No. 5006 of 2016 (Letters Patent Appeal No. 2261 of 2017). The facts so discussed are as under:

3. As all the petitions are identical in nature, this Court would refer to the facts of the case arising out of Special Civil Application No.5006 of 2016 for the sake of convenience and brevity and for examining the rival legal contentions urged in this group of petitions.

3.1 The petitioner possesses the qualification of Master of Arts (M.A.), Doctor of Philosophy (Ph.D.) in the subject of Gujarati. He joined the services with the Idar Anjana Patidar Arts and Commerce College, Idar, as a Lecturer and served there till March 04, 1987.

3.2 Thereafter, the petitioner vide order dated September 07, 1986, was appointed as Lecturer in the Post Graduate Department of Gujarat in Sardar Patel University and he joined the same on March 05, 1987.

3.3 The petitioner was subsequently promoted as a Reader on February 01, 1990 and then, His appointment as a Professor was with effect from July 01, 2000 in the Post Graduate Department of Gujarat in Sardar Patel University itself under the CAS scheme vide order dated July 13/14, 2000; and he continued to served there till his date of superannuation i.e. June 14, 2012.

3.4 The pension scheme for teaching staff in non-

Government affiliated colleges and in the University was introduced vide Government Resolution dated October 15, 1984. Even if the petitioner has not given any option, he is entitled to pension because his appointment was dated March 05, 1987 i.e. after April 01, 1982. Hence, the petitioner has approached this Court holding him entitled to pension as per the Government Resolution dated October 15, 1984 and thereby, to grant him pension forthwith by considering the services rendered by him.

4. At this stage, it would be appropriate to place on record the details qua the petitioners of respective petition, which in the tabular form are as under :

S No. Name of Design Date of r. l Civil Petition First at Promotion N
Applicant Appointment time of No. First Appointment

1. 5006/ Shri 07.11.19 Lecture (1) Reader 2016 Manilal 86 r on Haridas 01.02.1990
Patel (2) Professor on 01.07.2000

2. 5007/ Shri 15.06.19 Lecture (1) Principal 2016 Shankar 62 r on hai 18.06.1996
Dahyabhai Trivedi

3. 5008/ Shri 15.06.19 Lecture (1) Again as 2016 Mangal 73 r Lecturer on as
31.12.1985 Kalidas Patel (2) Reader on 06.09.1990 (3) Professor on 07.09.1998

4. 5009/ Shri 24.06.19 Lecture (1) Principal 2016 Arvindku 71 r on mar 11.01.1985
Devchand Shah

5. 9606/ Lalchand 17.05.19 Lecture (1) Principal 2016 Ramchand 71 r on d Mehta
23.08.2002

6. 9629/ Shri 13.07.19 Demon- (1) Junior 2016 Pravinch 64 strator Lecturer on andra
L. 01.01.1973 Farasram (2) Lecturer on 01.04.1977 (3) Principal on 22.09.2004

7. 10822/ Shri 01.12.19 Lecture (1) Reader 2016 Gulamhu 80 r on sen 09.03.1990
Ahmed Pandor (2) Professor on 07.09.1998

8. 12378/ Shri 1963 Lecture (1) Principal 2015 Satishch r on andra 18.,07.1996
Balshankar Vora (2) Vice Chancellor on 24.12.1996

9. 8756/ Shri 02.09.19 Lecture (1) Reader 2016 Goroor 70 r on Shrinivas 23.11.1980
an Parthasa (2) Professor rathy on 19.07.1988 1 8757/ Shri 02.07.19 Tempor (1)
Lecturer o 2016 Vishwan 75 ary on ath Lecture 05.12.1975 Anantra miah r (2) Reader
Bangalore on e 20.06.1984 (3) Professor on 20.03.1992 1 8758/ Shri 04.01.19 Senior
(1) Lecturer 1 2016 Punamch 68 Instruc on and tor 17.07.1972 Natverlal Sutaria (2)
Reader on 22.02.1984 (3) Professor on 11.03.1996 1 8760/ Shri 05.07.19 Lecture (1)
Reader 2 2016 Satish 80 r on Kantilal 01.02.1984 Shah (2) Professor on 23.04.1998 1

8761/ Shri 08.09.19 Lecture (1) Reader 3 2016 Arvindku 81 r on mar 09.05.1994
Ranchho dlal Shah 1 8762/ Shri 26.11.19 Lecture (1) Reader 4 2016 Shankar 81 r on
Ganapat 02.07.1990 hi (2) Professor on 07.09.1998 1 8763/ Shri 25.07.19 Lecture (1)
Reader

5 2016 Jamanad 78 r on as Ratilal 03.10.1988 Patadia (2) Professor on 07.09.1998 1 8764/ Shri
03.01.19 Curator (1) Assistant 6 2016 Kalhans 66 Lecturer on Harilal 01.07.1967 Patel (2) Lecturer
on 015.06.1972 (3) Reader on 31.03.1985 (4) Professor on 17.11.1992 1 8766/ Shri 14.08.19 Senior (1)
Lecturer 7 2016 Vijaykum 70 Instruc on ar tor 24.01.1974 Karshanb hai (2) Reader Mahyava on nshi
20.02.1980 (3) Professor on 14.07.1997 1 9602/ Shri 28.07.19 Senior (1) Lecturer 8 2016 Narotta 66
Instruc on mdas tor 27.07.1972 Bavabhai Parmar (2) Reader on 22.02.1984 (3) Professor on
11.03.1996 1 9604/ Shri 13.12.19 Lecture (1) Reader 9 2016 Jayshree 78 r on Basu De 05.02.1986 (2)
Professor on 07.09.1998 2 9607/ Shri 03.10.19 Lecture (1) Reader o 2016 Vishwan 77 r on atha
01.10.1988 Rama Karanth (3) Professor on 02.08.2001 2 9609/ Shri 07.09.19 Assista (1) Lecturer 1
2016 Sureshch 67 nt on andra Lecture 21.07.1973 Maneklal r Desai (2) Reader on 30.01.1985 (3)
Professor on 07.08.2001 2 9627/ Shri Vinu 10.01.19 Senior (1) Lecturer 2 2016 Hasmukh 64 Instruc
on lal tor 01.04.1972 Kapadia (2) Reader on 18.03.1981 (3) Professor on 23.03.1992 2 8043/ Smt.
08.07.19 Tutor (1) Lecturer 3 2016 Vimala 58 on Rangasw 02.07.1963 amy (2) Reader on
06.06.1983 (3) Professor on 30.06.1993 3.5 In all these appeals filed by the State of Gujarat, the
respondents who were the original petitioners claimed that they, having been recruited in their
respective college after 01.04.1982, were automatically governed by the pension scheme so framed
by Government Resolution dated 15.10.1984 for the teaching staff and subsequently mutatis
mutandis extended to the non-teaching staff of the respective educational institutions.

4. In the petitions so filed, there were two classes of teaching staff concerned - (a) direct recruits
who had two parts of service (i) pre 01.04.1982 in private colleges and (ii) post 01.04.1982 on
resignation in other colleges through a direct selection (b) the other class of the teaching staff who
may have continued in the same institution but through a due process of selection, either by
promotion or under the career advancement scheme risen in hierarchy from Tutor to Reader to
Professor - a career spanning pre 01.04.1982 period and post 01.04.1982 period. In both these cases,
the stand of the State Government was that since their initial appointment was prior to 01.04.1982,
they were required to opt for pension option to switch over from CPF, which they did not, hence
they were not entitled to pension.

4.1 The case of the petitioners was that irrespective of a fresh selection, post 01.04.1982, directly by
joining an institution or climbing the ranks through promotion or career advancement they were
"recruited" after 01.04.1982 and therefore as per clause (4) of the Government Resolution dated
15.10.1984, they were "automatically" governed by the pension scheme and there was no need for
them to give any option for doing so. It was in this context that in one of the judgement (which all
the judgements under challenge referred to) i.e. in the case of State of Gujarat Thro Secretary v.
Bhupendra Vallabhdas Chudasama and another in Letters Patent Appeal No. 981 of 2015, the Court
had answered the questions so raised in favour of the pensioner. The questions so raised read as
under:

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?
- 4.2 While considering the aforesaid question, the Government Resolution dated 15.10.1984 was reproduced.

The said Government Resolution 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 statutres / 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 amendeu /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"

5. Mr. S.N. Shelat, learned Senior Advocate appearing for Mr. S.J. Gaekwad, learned advocate for the respondents in some appeals, Mr. Bhaskar Tanna, learned Senior Counsel appearing for Mr. Dharmesh Shah, learned advocate for the respondents in some appeals as well as learned advocates Mr. Jayraj Chauhan, learned advocate for Mr. Mukund Desai, learned advocate for the respondents in some appeals, Mr. Bhushan Oza, Mr. Utpal Panchal, Ms. Avani Pandya and Mr. Mitul Shelat have reiterated the submissions made before the respective learned Single Judges. Their submissions briefly stated were as under and Mr. Siddharth Dave and Mr. P.A. Medh, learned advocate for the appellants have adopted these arguments advanced by the learned Senior counsels:

(I) When the respondents herein - original petitioners joined their services, there was no pension scheme applicable. They were covered by the Contributory Provident Fund Scheme(CPF).

(II) On 01.01.1972, the Government of Gujarat passed a resolution sanctioning a family pension scheme for Government of Gujarat employees. The Scheme was made

applicable to all employees, whether temporary or permanent.

(III) On 15.10.1984, the State passed a resolution directing that the pension, gratuity and other retirement benefits admissible to government servants should be made applicable to teaching staff of the Universities under the Education Department with effect from 01.04.1982. The scheme provided thus :

"i. Clause 3 (i) -The members of the existing staff recruited before 01.04.1982 and those staff who have retired on or after 01.04.1982 and prior to the date of issue of this resolution have to exercise their option within the period of one year from the date of issue of this resolution either to continue contributory provident fund scheme or to come under this scheme.

ii. Clause 4 -The members of their staff recruited on or after 01.04.1982 shall automatically be governed by this scheme and such staff will not be allowed to opt for contributory provident fund scheme."

(IV) On 14.09.1988, the Government of Gujarat passed a resolution and directed 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 the B.C.S.R. Rules, Volumes II, as amended from time to time and the family pension scheme sanctioned in Government Resolution, Finance Department No. FPS-1061-J dated 01.01.1972 as amended from time to time should be made applicable to the full time non-teaching staff of the Universities under the Education Department with effect from 01.04.1982. On 11.10.1988, the Government of Gujarat passed another resolution granting the teaching staff who have opted for contributory provident fund to switch over to the pensions scheme.

(V) On 11.10.1988, the Government of Gujarat passed another resolution for the pension scheme for the teaching staff in the non government affiliated colleges and in the universities where it was reiterated that the members of the staff recruited on or after 01 04.1982 shall automatically be governed by this scheme.

(VI) On 06.02.2012, the Higher Education Department addressed a communication to the M.S. University stating that the employees who have been appointed before 01.04.1982 who have not been extended the benefits of the pension scheme will be granted such benefits if they have been appointed on or after 01.04.1982 by way of direct selection as their service on or after 01.04.1982 will be pensionable.

(VII) The Petitioners came to know of the above Communication and made inquiries with the Government regarding the same. However the Petitioners were informed that no decision was taken by the Government and the matter was still pending consideration and the Petitioners were advised to await the final decision of the Government in reference to the same.

(VIII) The Petitioners have been appointed by way of open selection and Promotion after 01.04.1982 to different posts, however, they have not been granted the benefit of the pension scheme.

(IX) It is submitted that the Petitioners and other similarly situated persons had preferred petition before this Hon'ble Court challenging the action of the Respondents in depriving them of pensionary benefits and challenging the letter dated 07.01.2005 from the State Government to the M.S. University stating that because of financial constraints it is not possible for the State Government to shoulder the burden of heavy financial liabilities on the Government exchequer. This Hon'ble Court was pleased to dispose of the petitions by giving a direction to the State Government to reconsider the matter with sympathetic approach and to consider the sentimental issue for the concerned employees those who are retiring from the service and not able to get the pensionary benefits though similarly situated employees are getting it.

(X) The Government by its decision dated 29.08.2007 and 04.12.2007 again took the view that the employees who had not exercised the option were not entitled to claim pension. The decision however was not communicated to the Petitioners individually. (XI) It is submitted that the impugned action of the respondent No.1 is not in accordance with law and its enacted resolution and is therefore illegal and arbitrary. (XII) It is submitted that in an education institution to hold a higher post i.e. from the post of Assistant Lecturer to Lecturer, Lecturer to Reader, Reader to Professor the candidate has to be a part of the regular selection procedure. The selection from the selection process is to be approved by the University under the statute, the relevant rules and is also to be approved by the Education department of the State authority. Such process makes the appointment at a higher post a fresh appointment. Therefore the action of the state government in not holding them entitled to grant of pension and not making the pension scheme applicable to services of the Petitioners after 01.04.1982 is illegal and unjust.

(XIII) It is submitted that appointment to a higher post can be by direct recruitment and/or promotion. In both the cases, the procedure of selection is the same, eligibility criteria is the same only the zone of consideration would change. Appointment to a higher post would always be a fresh appointment to that post. The method of recruitment would not affect the nature of appointment and the consequent entitlement thereof. Consequently all the petitioners having been appointed to higher post after 01.04.1982 would be entitled to be automatically included in the pension scheme.

(XIV) It is submitted that the pension is in the nature of right which the Petitioners have earned by rendering service. The inequity which is created on account of difference in the two schemes is substantial and affects the quality of life of the petitioners. The petitioners are entitled to similar treatment from the Government. Therefore the action of the Respondent No.1 in not making the pension scheme applicable to the Petitioners is unjust and illegal.

(XV) It is submitted that in view of the Clause-4 of the resolution dated 15.10.1984, the pension scheme is automatically applicable to the Petitioners as the resolution provides that the members of their staff recruited on or after 01.04.1982 shall automatically be governed by this scheme and such staff will not be allowed to opt for contributory provident fund scheme. Therefore the action of the State Government is in contravention to the Government Resolution dated 15.10.1984.

(XVI) It is submitted that the Respondent No.1 has adopted a discriminatory approach between employees who have been appointed on or after 01.04.1982 and employees who have been appointed to a higher post on or after 01.04.1982. It is submitted that both the classes of employees should receive equal treatment. Therefore, the impugned action of the respondent No.1 is arbitrary, unjust and discriminatory.

(XVII) It is submitted that the impugned action is even otherwise arbitrary being violative of the constitutional mandate under Article 14 of the Constitution of India.

(XVIII) The petitioners state that they have been and are ready and willing to deposit the amount of Contributory Provident Fund received by them at the time of superannuation with interest as may be directed by this Honble Court.

6. Ms. Manisha Lavkumar Shah, learned Government Pleader assisted by Mr. Rashesh Rindani, learned Assistant Government Pleader made the following submissions:

(i) Vide G.R dated 15.10.1984, with effect from 1.4.1982, the State Government introduced and extended the benefit of GPF Scheme, Pension Scheme and Family Pension Scheme to the full time teaching staff of the Universities under Education Department as well as to all non affiliated and unaided Commerce and Science colleges in the State. Similarly, vide GR dated 3.7.1987, a policy decision was taken for introducing the benefit of GPF pension scheme and Family Pension Scheme on and with effect from 1.4.1982 which was extended to full time non-teaching staff of the affiliated and aided non-government Arts, Science and Commerce colleges.

(ii) Both the Government Resolutions of 15.10.1984 and 3.7.1987 applicable to teaching and non-teaching staff expressly stipulated certain conditions to be fulfilled in order to avail of the benefit of the GPF Scheme. Condition No.3 of the GRs stipulates that:

(I) those who had recruited before 1.4.1982, and those members of the staff who had retired on or after 1.4.1982 and prior to the date of the issuance of the Resolution dated 15.10.1984, were required to exercise their option for switching over from CPF to GPF.

(iii) In all the above two categories an option of switching over from CPF to GPF was required to be exercised within a period of one year from the date of Resolution. The procedure prescribed required that the option should be exercised in writing in the form prescribed (Appendix-A) and communicate to the Director of Higher Education. Members of the staff who do not exercise option within the stipulated period would be deemed to have opted for the retention of the benefit admissible to them as existed before 1.4.1982. Members of the staff who opted for the scheme shall join GPF Scheme concurrently and their share in the CPF together with interest thereon shall be credited to the GPF Account.

(iv) Vide GR dated 26.9.1989 for the teaching as well as non-teaching staff, it was provided that the age of superannuation/ retirement of the staff recruited before 1.10.1984 shall be 60 years and the age of superannuation / retirement for the staff which have been recruited on and from 1.10.1984 shall be 58 years for which Universities should be requested to take necessary steps for the amendment of relevant statutes, rules, regulations etc. It was further provided that if teachers who are originally required prior to 1.10.1984 change colleges / Universities or go to other colleges as Principals, they will be treated as existing teachers and their age of superannuation will be 60 years. All the aforesaid Resolutions consistently contemplate for the policy of the State Government in providing for the continuity of service i.e. without considering the period of break in service, for determining the qualifying service for pension. In other words, for the purpose of aforesaid Resolutions, if a person resigns from one position at one place and joins different position (may be higher) at different places, his all previous service will be taken into account and hence, for the purpose of exercise of option, his joining at different places should not be treated as new recruitment / fresh service.

(v) Admittedly, in case of persons of teaching staff with reference to Government Resolution dated 15.10.1984, three times options were given to join the Pension Scheme, vide different Resolutions as indicated herein below:

| Sr No. | Date of Resolution | Period |
|--------|--------------------|----------------|
| (I) | 10.1.1986 | Upto 31.3.1986 |
| (ii) | 11.10.1988 | For 3 months |
| (iii) | 17.9.1991 | For 2 months |

Similarly, in case of non teaching staff, on two occasions, such options were given vide Government Resolutions as indicated below:

| Sr No. | Date of Resolution | Period |
|--------|--------------------|------------|
| (I) | 03.07.1987 | One year |
| (ii) | 17.9.1991 | Two months |

(vi) In view of the above, for all practical purposes, if

the persons have not exercised any option during the course of their service either in the same position and in the same place or in different positions and at different places, they should not, later on, be covered within the four corners of Pension Scheme.

(vii) Pertinently as per the Revision of Pay Rules of 1987, with effect from 1.1.1986, wages for the post of Professor were in the order of Rs.2200-4000 and there used to be CPF deduction to the tune of 8.33% of the minimum wage of Rs.2200 along with Management Contribution of equal proportion, total whereof was coming to the tune of Rs.366.52. It was on this amount that interest at

the rate of 12% per annum from 1994-95 to 1999-2000 was payable. As against the above, if a person had rendered pensionable service of 33 years, then in that case, he would have been entitled to 50% of the minimum pay of Rs.2200 i.e. Rs.1100/- which would have been payable by way of pension. Thus, at that time, the rate of wages being on a lower side, CPF Scheme was beneficial as compared to Pension Scheme. However, after the Revision of Pay Rules, 2009, rates of wages came to be increased whereby basic wages would come to the tune of Rs.46,400/- and 50% thereof, would be Rs.23,200/- which would be payable by way of monthly pension. As a result of this, the scheme of monthly pension became very favourable and attractive as compared to the CPF Scheme.

(viii) It is further submitted that if someone has been given 3 options to join the Pension Scheme and despite that, he does not join, and if direction is given at this juncture to cover him under the Pension Scheme, then in that case, his automatic coverage under the Pension Scheme would impose huge financial burden upon the State Government. It was under the aforesaid circumstances that the State Government issued a Government Resolution dated 7.1.2004, inter alia providing that, if after failing to avail of 3 opportunities, a chance is given to join the Pension Scheme as of today, the same would impose huge burden on the State Government and that therefore it was decided not to give any further opportunity of option.

(ix) Notably all the petitioners claim that they have been appointed after 1.4.1982. In support of their claim, it is contended that they applied for the post of Lecturer, Reader or Professor or Principal pursuant to the advertisements and after due selection and approval by the State Government, they were appointed on the said post. Since it was pursuant to a selection process that they were appointed, their appointment as Lecturer, Reader, Professor or Principal should be construed as a fresh appointment.

(x) It is the case of the respondent that as per the UGC norms, there is no direct promotion from the post of Lecturer to Reader, Reader to Professor or Professor to Principal. For each of the posts in the Universities, advertisements are required to be issued and selections made in terms of the recruitment rules. Further at the time of retirement post 1.4.1982, all the petitioners have availed of Leave Encashment for their entire service commencing from prior to 1.4.1982 to till the date of retirement. Thus, though the petitioners contend that theirs is a case of fresh appointment post 1.4.1982 and therefore they are not required to exercise any option in favour of the GPF Scheme, factually all of them have availed of pay protection, leave encashment and other monetary benefits. All of them have received their CPF amounts with interest at the time of retirement. It is only on account of various pay revisions that today GPF Scheme appears monetarily far more advantageous that the petitioners have chosen to contend that theirs is a fresh appointment post 1.4.1982.

(xi) It is submitted that the respondents though aware of the introduction of the pension scheme and options given on three occasion between the years 1984 to 1991, consciously did not opt for the pension scheme and continued with the CPF Scheme. In case of most of the petitioners of Special Civil Application No. 3250 of 2009 and allied matters, they remained in CPF Scheme till their retirement and availed all benefits of PF Scheme. Now they want to get the benefit of pension scheme hence they filed various petitions.

(xii) It is further submitted that before the implementation of 6th pay scheme, the benefit under the provident fund scheme were more or less equal and there was a general impression among employees that having regard to average life expectancy and avenues for investment of the lump sum PF amount, it was prudent to receive a larger PF amount on retirement rather than receive a small pension for a few years.

7. Perusal of the judgements under challenge of the learned Single Judges would indicate that the respective advocates relied upon several decisions. Learned Senior Counsel Mr. Shelat, apart from extensively reiterating the fact that the issue on hand was covered by several decisions which the learned Single Judges have referred to, additionally relied upon the following decisions:

(I) M. Ramachandran vs. Govind Ballabh and Others reported in AIR 1999 SC 3601 wherein paragraph no.

6 reads as under:

"6. In order to appreciate rival contentions it is necessary to have a glance of Rule 5 which provides :

"5. Absorption/regularisation of existing employees. (1) Notwithstanding anything contained in the provisions of these rules, the persons holding the posts of Court Officers/Section Officers, Hindi Translator, Assistant, Junior Librarian, Caretaker, Upper Division/Receptionist/Store-keeper and Lower Division Clerk on the date of commencement of the rules either on transfer or on deputation basis or as the case may be, on direct recruitment basis and who fulfil the qualifications and experience laid down in these rules and who are considered suitable by Department Promotion Committee shall be eligible for absorption/Regularisation in the respective grade subject to condition that such persons exercise their option for the absorption and that their parent Departments do not have any objection to their being absorbed in the Tribunal.

(2) The seniority of officers mentioned in sub-rule (1) shall be determined with reference to the dates of their regular appointment to the posts concerned :

Provided that the seniority of officers recruited from the same source and in the posts held by them in the parent Department shall not be disturbed. (3) The Suitability of persons for absorption may be considered by a Department Promotion Committee."

Rule 4 deals with the method of recruitment and provides that the recruitment to the post, age limit, qualifications and other conditions relating thereto shall be as specified in Column 5 to 14 of the refers to the method of recruitment and column No. 12 to the source from which the posts are to be filled up. Column No. 12 provides :

"(i) Promotion -

Assistant with 8 years regular service in the scale of pay of Rs. 1400-2600 or equivalent.

(ii) Transfer on deputation/Transfer. Persons working under Central/State Government/High Court/ Subordinate Courts.

(a)(i) holding analogous post on regular basis; or

(viii) holding posts of Assistant or equivalent in the scale of Rs. 1400-2600 with 8 years regular services and

(b) possessing the educational qualifications prescribed for direct recruits in Column 8. Note : The period of Deputation including the period of deputation in another ex-cadre post held immediately preceding this appointment in the same or some other organisation/department of the (entral Government shall ordinarily not exceed 3 years."

There is no dispute that appointment/recruitment to any service can be made from different sources, i.e., by direct appointment, by promotion or by absorption/transfer. The source of recruitment can either be internal or external.

Internal source would relate to cases where the appointments are made by promotion or by transfer and by absorption. External source would conceive the recruitment of eligible persons who are not already in service in the organisation to which the recruitment is to be made. For the purposes of posts in the service regarding which the dispute has arisen, the source of recruitment for the purposes of sub-rule (1) of Rule 5 are: (i) promotion, (ii) transfer on deputation/transfer. Persons specified in the aforesaid categories possessing requisite qualification prescribed therein are eligible for appointment. Reference to the persons and the departments cannot be held to mean that such reference was to the 'source' as admittedly the sources are either promotion or by transfer on deputation/transfer. It is not disputed that in the instant case all the contesting parties have been recruited to the service from source (ii). It is also conceded that before their recruitment on deputation they possessed the requisite qualifications as prescribed under Column No. 12(ii)(a)(i) (ii)(b). The Tribunal was, therefore, not justified in holding that the source of appointment of parties to the dispute was either the Central or the State Government or the High Court or the Subordinate Courts. The proper interpretation of the Rule read with Schedule is that all such parties were recruited from the same source, i.e., Transfer on deputation/Transfer and possessed requisite qualifications for recruitment to the new service.

(II) Union of India and Others vs. Tarsem Singh reported in (2008) 8 SCC 648, more particularly para 5 which is reproduced hereinbelow:

"5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if

there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

(III) Asger Ibrahim Amin vs. Life Insurance Corporation of India reported in (2016) 13 SCC

797. Reliance is placed on paragraphs no. 3 & 4 thereof and the same read as under:

"3. On 8.8.1995, that is post the promulgation by the Respondent of the Pension Rules, the Appellant enquired from the Respondent whether he was entitled to pension under the Pension Rules, which has been understood by the Respondent as a representation for pension; the Respondent replied that the request of the Appellant cannot be acceded to. The Appellant took the matter no further but has averred that in 2000, prompted by news in a Daily and Judgments of a High Court and a Tribunal, he requested the Respondent to reconsider his case for pension. This request has remained unanswered. It was in 2011 that he sent a legal notice to the Respondent, in response to which the Respondent reiterated its stand that the Appellant, having resigned from service, was not eligible to claim pension under the Pension Rules. Eventually, the Appellant filed a Special Civil Application on 29.3.2012 before the High Court, which was dismissed by the Single Judge vide Judgment dated 5.10.2012. The LPA of the Appellant also got dismissed on the grounds of the delay of almost 14 years, as also on merits vide Judgment dated 1.3.2013, against which the Appellant has approached this Court.

4. As regards the issue of delay in matters pertaining to claims of pension, it has already been opined by this Court in *Union of India v. Tarsem Singh*, (2008) 8 SCC 648 that in cases of continuing or successive wrongs, delay and laches or limitation will not thwart the claim so long as the claim, if allowed, does not have any adverse repercussions on the settled third-party rights. This Court held:

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal).

One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

(emphasis is ours) We respectfully concur with these observations which if extrapolated or applied to the factual matrix of the present case would have the effect of restricting the claim for pension, if otherwise sustainable in law, to three years previous to when it was raised in a judicial forum. Such claims recur month to month and would not stand extinguished on the application of the laws of prescription, merely because the legal remedy pertaining to the time barred part of it has become unavailable. This is too well entrenched in our jurisprudence, foreclosing any fresh consideration.

(IV) The Calcutta Port Trust and Others vs. Anadi Kumar Das (Capt.) and Others reported in (2014) 3 SCC 617 wherein paragraphs no. 20 & 24 read as under:

20. We would like to observe that whenever an employer introduces the Pension Scheme or makes the same applicable to retired employees and give them opportunity to exercise option, the circulars/instructions issued for that purpose should either be communicated to the retirees or made known to them by some reasonable mode. Mere display of such notice/instructions on the notice board of the Head Office cannot be treated as an intimation thereof to the retired employees/officers. The employer cannot presume that all the retirees have settled in the city where the Head Office is located. If the employees belong to the services of the Central Government or its agencies/instrumentalities, they are likely to settle in their native places which may be far away from the seat of the Government or Head Office of the establishment or organisation. The retirees are not expected to frequently travel from their native places to the seat of the Government or Head Office to know about additional benefits, if any, extended by the Government or their establishment/organization and it is the duty of the employer to adopt a suitable mechanism for communicating the decision to the retired employees so as to enable them to exercise option. This could be done either by publishing a notice in the newspaper about which the retirees are told at the time of their retirement or by

sending copies of the circulars/instructions to the retirees or by sending a copy thereof to the association of the employees and/or officers with a direction to them to circulate the same among the concerned retirees. By taking advantage of the modern technology, the employer can also display the circulars/instructions on a designated website about which prior information is made available to the employees at the time of their retirement. If one of these modes is not adopted, the retired employees can legitimately complain that they have been denied right to exercise the option and can seek intervention of the Court.

24. In the result, the appeal is allowed, the impugned judgment and order are set aside and the one passed by the learned Single Judge is restored. However, keeping in view the peculiar facts of this case, we direct the appellants to allow respondent No.1 to exercise option in terms of circular dated 19.2.1986. The needful be done within a period of two months from the date of receipt of copy of this judgment. At the same time, we make it clear that this direction shall not be treated as a precedent for other cases pending before the High Court, which shall be decided in the backdrop of their own facts.

(V) Union of India vs. Bharat Vijay Mills Co. Ltd.

reported in 1984(2) GLR 1111 wherein para 7 reads as under:

"7. Next question to be considered is whether the suits filed by the Mills are barred by limitation. All the parties agree that the Mills' suits would be governed by Article 113 of the Schedule to the Limitation Act, 1963. This Article is a residuary Article and it prescribes a period of limitation of three years which would begin to run from the date the right to sue accrues. It is argued on behalf of the Revenue that assuming that excise duty levied on blended yarn was illegal, the right to recover it back would accrue on the same date on which the excise duty was paid. It is contended that all payments which were made beyond the period of three years next before filing of the suits would be barred by limitation. If what is contended on behalf of the Revenue is the true legal position, all the suits which are admittedly filed after January 15, 1976, for the recovery of excise duty paid prior to March 16/17, 1972 would be barred by limitation. It is, however, contended on behalf of the Mills that though they had a right to claim back the amount of excise duty illegally recovered from them from the date the duty was paid, the period of Limitation would begin to run only from the date they discovered that the duty was paid under mistake of law. It is submitted that under Section 17(1) of the limitation Act, where suit is for relief from the consequences of a mistake, the period of limitation would not begin to run until the plaintiff has discovered the mistake or could, with reasonable diligence, have discovered the same. The Mills did not know that recovery of excise duty on blended yarn was illegal until this Court, by its decision rendered in the Calico Mills' case held it to be so. Therefore, according to the Mills, it was only on January 15, 1976, that they discovered that excise duty was paid on blended yarn under a mistake. The

period of limitation would, therefore, begin to run only from January 15, 1976, and the Mills are entitled to claim refund of the entire excise duty paid by them on blended yarn upto March 16/ 17, 1972 by filing suits within three years from January 15, 1976. As pointed out above, it is not disputed that all the suits are filed within three years from January 15, 1976, and, therefore, if the view canvassed on behalf of the Mills is correct, the suits cannot be dismissed as being barred by limitation."

(VI) Union of India and Others vs. S.L. Verma and Others reported in (2006) 12 SCC 53, paragraph no. 7 of which reads as under:

"7. The Central Government, in our opinion, proceeded on a basic mis- conception. By reason of the said Office Memorandum dated 1.5. 1987 a legal fiction was created. Only when an employee consciously opted for to continue with the CPF Scheme, he would not become a member of the Pension Scheme. It is not disputed that the said respondents did not give their options by 30.9.1987. In that view of the matter respondent Nos. 1 to 13 in view of the legal fiction created, became members of the Pension Scheme. Once they became the member of the Pension Scheme, Regulation 16 of the Bureau of Indian Standards(Terms and Condition of Service of Employees Regulation, 1988) had become ipso-facto applicable in their case also. It may be that they had made an option to continue with the CPF Scheme at a later stage but if by reason of the legal fiction created, they became members of the Pension Scheme, the question of their reverting to the CPF would not arise. The respondent No.14 has correctly arrived at a conclusion that an anomaly would be created and in fact the said purported was illegal when a request was made by respondent No.14 to the Union of India for grant of approval so that all those employees shall come within the purview of the Pension Scheme. In our opinion, the Ministry of Finance proceeded on a wrong premise that the Pension Scheme was not in existence and it was a new one. Two legal fictions, as noticed hereinbefore, were created, one by reason of the memorandum, and another by reason of the acceptance of the recommendations of the Fourth Central Pay Commission with effect from 1.1.1986. In terms of such legal fictions, it will bear repetition to state, the respondent nos.1 to 13 would be deemed to have switched over to the pension scheme, which a fortiori would mean that they no longer remained in the CPF scheme."

(VII) K. Narayanan vs. State of Karnataka reported in AIR 199 SC 55. Paragraph no. 6 reads as under:

"6. Article 309 of the Constitution empowers appropriate legislature to frame rules to regulate recruitment to public services and the post. 'Recruitment' according to dictionary means 'enlist'. It is comprehensive term and includes any method provided for inducting a person in public service. Appointment, selection, promotion, deputation are all well known methods of recruitment. Even appointment by transfer is not unknown. But any rule framed is subject to other provisions of the Constitution. Therefore it has to be tested on rule of equality. Transfer is normally

resorted in same cadre. But when it is made in a different and higher cadre it must not be violative of constitutional guarantee and the rule of fairness. Providing for appointment of a diploma holder from the cadre of Junior Engineer to Assistant Engineer from back date without any test or selection on eligibility only does not sound reasonable and fair. Why was it done is apparent from the following notings by the Secretary, "The most important issue was regarding the date of transfer of the Junior Engineer acquiring graduate qualifications, the weightage of past service had to be taken into consideration. In the proposals submitted to the cabinet this crucial aspect was not outlined specifically and the impression that was-created was that the transfer would take place with prospective effect. In such an event the weightage of previous service would have to be confined only up to date of graduation and this would not have been of any advantage to most of the Junior Engineers who have acquired the degree qualification several years ago. Even if the weightage of past service after graduation and up to the date of appointment as Junior Engineers was given the transferees would not have gained any significant advantage in the matter of notional seniority. The Karnataka Graduate Engineers have strongly represented on this issue and have urged that their transfer to the Assistant Engineer's cadre should be with retrospective effect i.e., from the date they have acquired graduate qualification. In support of their arguments, they have pointed out that even in Andhra Pradesh a similar step was taken in that the transfer was allowed with retrospective effect. The points raised by the Graduate Engineers Association have been examined and it is felt that their demand to have to the transfer effected with retrospective effect has some justification in view of the long years of service rendered by the Junior Engineers before and after acquiring graduate qualification. If this benefit is not given, the amendment to the C & R Rules allowing for their transfer would be of little use for many of the senior members of the Graduate Engineers Association who have been fighting for this change for many years. Therefore, taking an overall sympathetic view it is proposed that we may allow for the transfer of Junior Engineers who acquired graduate qualifications with retrospective effect from the date of acquisition of such qualification subject to the availability of vacancies at that time in the Assistant Engineer's cadre. It is seen that the first batch of the in-service Junior Engineers took their graduate degree in 1976 and hence the Notification amending the rules would have to be effective from 1-1-1976."

Rules were thus bent and made retrospective as a sympathetic consideration as many Junior Engineers who were working since long would not have derived any benefit otherwise. May be true but if the extension of such benefit impinges upon the constitutional guarantee of equality then it cannot be upheld. And that does stand disturbed. No further need be said. Nor it is necessary to pronounce on validity of a rule which in the class of appointment by direct recruitment includes appointment by transfer resulting in entry of one class by competition or selection and other by acquisition of minimum qualification as the appellants did not challenge the rule of appointment by transfer but confined their claim to its operation retrospectively."

(VIII) Union of India and Others vs. D.R.R. Sastri reported in (1997) 1 SCC 514 wherein the Apex Court held that the respondent therein was rightly entitled to opt for the Pension Scheme on refunding the amount he had already received particularly when another person had been allowed to exercise such option long after the expiry of the prescribed time limit.

7.1 Ms. Manisha Lavkumar Shah, learned Government Pleader relied upon the following decisions:

(a) PEPSU RTC vs. Amandeep Singh reported in (2017) 2 SCC 766, paragraph no. 26 of which reads as under:

"26. The learned counsel for the respondents has also contended that insofar as the outstanding amount of CPF is concerned the said amount could have been deducted by virtue of Regulation 24 and which amount is to be adjusted against death-cum-retirement gratuity. In the present case the plaintiff having not opted for pension scheme, the requirement from refunding the advance taken from CPF within six months is not attracted. More so, in the present case as has been stated by the appellant in the written statement in the suit even after retirement an amount of Rs.4999/- was due from the advance taken by the respondents from his CPF amount."

(b) Rajasthan Rajya Vidyut Vitran Nigam Ltd. vs. Dwarka Prasad Koolwal reported in (2015) 12 SCC

51. Specific reliance has been placed on paragraphs no. 34 to 40 and the same are reproduced hereunder:

"34. We have mentioned above that the reason why some employees did not switch over from the CPF Scheme to the Pension and GPF Regulations is perhaps because of reasons personal to them. But at the same time, it must be pointed out that the respondents have virtually let the cat out of the bag by an averment made by them in their writ petition filed before the High Court. The background to the averment is given below.

35. The RSEB passed an order on 23rd August, 1997 in which it was stated that the Government of Rajasthan had recently promulgated the Rajasthan Civil Services (Pension) Rules, 1996 as amended from time to time. In view of this, the RSEB decided that the pension, family pension and commutation of pension in respect of its employees would be computed under the specific provisions of the Rajasthan Civil Services (Pension) Rules, 1996.

36. In their writ petition filed in the High Court the respondents stated that by virtue of this order dated 23rd August, 1997, the calculation of pension, family pension and commutation of pension under the Pension and GPF Regulations, became more beneficial to the employees as against the provisions in the CPF Scheme. It is perhaps this computation benefit made available to the employees of the RSEB with the

adoption of the Rajasthan Civil Services (Pension) Rules, 1996 that prompted the respondents to switch-over from the CPF Scheme to the Pension and GPF Regulations. Unfortunately, by that time the period for making the switch- over had expired in terms of the 8th notice dated 4th February, 1997. Therefore, since the respondents were unable to take advantage of the beneficial computation under the Pension and GPF Regulations read with the Rajasthan Civil Services (Pension) Rules, 1996 they seem to have set up a case of being unaware of the various notices issued by the RSEB from time to time over a period of 8 years.

37. All that we can infer from the conduct of the respondents is that they went along with the CPF Scheme so long as it was beneficial to them, but when the calculation of pension, family pension and commutation of pension underwent an alteration pursuant to the order dated 23rd August, 1997 the respondents had a change of heart and sought to take advantage of the revised manner of computation provided for in the Rajasthan Civil Services (Pension) Rules, 1996. We can only say that the argument of a lack of awareness of the switch-over option appears to be nothing but a self-serving argument.

38. Another facet of this argument (which was feebly urged) is to found in Issue No.5 dealt with by the RSEB in its order dated 26th June, 2008 in the following words:

"Issue raised

5. That the erstwhile RSEB adopted R.C.S. (Pension) Rules, 1996 of the Govt. of Rajasthan vide its order no. RSEB/F & R/F.3 (10)/D-42 dated 23.8.1997 but did not provide any opportunity to its employees for exercising option under RSEB Employees Pension Regulation, 1988.

Findings Issue 5:

That the erstwhile RSEB through RSEB Regulations - 1988 issued separate pension rules for their employees. But in the year 1996, Finance Department, GoR issued new Pension Rules in which computation of pension, family pension, and commutation as well as amount of pensions etc. was amended or revised. RSEB vide order No.42/23.8.1997 opted only computation for the amount of pension, family pension and commutation, other provisions of RSEB Pension Regulations, 1988 remaining unchanged. It has no relation to the option. Thus the applicants were not entitled for any re-option for pension even after the order dt. 23.8.1997. There were already given 8 opportunities to switch over to pension but they retained CPF benefits only."

39. We are in agreement with the view expressed by the RSEB that any and every change in the computation of pension or in the Pension Regulations (either of the RSEB or the Rajasthan Government) does not warrant a fresh option being offered to the respondents.

40. With regard to the submission that the respondents belong to the junior or technical cadre consisting of low paid staff such as peons, vehicle drivers, helpers etc. we need only say that, as pointed out in the rejoinder affidavit of the RSEB, about 100 of the respondents are senior level officers holding posts of Head of Office and Head of Department with the RSEB. As per the Pension and GPF Regulations, they receive the option forms from the employees, countersign them and then forward them to the Controller of Accounts. It is extremely difficult to accept their contention that they were unaware of the switch-over option."

(c) NCERT vs. Shyam Babu Maheshwari reported in (2011) 6 SCC 412. The relevant paragraphs read as under:

"6. The appellant challenged the order of the Tribunal before the High Court in Civil Writ Petition No.1447 of 1997 which was dismissed by the learned Single Judge of the High Court by order dated 02.08.2005. The appellant then filed Civil Special Appeal (Writ) No.898 of 2005 which was also dismissed by the Division Bench of the High Court by the impugned order.

7. The learned counsel for the appellant submitted that the Tribunal, the learned Single Judge of the High Court and the Division Bench of the High Court have all relied on the decision of this Court in *R. Subramaniam v. Central Railways*, which was rendered on the peculiar facts of that case. He submitted that a Constitution Bench of this Court in *Krishena Kumar, etc. v. Union of India* has clearly held that employees who opt for the CPF Scheme and employees who opt for the Pension Scheme fall into two distinct classes and once an employee opts within the cut-off date to be under the CPF Scheme, he cannot later on make a request to switch over to the Pension Scheme. He submitted that the decision of the Constitution Bench of this Court in *Krishena Kumar (supra)* has subsequently been followed in *V.K. Ramamurthy v. Union of India & Anr.* and *Union of India & Ors. v. Kailash* and in these subsequent decisions this Court has explained that the decision of this Court in *R. Subramaniam (supra)* was rendered on the particular facts of that case.

8. The learned counsel further submitted that in any case it will be clear from the language of the O.M. dated 06.06.1985 which was adopted by the NCERT that the option to switch over from the CPF Scheme to the Pension Scheme was available to only those employees who were in service on 31.03.1985 and were to retire from service on or after 31.03.1985 and not to the appellant who was not in service on 31.03.1985 having retired on 31.07.1984.

9. The learned counsel for the respondent, on the other hand, supported the orders of the Tribunal, the learned Single Judge of the High Court and the Division Bench of the High Court and relied on the decision of this Court in *R. Subramaniam (supra)*.

10. We have carefully perused the decision of this Court in R. Subramaniam on which reliance has been placed by the Tribunal, the learned Single Judge and the Division Bench of the High Court as well as learned counsel for the respondent and we find that in that case the Central Administrative Tribunal, Bombay, by its order dated 11.11.1987 had directed that Railway employees who had indicated their option in favour of Pension Scheme either at any time while in service or after their retirement and who then desired to opt for the Pension Scheme should be given the benefit of the Pension Scheme. This order dated 11.11.1987 of the Central Administrative Tribunal was challenged by the Union of India in a Special Leave Petition, but the Special Leave Petition was dismissed and a Review Petition was also dismissed by this Court. When the matter came before this Court for the second time in R. Subramaniam this Court held that the Union of India cannot resist the claim of R. Subramaniam.

11. It is thus clear that in R. Subramaniam (supra) the claim of the employee had to be allowed by this Court because in an earlier order, the Central Administrative Tribunal had allowed the claim of the railway employees to switch over to the Pension Scheme and the order of the Central Administrative Tribunal had become final on the dismissal of the Special Leave Petition and the Review Petition by this Court. The facts of this case are entirely different. There is no such earlier order of the Tribunal or a Court allowing the claim of the respondent to switch over from the CPF Scheme to the Pension Scheme, which had become final. The Tribunal, the learned Single Judge and the Division Bench of the High Court were thus not right in relying on the decision of this Court in R. Subramaniam (supra) in allowing the claim of the respondent to switch over from the CPF Scheme to the Pension Scheme.

12. We may now consider whether de hors the decision of this Court in R. Subramaniam (supra) the respondent could be allowed to opt for the Pension Scheme having earlier opted for the CPF Scheme while in service.

Admittedly, the respondent while he was in service of NCERT had opted for the CPF Scheme way back in 1977 and on his retirement, he had availed the benefits of the CPF Scheme. This Court has held in Krishena Kumar, etc. v. Union of India & Ors., V.K. Ramamurthy v. Union of India & Anr. and Union of India & Ors. v. Kailash (supra) that once an employee has opted for the CPF Scheme, his exercise of option was final and he is not entitled to change over to the Pension Scheme because the two schemes are entirely different. It, however, appears that the Government in the Ministry of Personal and Training by the O.M. dated 06.06.1985 gave an opportunity to Central Government employees who had earlier opted for the CPF Scheme to opt for the Pension Scheme.

13. The relevant portion of the O.M. dated 06.06.1985 is extracted hereinbelow:-

"... In the light of these changes, the President is now pleased to decide that Central Government employees who have retained the Contributory Provident Fund benefits in terms of rule 38 of the Contributory Provident Fund Rules (India), 1962 or in

terms of any other orders issued in this behalf, may be allowed another opportunity to opt for the Pension Scheme as laid down in the Central Civil Services (Pension) Rules, 1972. The option is open to those Government employees who were in service on the 31st March, 1985 and retiring from service on or after that date. The option should be exercised within a period of six months from the date of issue of this O.M. Option once exercised shall be final."

(d) Union of India vs. M.K. Sarka reported in (2010) 2 SCC 59. Paragraphs no. 9 to 13 thereof read as under:

"9. When a scheme extending the benefit of option for switchover, stipulates that the benefit will be available only to those who exercise the option within a specified time, the option should obviously be exercised within such time. The option scheme made it clear that no option could be exercised after the last date. In this case, the respondent chose not to exercise the option and continued to remain under the Contributory Provident Fund Scheme, and more important, received the entire PF amount on his retirement.

10. The fact that the respondent was the head of his department and all communications relating to the offer of Eighth Option and the several communications extending the validity period for exercising the option for pension scheme, were sent to the heads of the departments for being circulated to all eligible employees/retired employees, is not in dispute. Therefore, the respondent who himself was the head of his department could not feign ignorance of the Eighth Option or the extensions of the validity period of the Eighth Option.

11. In fact, as noticed above, in his application before the Tribunal the respondent refers to all the options. He is careful to say that he was not 'intimated' about the contents of the last order relating to extension of the option, but does not say that he was unaware of the order extending the benefit of option. The respondent consciously chose not to exercise the option as he admittedly thought that receiving a substantial amount in a lump sum under the provident fund scheme (which enabled creation of a corpus for investment) was more advantageous than receiving small amounts as monthly pension under the pension scheme. In those days (between 1957 when the pension scheme was introduced and 1976 when the respondent retired) the benefits under the provident fund scheme and pension scheme were more or less equal; and there was a general impression among employees that having regard to average life expectancy and avenues for investment of the lump sum PF amount, it was prudent to receive a large PF amount on retirement rather than receive a small pension for a few years (particularly as there was a ceiling on the pension and as dearness allowance was not included in the pay for computing the pension).

12. From 1980 onwards, gradually the pension scheme became more and more attractive as compared to the Contributory Provident Scheme, on account of various

factors, like dearness allowance being included in the pay for computing pension, ceiling on pension being removed and liberalisation of family pension etc. But the respondent was well aware that not having opted for pension scheme and having received the PF amount on retirement, he was not entitled to seek switch over to pension scheme. But in 1996, when the respondent learnt that some others who had retired in and around 1973 to 1976 had been permitted to exercise the option in 1993-94 on the ground that they had not been notified about the option, he decided to take a chance and gave a representation seeking an option to switch over to pension scheme.

13. Having enjoyed the benefits and income from the provident fund amount for more than 22 years, the respondent could not seek switch over to pension scheme which would result in respondent getting in addition to the PF amount already received, a large amount as arrears of pension for 22 years (which will be much more than the provident fund amount that will have to be refunded in the event of switch over) and also monthly pension for the rest of his life. If his request for such belated exercise of option is accepted, the effect would be to permit the respondent to secure the double benefit of both provident fund scheme as also pension scheme, which is unjust and impermissible. The validity period of the option to switch over to pension scheme expired on 31.12.1978 and there was no recurring or continuing cause of action. The respondent's representation dated 8.10.1998 seeking an option to shift to pension scheme with effect from 1976 ought to have been straight away rejected as barred by limitation/delay and laches."

(e) Prof. A.K. Sharma & Others vs. Union of India & Another rendered in WP (C) No. 842/03 dated 07.08.2008 which has also taken a similar view.

(f) Krishena Kumar vs. Union of India and Others reported in (1990) 4 SCC 207 wherein paragraphs no. 32 to 34 and 42 read as under:

"32. In Nakara it was never held that both the pension retirees and the P.F. retirees formed a homogeneous class and that any further classification among them would be violative of Art. 14. On the other hand the Court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by 381 definition a fund. Besides, the Government's obligation towards an employee under C.P.F. Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee Government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely

different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to P.F. retirees. This being the legal position the rights of each individual P.F. retiree finally crystallized on his retirement whereafter no continuing obligation remained while on the other hand, as regards Pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the P.F. retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in Nakara that the State's obligation towards its P.F. retirees must be the same as that towards the pension retirees. An imaginary definition of obligation to include all the Government retirees in a class was 'not decided and could not form the basis for any classification for the purpose of this case. Nakara cannot, therefore, be an authority for this case.

33. *Stare decisis et non quieta movere*. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Art. 141 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same. A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles of law and remedy continued injustice. It should be invariably applied³⁸² and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it. But in Nakara it was never required to be decided that all the retirees formed a class and no further classification was permissible.

34. The next argument of the petitioners is that the option given to the P.F. employees to switch over to the pension scheme with effect from a specified cut-off date is bad as violative of Art. 14 of the Constitution for the same reasons for which in Nakara the notification were read down. We have extracted the 12th option letter. This argument is fallacious in view of the fact that while in case of pension retirees who are alive the Government has a continuing obligation and if one is affected by dearness the others may also be similarly affected. In case of P.F. retirees each one's rights having finally crystallized on the date of retirement and receipt of P.F. benefits and there being no continuing obligation thereafter they could not be treated at par with the living pensioners. How the corpus after retirement of a P.F. retiree was affected or benefitted by prices and interest rise was not kept any track of by the Railways. It appears in each of the cases of option the specified date bore a definite nexus to the objects sought to be achieved by giving of the option. Option once exercised was told to have been final. Options were exercisable vice versa. It is clarified by Mr. Kapil Sibal that the specified date has been fixed in relation to the reason for giving the option and only the employees who retired after the specified date and before and after the date of notification were made eligible. This submission appears to have been substantiated by what has been stated by the successive Pay Commissions. It would also appear that corresponding concomitant benefits were

also granted to the Provident Fund holders. There was, therefore, no discrimination and the question of striking down or reading down clause 3.1 of the 12th Option does not arise.

42. The next question debated is that of financial implications. It is submitted that given the fact that the budget for the year 1990-91 for disbursement of pension is Rs.900 crores (as per page 11 of the Budget of the Railway Revenue and Expenditure of the Central Government for 1990-91), the additional liability which would arise by giving relief to the Petitioners would be insignificant in comparison. According to the petitioners as per their affidavit dated 15.9.88, the additional liability would come to Rs. 18 crores per annum and this figure would steadily decrease as the number of P.F. retirees diminishes every year due to the fact that this question arises only with respect to very old retirees, and a substantial number of them pass away every year."

(g) Mitthan Lal Gupta vs. The Board of Secondary Education Ajmer & Another rendered in S.B. Civil Writ Petition No. 3297/1998 dated 01.11.2012

8. The learned Single Judges have considered the decisions which are pressed into service and also discussed that even when the teaching staff rises in rank, he/she has to undergo selection which is undertaken by a duly constituted selection committee after a public advertisement which comprises of subject expert, government nominee. The appointment orders issued pursuant to such selection specifically mentioned that he/she will be admissible to benefits of pension under the Rules. That such hierarchical promotions or career advancements were in fact akin to fresh recruitments. The learned Single Judges considered the two resolutions dated 23.11.1976 and 14.09.1988 and its relevant clauses. The consideration, as reflected read as under:

"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."

8.1 At this stage it shall also be relevant to peruse the resolution dated 14.09.1988. Paragraphs no. 10 to 13 are quite relevant and the same are reproduced hereinbelow:

"...

CAREER ADVANCEMENT

10. Every Lecturer will be placed in a senior scale of Rs. 3000-5000 if he/she has -

(a) completed 8 years of service after regular appointment, with relaxation as provided in a para

9 above,

(b) Participated in two refresher course/summer Institutes, each of approximately 4 weeks' duration or engaged in other appropriate continuing education programmes of comparable quality as may be specified by the UGC; and

(c) Consistently satisfactory performance appraisal reports.

EXPLANATION All Lecturers in the existing scale of Rs. 700-1600, who have completed 8 years service on 1st January, 1986, will be placed through a process of screening/selection as indicated in para 20 below, in the scale of Rs.3000-5000. The benefit of service provided in para 9 will be

available for the initial placement also.

11. Every lecturer in the senior scale will be eligible for promotion to the post of Reader in the scale of pay of Rs. 3700-5700 in he/she has -

(a) Completed 8 years of service in the senior scale, provided that the requirement of 8 years will be relaxed if the total service of the Lecturer is not less than 16 years, in case of a teacher, whose service as a lecturer is not more than 8 hours his previous service as a Tutor/Demonstrator is more than 8 years, his previous service as a Tutor/Demonstrator shall be counted as lecturer from the date he acquired qualification for the post of Lecturer in the ratio of 5 years Tutor/Demonstrator 4 years Lecturer. Such weightage will not be admissible beyond 16 years;

(b) Obtained a Ph.D. degree, or an equivalent published work;

(c) Made some mark in the areas of scholarship and research as evidenced by self assessment, reports of referees, quality of publications, contribution to educational renovation, design; of new courses and curricula, etc.;

(d) Participated in two refresher courses/summer institutes each of approximately 4 weeks duration or engaged in other appropriate continuing education programme of comparable quality as may be specified by the UGC, after placement in the senior scale; and

(e) Consistently good performance appears in reports.

12. Promotion to the post of Reader will be through a process of selection by a Selection Committee to be set up under the Statutes/Ordinances of the University concerned or other similar Committees set up by the appointing authorities in accordance with the guidelines to be laid down by the UGC. Posts of Readers will be created for this purpose by upgrading a corresponding number of posts of lecturers in the Universities and Colleges.

8.2 What is noticeable on examination of the judgements of the learned Single Judges is that the litigation has a chequered history. The issue was one of pension and deserved consideration sympathetically by the State Government. The respondents - original petitioners claimed to switch over to the pension scheme, may be at a belated stage, and settled it is, by several decisions of the Apex Court, that pension is not a bounty. Looking to this aspect, the Government of Gujarat examined this question of giving option by constituting a committee whose members are as under:

"Under Resolution of Government of Gujarat, Education Department bearing No. N.G.C. 1101 5405-13-Kh. Dated 16/08/2002, a Committee has been constituted regarding the issues of the Government of Gujarat Affiliated Colleges / Universities. In this Committee following members have been included.

1. Dr.K.G. Mavani, Chancellor, Saurashtra University Chairman.

2. Dr.B.S. Jani, Chancellor, North Gujarat University Member.
3. Pro. K.S. Shastri, President, Professors Association, Gujarat University Area Member.
4. Pro. Indravijaysinh Gohil, President, P.G. Teachers Association, Bhavnagar Member
5. Pro. D.m. Patel, Representative, Gujarat State Professors Association Member.
6. Secretary, Higher & Technical Education Member.
7. Secretary (Expense), Finance Department Member.
8. Commissioner, Higher Education Member Secretary.
9. Prof. J.J. Bhatt, Prof. Vice-Chancellor, South Gujarat University Convener.

8.3 Amongst the recommendations that the Committee made, recommendation no. 6 reads as under:

"6. Regarding granting one more option for pension With regard to grant pension option, it is hereby resolved that as principally agreed in the meeting of the leaders of Professors with the then Honble Education Minister held in November, 2001, this Committee recommends that Professors who left out may be given an opportunity. Further, Professors who have already filled-up option and already deposited C.P.F. contribution with the Government and for the administrative reasons options were not forwarded to the Government by Colleges or Universities then it is resolved to accept such cases immediately."

8.2 The schedule to the minutes had clause (c) which reads as under:

"(c) Pension Option:

For giving pension option, Association has submitted that earlier in 1984 Government has issued orders for giving benefit and issued orders to accept option in this respect and thereafter twice orders have been issued for accepting option. Department has made proposal to the Finance Department for giving one more option. In fact such option should be provided at every pay revision. In this respect, it is decided to forward proposal to Finance Department once again."

8.4 In other words, the committee resolved that as principally agreed, professors who were left out be given one more opportunity.

9. The judgements under challenge before us considered various lines of judgements interpreting the same Government Resolution dated 15.10.1984 and the nuances and repeatedly interpreted the same in favour of the present respondents. Let us consider each one of them. The first in line was in the case of Dr. Nalini V Dave vs. Government of Gujarat and Others reported in (2005) 3 GLR 1844.

"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."

9.1 In the case of State of Gujarat and Others vs. Dr. S.G. Trivedi, Retd. Reader Physics Division and another decided on 17.03.2006 in Special Civil Application No. 12620 of 2003, the challenge was to the decision of the Gujarat University Services 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. 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.

9.2 In the aforesaid judgement, this Court held 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 relieved 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 dis- entitled 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 dis- entitle 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."

9.3 Both these cases i.e. Dr. Nalini Dave (supra) and Dr. S.G. Trivedi (supra) were considered in the case of S.S. Patel vs. Director of Pension and Provident Fund, Gandhinagar & Others reported in 2008(4) GLR 2983. Relevant paragraphs are as under:

"14. That undisputed service history of the petitioner is produced in affidavit dated 29.1.2008 filed by Director of Pension and Provident Fund, State of Gujarat which

reads as under:

"5. The Pension Scheme for teaching staff in the non-government affiliated Colleges in the Universities was introduced by the respondent state after passing a resolution in its Education Department dated 15.10.1984. (Since the petitioner has already appended the same along with his memo of Special Civil Application from Page No.16 to 24, I am not annexing the same.) Perusing the said resolution, it would be very clear that the same is made effective from 1.4.1982 and was applicable to Affiliated Aid Non-Government Arts, Science, Commerce and Education Colleges in the State, however, the same was not applicable to affiliated Engineering Colleges to various Universities in the State. The service history of the petitioner can be summarized in tabular manner as follows:

| Sr. No | Period | Position Held | Name of Unviersity |
|-----------|--------------------------------------|-------------------|--------------------------------------------------|
| 1. | 22.7.1968 to 3.12.1975 | Asst. Lecturer | B.V.M. Engg. College, Vallabh Vidyanagar |
| 2. | 4.12.1975 to 31.3.1986 (BN) | Lecturer | SVR College of Engg. & Technology Surat |
| 3. | 31.3.1986 | Reader | South Gujarat |

| Sr. No | Period | Position Held | Name of Unviersity |
|-----------|-------------------------------|------------------|------------------------------|
| | to 5.10.1988 | | University |
| 4. | 6.10.1988 to 30.11.2000 | Reader | M.S. Univeristy, Vadodara |

The above service is without any break.

15. Thus, what is admitted position about service history of the petitioner is that from 22.7.1968 to 3.12.1975 when the petitioner was serving as a Assistant Lecturer with B.V.M.College of Engineering, Vallabh Vidhyanagar and thereafter from 4.12.1975 to 31.3.1986 as a Lecturer with S.V.R. College of Engineering and Technology, Surat, the petitioner was not governed by any pension scheme and was having C.P.F. and accordingly Contributed Provident Fund was credited in account of the petitioner and ultimately the petitioner had collected the amount.

16. At the same time the prior to issuance of Government Resolution dated 15.10.1984 which was made effective with retrospective effect from 1.4.1982, employee had no opportunity whatsoever, whether to opt for pension or for any other scheme and such an employee used to be governed by prevailing system of C.P.F.. When the G.R. dated 15.10.1984 came to be issued, the petitioner was serving as a lecturer with S.V.R.College of Engineering and Technology at Surat, which was a Regional Engineering College and later on nomenclatured as National Institute of Technology, the G.R. was not applicable to Engineering College which was under Government of India. From the record, what appears, the petitioner had continued to be Governed by the existing scheme ?the provident fund for employees of the S.V.R. College of Engineering and Technology (Surat) Society? as per option exercised in 1978. There is no dispute about the amount which was credited in the account of the petitioner, came to be collected and ultimately in year 2000, the petitioner deposited the said amount with interest. After resigning from the S.V.R. College of Engineering, when the petitioner joined as a 'Reader' with South Gujarat University from 31.3.1986 and served upto 5.10.1988, the petitioner was a Recruit after 1.4.1982 and was being governed automatically for pension scheme as introduced by G.R. dated 15.10.1984 and accordingly no contributory amount was deducted and only G.P.F. account was credited. Thus, as a Reader with South Gujarat University, the petitioner was getting benefit of the pension scheme. Even as per the respondents, the period commencing from 31.3.1986 till the date of voluntary retirement on 30.11.2000, the service of the petitioner can be considered for pensionable job. The above fact is admitted in para 10 of the affidavit-in-reply dated 19th December, 2007 filed by Accounts Officer of Commissioner of Higher Education and, therefore, the interpretation of Government Resolution dated 15.10.1984 mainly revolves round Clauses 3, 4, 6 and 7 of the above Government Resolution and to be examined accordingly.

16.1. If the Government Resolution dated 15.10.1984 is perused the preamble of the resolution is pertaining to grant of benefit of pension scheme for the teaching staff in the Non- Government Affiliated Colleges and in the Universities at par with employees of the Government of Gujarat under Revised Pension Rules, 1950 as amended from time to time. Therefore, if Clause 3 is perused, two types of employees were to exercise option, viz. (1) members of the existing staff recruited before 1.4.1982 and (2) those staff who have retired on or after 1.4.1982 and prior to the date of issue of this resolution within a period of one year from the above date, whether to

continue in C.P.F. or to go under the pension scheme and such option was to be final. In Clause 4, it is clearly stated that member of the staff recruited on or after 1st April, 1982 shall automatically be governed by this scheme and such staff will not be allowed to opt for C.P.F. Therefore, if principle of plain reading is applied, all the contents of the clauses read together, what transpires is that the member of the staff recruited on or after 1st April, 1982 was not supposed to exercise an option since he was to be automatically governed by the scheme. So far as the petitioner is concerned, he was recruited directly after the advertisement issued by the concerned Universities on the post of 'Reader' in South Gujarat University on 31.3.1986 to 5.10.1988 and later on appointed in the M.S. University as a 'Reader' from 6.10.1988 after undergoing valid selection procedure. Thus, the case of the petitioner is not governed by Clause 3 of the Government Resolution in view of fact that neither the petitioner is a member of existing staff recruited prior to 1.4.1982 nor he retired from 1.4.1982 to 15.10.1984. Therefore, the contention of learned AGP that the petitioner was to exercise option for pension which was mandatory, cannot be accepted and is hereby rejected.

16.2. So far as width and amplitude of Clause 6 of Government Resolution is concerned, it confers benefits upon an employee 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 this scheme. If the above clause is made applicable to the petitioner, service rendered in the B.V.M.College of Engineering at Vallabh Vidhyanagar as 'Assistant Lecturer' and even, subsequent service as a 'Lecturer' in the S.V.R. College of Engineering and Technology are to be counted since the above two colleges are recognised colleges and in view of service rendered in Non-Government Aided Colleges of the State of Gujarat and Union of India can be considered for qualifying service for pension and calculation of pensionable qualifying service by two offices of respondent Nos. 1 and 5 at the time of accepting application for voluntary retirement of the petitioner was just and proper and cannot be brought within the preview of Rule 41 (1) (a) of the Pension Rules, to deny pension to the petitioner, on the ground that the petitioner had not rendered any service in a pensionable establishment. The fact remains that the petitioner was a member of C.P.F. in both the above colleges and resigned from the service and ceased to be a member of C.P.F. for all purposes. It is very clear from the plain reading of clause 6 that clause 6 does not distinguish employees rendering service in a pensionable or non-pensionable establishment and on the contrary it covers all kinds of services even temporary or officiating rendered in Non-Government Aided Colleges. Even otherwise, no material contrary exist to show that the above two colleges were non-pensionable establishment.

16.3. If the submissions of learned AGP are accepted that to get benefits of clause 6 of G.R. of 15.10.1984, option is to be exercised as per clause 3, provisions of clause 6 will

become redundant and inoperative for a recruitee on or after 1.4.1982. Neither clause 4 nor clause 6 envisaged or mandate a recruitee after 1.4.1982 to exercise any option as per clause 3.

It can be safely concluded from the above, 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. At the same time, failure to exercise an option on the part of post 1.4.1982 recruitee, making him vulnerable for benefits of previous services as per clause 6, will be against the spirit and object of the scheme and will be creating artificial, arbitrary and discriminatory dividing line amongst university teaching staff not found in clause 6.

16.4. Likewise it was not obligatory at all upon the petitioner to exercise option as per subsequent G.R. 's dated 17.12.1987 and 17.9.1991 in view of the fact that the petitioner was automatically governed by pension scheme by G.R. dated 15.10.1984. At the same time there is no break of service of the petitioner from 22.7.1968 to 30.11.2000 and, therefore, rest of contents of clause 6 are not to be gone into.

16.5. Thus, when clause 6 is unambiguous and benefits of all previous services are not restricted to optee only, no other interpretation is permissible and restricting such benefits to the recruitee like the petitioner pursuant to fresh appointment on or after 1.4.1982 and automatically governed by clause 4 of the G.R., any attempt to add or alter any meaning of any word or phrase of clause 6 would amount giving narrow meaning to clause 6 which is not envisaged at all by the draftsman of the resolution. Therefore, the petitioner is entitled for continuity and gets benefit of all previous services rendered in B.V.M. College of Engineering and S.V.R. College of Engineering and Technology and the same is rightly considered by respondents No. 1 and 4 at relevant point of time while granting voluntarily retirement to the petitioner and, therefore, now they cannot be permitted to take another view and they are estopped from doing so. The petitioner has relied and acted on the orders passed by respondents No. 1 and 4 and preponed the date of superannuation now cannot be placed in disadvantageous position on the basis of ipsi-dixi of officers of Respondents No.1 and 4.

16.6. The above fact will be clear if we read Clause 7 in juxtaposition to Clause 4 and 6, which carves out an exception with regard to applicability of general provision of Chapter 11 of B.C.S.R. Volume I in granting retirement benefits in case if a special provisions are made, the above applicability can be kept aside and this pension scheme of G.R. dated 15.10.1984 being a special scheme conferring benefits of pension and retiral dues, will govern the case of the petitioner and the contention of learned AGP about applicability of Rule 41(1) (a) cannot be accepted and is hereby

rejected.

17. Thus, non-consideration of above aspect by learned Single Judge of this Court in decision of Dr. Nalini V. Dave (supra) also fails."

The Division Bench in the appeal so filed by the Director of Pension and Provident Fund being Letters Patent Appeal No. 1151 of 2008 challenging the above confirmed the said view. The SLP filed before the Apex Court challenging the order in appeal was also dismissed.

9.4 In the case of Maheshbhai H. Bhatt vs. Secretary and Others rendered on 07.02.2014 in Letters Patent Appeal No. 1213 of 2010 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.

9.5 The relevant paragraphs in the said case of Maheshbhai H. Bhatt (supra) 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 ie., 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."

In the facts, therefore, the Court held that those who were recruited on or after 01.04.1982 had not to exercise any option and they would be automatically governed by the pension scheme.

9.6 In the case of Banuben Rameshbhai Dhakkan vs. State of Gujarat through Secretary and Others decided on 22.01.2015 in Special Civil Application No. 740 of 2013 the question for consideration was 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."

9.7 In the case of Bhupendra Vallabhdas Chudasama vs. State of Gujarat rendered in Special Civil Application No. 7173 of 2012, which was held in favour of the petitioner, the Division Bench in Letters Patent Appeal No. 981 of 2015, confirmed the order of the learned Single Judge. The Division Bench of this Court held as under:

"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.

9.8 In the case of L.P. Joshi vs. State of Gujarat and another decided by way of 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, 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.

9.8.1 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 VS.

JASPAL KAUR, 2007 (o) 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 VS. PRESIDENT, RAJASTHAN ROADWAYS UNION, 2012(o)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 VS. 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."

9.9 In the case of Uma V. Chudasama v. State of Gujarat and others, which came up for consideration by way of Special Civil Application No.11473 of 2013, the Division Bench of this Court while deciding the appeal being Letters Patent Appeal No. 1019 of 2015 assailing the order passed in the Special Civil Application held as under:

"[5.0] Heard learned advocate appearing on behalf of respective parties at length.

At the outset it is required to be noted that as such the appellant herein original petitioner served as a Lecturer with the M.S. University, Vadodara from 24.10.1980 till she was appointed as a Reader vide order 05.02.1986. It is also not in dispute that thereafter she was then selected for the post of Professor and was appointed on the post of Professor vide order dated 25.09.1986 and she served on the said post of Professor till she retired on 14.06.2012. Thus, her appointment as Reader and Professor was after 15.10.1984.

[5.1] Identical question came to be considered by the Division Bench of this Court in the case of Bhupendra Vallabhdas Chudasama and Anr. (Supra) rendered in Letters Patent Appeal No.981/2015 and after considering the G.R. dated 15.10.1984 and on interpreting the said resolution it is 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. In para 7 the Division Bench has observed and held as under:

[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.

[5.2] The decision of the Division Bench of this Court in the case of Bhupendra Vallabhadas Chudasama and Anr. (Supra) squarely applies to the case on hand. Under the circumstances, the impugned order passed by the learned Single Judge cannot be sustained and the same deserves to be quashed and set aside and it is to be held that petitioner shall be entitled to the pension under the GPF Scheme as per the G.R. dated 15.10.1984 and her earlier services if prior to 01.04.1982, if any, as required to be counted for the purpose of pensionable service only, however before any benefit is granted to the petitioner under the GPF Scheme, the petitioner shall deposit the entire amount of CPF if any received by her during her service and only thereafter she shall be entitled to the benefit of GPF Scheme as per the G.R. dated 15.10.1984."

9.10 The State preferred SLP(C) No. 3831-3832 of 2016 against the said order which was rejected by an order dated 09.03.2016. From these preceding chain of decisions, except in the case of Banuben Dhakkan (supra) wherein SLP(C) No. 9018 of 2016 was filed, by an order dated 02.09.2016, before the Apex court could grant stay, the order of the Division Bench is implemented.

10. The State would, therefore, contend that when the issue is at large before the Apex Court in SLPs in the case of Banuben Dhakkan (supra) and Bhupendra Vallabhadas Chudasama (supra), the issue does not stand concluded in favour of the respondent - original petitioners. We see no reason to take a view different from the line of decisions which have stood the test in the decisions rendered by the learned Single Judges and so confirmed by the Division Bench and by the Apex Court, except in the two cases referred to earlier.

11. What is evident from the facts in juxtaposition to the case laws cited hereinabove is as under:

(a) The issue as far as this Court is concerned stands concluded by a number of judgements referred to hereinabove. At the outset, it has been reiterated by several judgements of this Court as well as the Apex Court that pension is not a bounty. In the judgement in the case of Deokinandan Prasad vs. State of Bihar reported in (1971) 2 SCC 330, the Apex Court has held as under:

"29. We are not inclined to accept the contention of the learned counsel for the respondents. By a reference to the material provisions in the Pension Rules, we have already indicated that the grant of pension does not depend upon an order being passed by the authorities to that effect. It may be that for the purposes of quantifying the amount having regard to the period of service and other allied matters, it may be necessary for the authorities to pass an order to that effect, but the right to receive pension flows to an officer not because of the said order but by virtue of the Rules. The Rules, we have already pointed out, clearly recognise the right of persons like the petitioner to receive pension under the circumstances mentioned therein.

30. The question whether the pension granted to a public servant is property attracting Art. 31(1) came up for consideration before the Punjab High Court in

Bhagwant Singh v. Union of India. It was held that such a right constitutes "property" and any interference will be a breach of Art. 31(1) of the Constitution. It was further held that the State cannot by an executive order curtail or abolish altogether the right of the public servant to receive pension. This decision was given by a learned Single Judge. This decision was taken up in Letters Patent Appeal by the Union of India. The Letters Patent Bench in its decision in Union of India v. Bhagwant Singh approved the decision of the learned Single Judge. The Letters Patent Bench held that the pension granted to a public servant on his retirement is "property" within the meaning of Art. 31(1) of the Constitution and he could be deprived of the same only by an authority of law and that pension does not cease to be property on the mere denial or cancellation of it. It was further held that the character of pension as "property"

cannot possibly undergo such mutation at the whim of a particular person or authority.

31. The matter again came up before a Full Bench of the Punjab and Haryana High Court in K. R. Erry v. The State of Punjab. The High Court had to consider the nature of the right of an officer to get pension. The majority quoted with approval the principles laid down in the two earlier decisions of the same High Court, referred to above, and held that the pension is not to be treated as a bounty payable on the sweet will and pleasure of the Government and that the right to superannuation pension including its amount is a valuable right vesting in a Government servant. It was further held by the majority that even though an opportunity had already been afforded to the officer on an earlier occasion for showing cause against the imposition of penalty for lapse or misconduct on his part and he has been found guilty, nevertheless, when a cut is sought to be imposed in the quantum of pension payable to an officer on the basis of misconduct already proved against him, a further opportunity to show cause in that regard must be given to the officer. This view regarding the giving of further opportunity was expressed by the learned Judges on the basis of the relevant Punjab Civil Service Rules. But the learned Chief Justice in his dissenting judgment was not prepared to agree with the majority that under such circumstances a further opportunity should be given to an officer when a reduction in the amount of pension payable is made by the State. It is not necessary for us in the case on hand, to consider the question whether (1) A. T. R. 1962 Punjab 503. (2) I. L. R. 1965 Punjab 1. (3) I. L. R. 1967 Punjab & Haryana 278 652 before taking action by way of reducing or denying the pension on the basis of disciplinary action already taken, a further notice to show cause should be given to an officer. That question does not arise for consideration before us. Nor are we concerned with the further question regarding the procedure, if any, to be adopted by the authorities before reducing or withholding the pension for the first time after the retirement of an officer. Hence we express no opinion regarding the views expressed by the majority and the minority Judges in the above Punjab High Court decision, on this aspect. But we agree with the view of the majority when it has approved its earlier decision that pension is not a bounty payable on the sweet will and pleasure of the Government and that, on the other hand, the right to pension is a valuable right vesting in a government servant.

32. This Court in State of Madhya Pradesh v. Ranojirao Shinde and another had to consider the question whether a "cash grant" is "property" within the meaning of that expression in Arts. 19(1)

(f) and 31(1) of the Constitution. This Court held that it was property, observing "it is obvious that a right to sum of money is property".

33. Having due regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Art. 31 (1) and by a mere executive order the State had no power to withhold the same. Similarly, the said claim is also property under Art. 19(1)(f) and it is not saved by sub-article (5) of Art. 19. Therefore, it follows that the order dated June 12, 1968 denying the petitioner fight to receive pension affects the fundamental right of the petitioner under Arts. 19(1)(f) and 31(1) of the Constitution, and as such the writ petition under Art. 32 is maintainable. It may be that under the Pension Act (Act 23 of 1871) there is a bar against a civil court entertaining any suit relating to the matters mentioned therein. That does not stand in the way of a Writ of Mandamus being issued to the State to properly consider the claim of the petitioner for payment of pension according to law."

(b) The objection by the State Government that now the respondents' case is barred by delay deserves to be rejected. In the case of D.R.R Sastri (supra) relied upon by learned Senior Counsel Shri S.N. Shelat, there was a delay in exercise of option. The proposition of law as held so rightly by the learned Single Judge is that had they been asked to opt for pension scheme and informed, they would have done so. Delay in facts of the case would not be fatal and the respondents would be entitled to the benefit of exercising their option. This is particularly when from the minutes of Committee reproduced hereinabove, it is clear that the Committee did recommend that the Professors be given one more chance to exercise their options.

It is also evident that similarly situated petitioners including some of the present respondents had as early as in the year 2007 approached this Court by filing Special Civil Application No. 8383 of 2007 and group matters. This Court after recording the concise facts in the petitions and considering the judgements of the Apex Court and recording the contentions that the petitioners therein were not aware of the options to be given, practically gave positive directions which read as under and obviously therefore the State's objections on the ground of delay cannot be sustained.

"15. I have considered the submissions made by learned advocates Mr. Desai. I have also considered the factual aspect in respect to claim of pensionary benefits by the petitioners.

16. Learned Government Pleader Mr. Sunit Shah with learned AGPs appearing on behalf of respondents ? State Authorities submitted that State Government will reconsider the case of petitioners and will also pass appropriate orders within some reasonable time in light of the observations made by the Apex Court as referred above.

17. In this group of petitions, this Court is passing the orders without determination of merits between the parties in respect to claim of pension. The reason behind it is that it is a burden upon the State Government to examine such issue as early as possible in accordance with law. The question is that State Government is not

extending the benefit of pension in favour of petitioners and they remained continue as a member in CPF Scheme, however, ultimately, their requests has been rejected only on the ground of which have to shoulder burden of heavy financial liabilities. Therefore, in view of the recent decision of Apex Court in case of A.P.S.R.T.C. & Ors. v. G. Srinivas Reddy & Ors. Reported in 2006 AIR SCW 1108 and also in case of Employees State Insurance Corporation v. All India I.T.D.C. Employees Union & Ors. reported in 2006(2) GCD 1430 (SC). This Court has power to direct the respondents ? State Government to reconsider the case of the petitioners in light of the aforesaid background and examine the issue within some reasonable time. It is legal obligation on the part of the State Government to consider such cases of denial of pensionary benefit to the petitioners.

18. In light of the above facts as observed by this Court, it is open for the petitioners to make detailed representation, if they so desire, along with the copy of the aforesaid decision of Apex Court in case of Union of India and Others v. S.L. Verma and Others reported in 2007 (112) FLR 697 to the respondents as early as possible.

19. As and when, the respondents ? State Government received any representation from the petitioners along with the aforesaid decision of the Apex Court, it is directed to the respondents ? State Government to reconsider the matter while examining the earlier representation which has been made by Association and recent one, in light of observations made by the Apex Court in case of Union of India and Others v. S.L. Verma and Others reported in 2007 (112) FLR 697 and pass appropriate reasoned order in accordance with law within a period of four months from the date of receiving the copy of the said order and communicate the same to each petitioner immediately.

20. It is also directed to the State Government to reconsider the matter with sympathetic approach and to consider the sentimental issue for the concerned employees those who are retiring from the service and not able to get pensionary benefits though other similarly situated employees are getting it and enjoying it.

21. In view of above observation and directions, rule is made absolute to the aforesaid extent in each petition with no order as to costs."

(c) Reading of clauses 3, 4 and 6 of the Government Resolution dated 15.10.1984 indicate that the members of the existing staff recruited before 01.04.1982 and those staff who have retired on or after 01.04.1982 and prior to the date of issue of the resolution only have to exercise their option. Those recruited on or after 01.04.1982 shall automatically be governed by the pension scheme of 1984.

In the case of D.S Nakara vs. Union of India reported in (1983) 1 SCC 305, the Apex Court has held that the pension retirees have to be treated as a homogeneous class and that any further classification amongst them would be violative of Article 14 of the Constitution of India. It was

further held that the principle that when a certain date or eligibility criteria is selected with reference to legislative or executive measure which has the pernicious tendency of dividing an otherwise homogeneous class and the choice of beneficiaries of the legislative/executive action becomes selective, the division or classification made by choice of date or eligibility criteria must have some relation to the objects sought to be achieved. And apart from the first test that the division must be referable to some rational principle, if the choice of the date or classification is wholly unrelated to the objects sought to be achieved, it cannot be upheld on the specious plea that was the choice of the Legislature. In the facts of the present case, it is evident in accordance with the case of D.S. Nakara (supra), that all of them form a homogeneous group who have been working with the institution and therefore it is not fair for the 'State' to discriminate only on the ground of cut off date.

(d) What is evident from the service details of the respondents is that they had two spells of service. The first spell was prior to 01.04.1982 and the second one after 01.04.1982. As far as the first spell is concerned there was only one scheme CPF, therefore there was no question of exercising option. In the second spell, when they joined there was no question of exercising option as the pension scheme was compulsory. They were, to use the words of clause 4 of the resolution, "automatically" governed by the pension scheme as therefore there was no fault, inaction or omission which would disentitle them to claim pension. The disability of filling in the option form or asking for switching over belatedly cannot be held against them.

(e) As held in the case of S.S. Patel (supra) which has received affirmation even by the Apex Court that the two clauses of the Government Resolution dated 15.10.1984 i.e. clauses 4 & 6 respectively cannot be read in isolation of each other, it will not be out of place to repeat the observations of this Court to make that clear.

"16. At the same time the prior to issuance of Government Resolution dated 15.10.1984 which was made effective with retrospective effect from 1.4.1982, employee had no opportunity whatsoever, whether to opt for pension or for any other scheme and such an employee used to be governed by prevailing system of C.P.F.. When the G.R. dated 15.10.1984 came to be issued, the petitioner was serving as a lecturer with S.V.R.College of Engineering and Technology at Surat, which was a Regional Engineering College and later on nomenclatured as National Institute of Technology, the G.R. was not applicable to Engineering College which was under Government of India. From the record, what appears, the petitioner had continued to be Governed by the existing scheme ?the provident fund for employees of the S.V.R. College of Engineering and Technology (Surat) Society? as per option exercised in 1978. There is no dispute about the amount which was credited in the account of the petitioner, came to be collected and ultimately in year 2000, the petitioner deposited the said amount with interest. After resigning from the S.V.R. College of Engineering, when the petitioner joined as a 'Reader' with South Gujarat University from 31.3.1986 and served upto 5.10.1988, the petitioner was a Recruit after 1.4.1982 and was being governed automatically for pension scheme as introduced by G.R. dated 15.10.1984 and accordingly no contributory amount was deducted and only

G.P.F. account was credited. Thus, as a Reader with South Gujarat University, the petitioner was getting benefit of the pension scheme. Even as per the respondents, the period commencing from 31.3.1986 till the date of voluntary retirement on 30.11.2000, the service of the petitioner can be considered for pensionable job. The above fact is admitted in para 10 of the affidavit-in-reply dated 19th December, 2007 filed by Accounts Officer of Commissioner of Higher Education and, therefore, the interpretation of Government Resolution dated 15.10.1984 mainly revolves round Clauses 3, 4, 6 and 7 of the above Government Resolution and to be examined accordingly.

16.1. If the Government Resolution dated 15.10.1984 is perused the preamble of the resolution is pertaining to grant of benefit of pension scheme for the teaching staff in the Non- Government Affiliated Colleges and in the Universities at par with employees of the Government of Gujarat under Revised Pension Rules, 1950 as amended from time to time. Therefore, if Clause 3 is perused, two types of employees were to exercise option, viz. (1) members of the existing staff recruited before 1.4.1982 and (2) those staff who have retired on or after 1.4.1982 and prior to the date of issue of this resolution within a period of one year from the above date, whether to continue in C.P.F. or to go under the pension scheme and such option was to be final. In Clause 4, it is clearly stated that member of the staff recruited on or after 1st April, 1982 shall automatically be governed by this scheme and such staff will not be allowed to opt for C.P.F. Therefore, if principle of plain reading is applied, all the contents of the clauses read together, what transpires is that the member of the staff recruited on or after 1st April, 1982 was not supposed to exercise an option since he was to be automatically governed by the scheme. So far as the petitioner is concerned, he was recruited directly after the advertisement issued by the concerned Universities on the post of 'Reader' in South Gujarat University on 31.3.1986 to 5.10.1988 and later on appointed in the M.S. University as a 'Reader' from 6.10.1988 after undergoing valid selection procedure. Thus, the case of the petitioner is not governed by Clause 3 of the Government Resolution in view of fact that neither the petitioner is a member of existing staff recruited prior to 1.4.1982 nor he retired from 1.4.1982 to 15.10.1984. Therefore, the contention of learned AGP that the petitioner was to exercise option for pension which was mandatory, cannot be accepted and is hereby rejected.

16.2. So far as width and amplitude of Clause 6 of Government Resolution is concerned, it confers benefits upon an employee 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 this scheme. If the above clause is made applicable to the petitioner, service rendered in the B.V.M.College of Engineering at Vallabh Vidhyanagar as 'Assistant Lecturer' and even, subsequent service as a 'Lecturer' in the S.V.R. College of Engineering and Technology are to be counted since the above two

colleges are recognised colleges and in view of service rendered in Non-Government Aided Colleges of the State of Gujarat and Union of India can be considered for qualifying service for pension and calculation of pensionable qualifying service by two offices of respondent Nos. 1 and 5 at the time of accepting application for voluntary retirement of the petitioner was just and proper and cannot be brought within the preview of Rule 41 (1) (a) of the Pension Rules, to deny pension to the petitioner, on the ground that the petitioner had not rendered any service in a pensionable establishment. The fact remains that the petitioner was a member of C.P.F. in both the above colleges and resigned from the service and ceased to be a member of C.P.F. for all purposes. It is very clear from the plain reading of clause 6 that clause 6 does not distinguish employees rendering service in a pensionable or non-pensionable establishment and on the contrary it covers all kinds of services even temporary or officiating rendered in Non-Government Aided Colleges. Even otherwise, no material contrary exist to show that the above two colleges were non-pensionable establishment.

16.3. If the submissions of learned AGP are accepted that to get benefits of clause 6 of G.R. of 15.10.1984, option is to be exercised as per clause 3, provisions of clause 6 will become redundant and inoperative for a recruitee on or after 1.4.1982. Neither clause 4 nor clause 6 envisaged or mandate a recruitee after 1.4.1982 to exercise any option as per clause 3.

It can be safely concluded from the above, 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. At the same time, failure to exercise an option on the part of post 1.4.1982 recruitee, making him vulnerable for benefits of previous services as per clause 6, will be against the spirit and object of the scheme and will be creating artificial, arbitrary and discriminatory dividing line amongst university teaching staff not found in clause 6.

16.4. Likewise it was not obligatory at all upon the petitioner to exercise option as per subsequent G.R. 's dated 17.12.1987 and 17.9.1991 in view of the fact that the petitioner was automatically governed by pension scheme by G.R. dated 15.10.1984. At the same time there is no break of service of the petitioner from 22.7.1968 to 30.11.2000 and, therefore, rest of contents of clause 6 are not to be gone into.

16.5. Thus, when clause 6 is unambiguous and benefits of all previous services are not restricted to optee only, no other interpretation is permissible and restricting such benefits to the recruitee like the petitioner pursuant to fresh appointment on or after 1.4.1982 and automatically governed by clause 4 of the G.R., any attempt to add or alter any meaning of any word of phrase of clause 6 would amount giving narrow

meaning to clause 6 which is not envisaged at all by the draftsman of the resolution. Therefore, the petitioner is entitled for continuity and gets benefit of all previous services rendered in B.V.M. College of Engineering and S.V.R. College of Engineering and Technology and the same is rightly considered by respondents No. 1 and 4 at relevant point of time while granting voluntarily retirement to the petitioner and, therefore, now they cannot be permitted to take another view and they are estopped from doing so. The petitioner has relied and acted on the orders passed by respondents No. 1 and 4 and preponed the date of superannuation now cannot be placed in disadvantageous position on the basis of ipsi-dixi of officers of Respondents No.1 and 4.

16.6. The above fact will be clear if we read Clause 7 in juxtaposition to Clause 4 and 6, which carves out an exception with regard to applicability of general provision of Chapter 11 of B.C.S.R. Volume I in granting retirement benefits in case if a special provisions are made, the above applicability can be kept aside and this pension scheme of G.R. dated 15.10.1984 being a special scheme conferring benefits of pension and retiral dues, will govern the case of the petitioner and the contention of learned AGP about applicability of Rule 41(1) (a) cannot be accepted and is hereby rejected."

(f) Considering the tenor of the word "recruitment" as held in the case of K. Narayan vs. State of Karnataka reported in AIR 1994 SC 55, which according to the dictionary meaning means "enlist", it includes any method of inducting a person in public service. Appointment, selection, promotion, deputation are all well known methods of recruitment.

12. Having perused the facts in the context of the term what is apparent is from the Government Resolutions dated 23.11.1976 and 14.09.1988, the selection is by issuance of a public advertisement. Once a person makes an application, a duly constituted selection committee is formed. Even in the Career Advancement Scheme, the modus is of recruitment. All these aspects were rightly considered in the decision in the case of Dr. S.G. Trivedi (supra) where the Court specifically held that 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.

12.1 In the cases of L.P. Joshi (supra), Banuben Dhakkan (supra), Bhupendra Chudasama (supra) and Uma Chudasama (supra), this Court has reiterated and revisited the entire scheme of the Government Resolution dated 15.10.1984 and in no uncertain terms held that if clause no. 3 of the resolution is perused there are two types of employees who have to exercise option namely (a)

members of the existing staff recruited before 01.04.1982 (b) Those staff who have retired on or after 01.04.1982 and prior to the issuance of the Government Resolution dated 15.10.1984. it is therefore the relief of option. Once an employee is a recruit post 01.04.1982, he automatically comes over to the pension scheme.

13. The objection of the State therefore that the subsequent decision of the respondents herein to ask for a switch over due to the rise in pension amounts to the revision of pay will also not hold good. Their coming over to pension being automatic, the State is obliged to extend the benefits. Once the learned Single Judge of the judgement under challenge had asked the State to so consider, the State was bound to consider the same positively in light of the directions so issued and not reject the same on the ground of financial implications. In fact, financial burden is no ground to deny benefits arising from the pension rules.

14. It is required to be noted that so far as the teaching staff is concerned, there is no concept of automatic promotion on higher posts on completion of certain number of years. An employee has to acquire educational qualification and put in number of service to secure eligibility criteria for recruitment on higher post. Any appointment either direct or by transfer or by changing the post in the same institute and or in different institute for securing higher post or on a same post made after 1982 is covered under pension scheme - GPF for which option is not to be given as CPF scheme is discontinued with effect from 01.04.1982. It is settled that the employees even though recruited before 01.04.1982 on a given post but subsequently i.e. after 01.04.1982 if they are again recruited after following the procedure prescribed therein, then such employees are not required to give any option to switch over from CPF to GPF because of requirement of clause 4 of the Government Resolution dated 15.10.1984. The said clause 4 at the cost of repetition is reproduced hereinbelow:

"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."

14.1 Moreover, any recruitment/appointment made after 01.04.1982 for the teaching staff is through advertisement and selection hence it is fresh appointment and therefore pension scheme i.e. GPF is automatically applicable. Further, for the non teaching staff also, their promotion at a particular time is to be considered as recruitment and therefore they need not give the option at the time of promotion. In view of the overall facts of the case we are not inclined to entertain these appeals and therefore the appeals deserve to be dismissed.

15. For the aforesaid reasons, the judgements rendered by the learned Single Judges in the respective Letters Patent Appeals are confirmed. The State authorities are directed to grant the benefit of the pension scheme to all the respondents in view of the Government Resolution dated 15.10.1984 from the date of their respective retirement. The respondents who have not refunded/repaid the amount of Contributory Provident Fund, their case be considered by the authorities by paying the amount of pension after adjusting/setting off the amount of Contributory Provident Fund payable by the respondents. In case of the respondents who have refunded/repaid the amount of Contributory Provident Fund, they shall be entitled for interest at the rate of 9% per

annum on the amount of pension from the date of their repaying/refunding the amount of Contributory Provident Fund. The respective parties shall act upon these directions and implement the same within 8 weeks from the date of receipt of the writ of the order of this Court. Appeals are accordingly dismissed. Civil Applications also stand disposed of accordingly.

(ANANT S. DAVE, ACJ) (BIREN VAISHNAV, J) DIVYA