
(1997) 05 GUJ CK 0016
In the Gujarat High Court

Ahmedabad District Grant-In-Aid Primary School Employees Association and Others APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 09-05-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1997) 2 GLR 1728

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

S.K. Keshote, J.—As all these petitions proceed on the common facts and legal grounds, same were taken for hearing together with consent of the parties and are being disposed off by this common order. In these petitions, there are two classes of petitioners. One is the Union of Prathmik Shikshaks and the other is individual Prathmik Shikshaks (Primary Teachers). These petitions have arisen from different districts of the State of Gujarat. The dispute relates to discontinuation of monthly payment of medical allowance to the primary school teachers who are serving in private recognised grant-in-aid primary schools in different districts of this State. One fact to be noticed in the petitions arising from the Gandhinagar District, is that the primary teachers serving in the private recognised grant-in-aid primary schools were not getting the medical allowance at all.

2. Special Civil Application No. 465 of 1991 has been filed by the Ahmedabad District Grant-in-aid Primary School Employees Association and four individual teachers.

Special Civil Application No. 528 of 1991 has been filed by the Ahmedabad District Recognised Private Primary Education Teachers" Association through its President Smt. Induben Ambalal Patel.

Special Civil Application No. 1132 of 1991 has been filed by individual teachers of

Baroda District.

Special Civil Application No. 6913 of 1991 has been filed by Vadodara Jilla Manya Khangi Primary Teachers' Association, Baroda, through its President Shri K.B. Nayak.

Special Civil Application No. 7180 of 1991 has been filed by Mehsana Jilla Khangi Prathmik Shikshak Sangh, Mehsana, through its President Shri Ganpatbhai V. Modi.

Special Civil Application No. 7469 of 1991 has been filed by Panchmahal Jilla Manya Khangi Prathmik Shikshak Sangh, Panchmahals, through its President Shri V.J. Bariya and its Secretary.

Special Civil Application No. 7971 of 1991 has been filed by Jamnagar Jilla Khangi Prathmik Shikshak Sangh, Jamnagar, through its President Shri Prabhubhai L. Chudasma.

Special Civil Application No. 264 of 1992 has been filed by Broach District Recognised Private Primary Education Teachers' Association, Broach, through its President Shri Pravinbhai S. Shah.

Special Civil Application No. 2463 of 1992 has been filed by Kheda Jilla Manya Khangi Prathmik Shikshak Sangh, Kheda, through its President Shri Mahendrakumar Ratilal Saraiya.

Special Civil Application No. 4565 of 1992 has been filed by teachers of Ahmedabad District in individual capacity.

Special Civil Application No. 6364 of 1992 has been filed by The All Gujarat Recognised Private Primary School Teachers' Association, Ahmedabad, through its President Shri Chandrakant Jalnapurkar, and by Amerli District Recognised Private Primary School Teachers' Association, Amreli, through its Secretary Shri Bhanubhai Zaverilal Seth. So in this case, the petition is filed by All Gujarat Recognised Private Primary School Teachers' Association, which covers all the districts of Gujarat State.

Special Civil Application No. 4199 of 1993 has been filed by eight primary school teachers of Ahmedabad.

Special Civil Application No. 9954 of 1993 has been filed by individual primary teachers of district Jamnagar.

Special Civil Application No. 14310 of 1993 has been filed by seven primary teachers of district Gandhinagar.

Special Civil Application No. 13520 of 1994 has been filed by Jamnagar Jilla Khangi Prathmik Shikshak Sangh, Jamnagar, through its President Shri Narshibhai L. Popat.

3. The facts in brief of the case are that the primary teachers of private

recognised grant-in-aid primary schools were receiving medical allowance at the rate of Rs. 15/- p.m. which was subsequently enhanced to Rs. 30/- p.m. The petitioners have come up with the case that the primary teachers of private recognised grant-in-aid primary schools were entitled for medical allowance by virtue of Government Resolutions dated 10th March, and 7th April 1982. Under the latter Resolution, the rate of medical monthly allowance was enhanced to Rs. 30/-. Reference has been made to Resolution of Finance Department, dated 7th July 1990, whereunder the monthly medical allowance was revised and enhanced to Rs. 75/- p.m. So in all districts of the State of Gujarat, from where these petitions have arisen, except Gandhinagar, the primary teachers of all private recognised grant-in-aid primary schools were recipients of medical allowance. The dispute has arisen when the Director of Education, Gandhinagar, under its order dated 11th September 1991, has decided that there are no orders of the Government for payment of medical allowances to the teachers serving in various private recognised grant-in-aid primary schools. The aforesaid order was addressed to the District Education Officer, Bhavnagar with copies to all District Education Officers of Gujarat State. The controversy centers on two questions. Firstly, whether the Government Resolution under which the medical allowance has been ordered to be paid to the teachers is applicable to the primary teachers of private recognised grant-in-aid primary schools or not, and secondly, assuming that under the Resolution, this class of teachers are not covered, whether the denial of medical allowance to them is just and reasonable and whether it does or does not violate principles of equality.

4. In reply to the Special Civil Applications, the State Government and the Department have come up with the case that under the Bombay Primary Education Rules, 1949, the pay and allowances of the staff of private primary schools are subject to sanction from the State Government and direct payment scheme is introduced. The medical allowance, as per the case of the respondent, does not form part of direct payment scheme nor it is associated with the same. The respondent has urged that the State Government has taken a policy decision not to give medical allowance to the teachers serving in private primary schools and the reference in this respect has been made to the letter written by the Under Secretary, Education Department, to the Director of Primary Education dated 3rd June 1992. The respondent has further submitted that the Government has taken the aforesaid decision after due deliberations and proper application of mind. It has next been stated that this decision has been taken keeping in view the fact of financial implications on the public exchequer, which is consequently, as per respondents' case, is against public interest. The respondent has stated that no direction can be given to the Government to change its policy, more particularly when it involves additional expenditure. Reference has been made to the Circular dated 29th June 1992 and it has been stated that the primary teachers of private primary schools are not entitled for medical allowance in view of the fact that the expenditure incurred on this account cannot be paid to the private schools as grant, as explained therein. So, in sum and substance, the

defence of the respondent is that it has taken a policy decision not to pay medical allowance to the primary teachers of the private recognised grant-in-aid primary schools and one of the reasons for taking this decision is that it will put additional burden on the public exchequer which is against public interest. Another defence has been taken that primary private schools are not included for the benefit of medical allowance in the Government Resolutions.

5. The learned Counsel for the petitioners made three-fold submissions. Firstly, it is contended that once a benefit of medical allowance has been extended to the primary teachers of private recognised grant-in-aid primary schools, then there is a presumption that the Resolution of the Government covers this class of persons and at subsequent stage the respondents are estopped from giving any different interpretation to it and more so to the disadvantage of the teachers. It has next been contended that the medical allowance is provided to the employees so that they may have some financial assistance in the case of ailment of his own or family members. This benefit is provided having socio-economic approach. Lastly, it is contended that the policy decision taken by the Government is violative of Articles 14 & 16 of the Constitution as no discrimination could have been made only on the ground that the petitioners are primary teachers of recognised grant-in-aid private primary schools. There is no nexus whatsoever with the object sought to be achieved by excluding the primary teachers of private recognised grant-in-aid primary schools, from the benefit of medical allowance.

6. On the other hand, the learned Counsel for the respondent supported the order of the Director of Education, Gandhinagar, discontinuing the benefit of medical allowance to this class of persons.

7. I have given my thoughtful considerations to the submissions made by the learned Counsels for the parties. The learned Counsel for the respondents does not dispute that the teachers working in private recognised grant-in-aid secondary, higher secondary and colleges are being given medical allowance by the Government. The learned Counsel for the respondents also does not dispute that the primary teachers of the Government schools are getting the medical allowance. Not only this, he also does not dispute that the primary teachers working in the schools run by Municipalities or Municipal Corporations or by the District Panchayat are also receiving medical allowance. A teacher, irrespective of fact, whether he is a teacher in primary school, secondary school, higher secondary school or college, is a teacher. The pay scales of these teachers may be different on the basis of qualifications and on the ground that they are teaching different standards. But for all other purposes, a class. I fail to see any cogent and justified reason to debar the primary teachers of private recognised grant-in-aid primary schools from the benefit of medical allowance. The primary teachers are the lowest paid teachers and in my opinion, they need more financial assistance in the form of allowance. The policy decision taken by the Government, though normally is not subject to judicial scrutiny by this Court, but

if the policy decision is arbitrary on the fact of it or if makes a hostile discrimination amongst a class of persons similarly situated, then certainly this Court can proceed to decide whether there is any justification, rationality and correctness in such policy decision taken by the Government or not. The primary teachers of recognised grant-in-aid private primary schools, are of the all districts of Gujarat State were getting this allowance, except Gandhinagar District, and it is the case of discontinuation of that allowance at a later point of time. So, the burden heavily lies upon the respondents to justify discontinuation of medical allowance which these teachers were receiving for last many years. The only defence is that the policy decision has been taken by the Government not to pay the medical allowance to the primary teachers of recognised grant-in-aid private primary schools, as it will put heavy financial burden on public exchequer which is against public interest. This is really shocking to the conscious of the Court that a poor teacher has been denied benefit of medical allowance on the ground that it will put heavy financial burden on public exchequer. The Government can see scams running in crores of rupees in different spheres and that will not put any financial burden on the exchequer nor it is against public interest, but if a little amount of medical allowance is paid to the primary teacher, it becomes serious concern for the Government and it considers that amount to be heavy financial burden on the exchequer which is against public interest. From these pleadings and defences of the respondents necessary inference follows that scams do not adversely affect the public exchequer nor they are against public interest. If the matter is taken in the context of prevalent circumstances in the country with reference to the amount to be paid to this class of persons in the form of medical allowance, it will be a negligible percentage of the total amount of scams which have so far been detected in the country. This approach of the Government to worry about the financial burden on exchequer only in the case where medical allowances are to be paid to the primary teachers of private schools is wholly unjustified, unfair and against fair-play. If we go by this policy of the Government, then the inference which can be drawn is that these primary teachers never fall ill nor any of their family members and that the primary teachers are financially sound to bear medical expenses on their own, in case they fall ill. The case of this class of persons has to be compared with the cases of other teachers of the secondary, higher secondary and colleges who are paid better salaries and are also given medical allowances. The respondents have failed to give out any justification to single out only primary teachers of private recognised grant-in-aid primary schools. All the teachers of private schools irrespective of the fact that they are primary teachers, secondary teachers, higher secondary teachers or college teachers, should be dealt with equally in the matter of allowances etc. It is not in dispute that the primary teachers are receiving Dearness Allowance, House Rent Allowance, City Compensatory Allowance etc. But exception has been made only in case of medical allowance. In case the payment of medical allowance causes additional financial burden on the exchequer, then how it is justified to extend this benefit to the teachers of recognised grant-in-aid private secondary, higher

secondary and colleges. The Apex Court has dealt with the matter of teachers of private schools and held that their service conditions should be at par with the Government teachers in respect of pay scales, allowances etc. All primary teachers except private schools, are getting medical allowance. The pay scale of the primary teachers of private schools is identical to that of pay scale of primary teachers of primary schools run by Government, Municipalities, Corporations or Panchayats. The allowances other than medical allowance are also equal. The other service conditions are also undisputedly equal. In the State of Gujarat, only the private primary teachers of private schools are being discriminated. I had an occasion to consider this aspect with respect to extension of benefit of pensionary schemes to the primary teachers of private schools, while dealing with Special Civil Application No. 3635 of 1982 decided on 18-1-1997 (Kusumben E. Borasada v. Govt. of Gujarat). There, challenge has been made by primary teachers of private recognised grant-in-aid primary schools to the action of the State not to extend benefits of pension to this class of persons. After considering the decision of the Hon'ble Apex Court, this action of respondent-State was held to be ultra vires of Article 14 of the Constitution of India and the benefit of pension was ordered to be extended to the primary teachers of private grant-in-aid recognised primary schools. In that case also, the Government has taken a policy decision not to give pension to the primary teachers of recognised grant-in-aid primary schools. The policy decision of the Government in question does not stand to the test of reasonability and rationality. The primary school teachers have been denied the benefit of medical allowance without there being any justification whatsoever and as such, it is absolutely arbitrary action on the part of the respondent, Director of Education Department. It cannot be allowed to stand. Otherwise also, it will make a hostile discrimination amongst a class of persons. Discrimination cannot be permitted between a primary teacher of Government primary school and a primary teacher of recognised grant-in-aid private primary school. Similarly, private school teachers cannot be allowed to be discriminated only on the ground that they are teachers of primary schools. In view of the aforesaid discussion, the other two contentions raised by the learned Counsel for the petitioners are not required to be gone into.

8. In the result, all these Special Civil Applications succeed and the same are allowed. It is hereby declared that the primary teachers of recognised grant-in-aid private primary schools of the State of Gujarat are entitled for medical allowance at the rate at which it is payable to other teachers under the Government Resolution. The order of the Director of Education, Old Sachivalaya, Block No. 12, Gandhinagar, dated 11-9-1991 is quashed and set aside. It is hereby ordered that all the primary teachers shall be entitled for these benefits irrespective of the fact whether they have approached this Court or not. The respondent is directed to calculate the amount payable to this class of persons within a period of three months from the date of receipt of certified copy of this order. Arrears to be paid within two months next thereafter. It is further ordered that all the primary teachers of recognised grant-in-aid private primary schools

who have not received medical allowance as it was discontinued and who were not protected by this Court are at liberty to lodge their claims with the concerned District Education Officers and their claims shall be decided within a period of three months from the date of receipt of the claim and the amount of arrears of medical allowance shall be paid to the concerned teacher within a period of two months next thereafter. In case this amount is not paid within the stipulated period, the primary teachers concerned shall be entitled for interest thereon at the rate of 12% p.a. from the last date of the stipulated period.

The respondent-Director of Education, Education Department, Gandhinagar, is directed to issue necessary Circular in this respect within a period of one month from the date of receipt of certified copy of this order and circulate the same to all District Education Officers and in turn, the concerned District Education Officers shall circulate the same to all the primary teachers of recognised private grant-in-aid primary schools of the concerned District. Rule is made absolute in aforesaid terms in each petition with no order as to costs.