
(1995) 07 GUJ CK 0011
In the Gujarat High Court

Arunaben Jayantilal Min

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 24-07-1995

Acts Referred:

Citation : (1996) 1 GLR 64

Hon'ble Judges : M.R. Calla, J

Bench : Single Bench

Judgement

M.R. Calla, J.—Petitioner's case is that she was selected after interview by the Selection Board for appointment as Assistant Teacher in the year 1973 and on that basis, she was appointed as such on 17-12-1973. It has also been stated that although she had been selected by the Selection Board after an interview, her appointment was described as Badli Teacher and she was discontinued from service from 28-4-1974. At the time when she was selected and appointed as Assistant Teacher in 1973, the only qualification possessed by her was S.S.C. She was again appointed as Primary Teacher on 4-6-1974 and this time it was not an appointment as a Badli Teacher but it is a fact that she has been discontinued from 28-10-1974. She was again appointed on 18-11-1974 and was discontinued by order dated 25-11-1974. She was again appointed by order dated 6-1-1977 and was discharged by order dated 8-3-1977. Lastly, she was appointed on 4-6-1979 and, thereafter, she has been continuing as primary teacher. It has also been submitted that although she was only SSC in the year 1973, later on she passed B.A. examination and in May 1978 she had also passed the B.Ed, examination. The petitioner has stated that the District Primary Education Committee, Jamnagar in its meeting dated 15-2-1979 had passed a resolution and decided to regularise the petitioner's service from 25-11-1974 and to treat her to be in continuous services from 25-11-1974 in terms of Annexure "D" enclosed with the petition. While the petitioner was continuing in service, an order dated 5-11-1981 came to be passed on the basis of some observations made in the order dated 18-11-1980 passed by the Director of Education, Gujarat State, Ahmedabad. Copy of the same has been enclosed as

Annexure "E". This order dated 18-11-1980, i.e., Annexure "E" was passed in the case of one Mrs. Indira P. Dasani, who had filed Special Civil Application No. 2619 of 1980 in this Court asking for a direction for appointment as Primary Teacher. In terms of the order passed in this Special Civil Application filed by Mrs. Indira P. Dasani she was to make a representation before the Director of Education; she accordingly made the representation and on that representation the order had been passed on 18-11-1980 by the Director of Education, Gujarat State, Ahmedabad. Thereafter, Special Civil Application No. 2619 of 1980 filed by Mrs. Indira P. Dasani was rejected by the Court on 8-12-1980. It appears from the contents of the order Annexure "E" dated 18-11-1980 that while deciding the case of Mrs. Indira P. Dasani certain observations were made against petitioner's appointment by the Director and on that basis, the order dated 5-11-1981 was passed against the petitioner by the District Primary Education Officer.

2. The petitioner preferred Regular Civil Suit No. 793 of 1981, challenging the order dated 5-11-1981 passed by the District Primary Education Officer, in the Court of Civil Judge (S.D.), Jamnagar in which directions were issued not to terminate the services of the petitioner. But this order was vacated on 14-9-1982. The petitioner preferred appeal against this order dated 14-9-1982 before the District Judge at Jamnagar and that too was dismissed vide judgment dated 23-5-1982. The petitioner's case is that her case was rejected only on the ground that Special Civil Application No. 2619 of 1980 filed by Mrs. Indira P. Dasani had been rejected by this Court. Petitioner has made a reference to a Circular dated 12-2-1976 stating therein that those who have obtained B.Ed. degree should not be appointed as primary teachers hereinafter. Copy of this Circular dated 12-2-1976 has been enclosed as Annexure "G" and the petitioner's grievance is that the order dated 5-11-1981 was passed against her on account of the above referred Circular dated 12-2-1976. The petitioner then preferred Special Civil Application No. 484 of 1983, which was decided by order dated 10-3-1983 passed by this Court in the following terms:

Mr. Panchal states that if the petitioner makes a representation to the Jt. Director of Education within 15 days from today, that representation will be considered and disposed of by the Jt. Director within two months thereafter. In view of this statement, Mr. Vakharia withdraws this petition and agrees to withdraw the suit also with a liberty to file a fresh suit if that becomes necessary. The respondents shall maintain status quo till the representation of the petitioner is disposed of by the Jt. Director. Notice is discharged with no order to costs.

3. The petitioner accordingly submitted representation before the Director of Education, which was disposed of on 23-5-1983 upholding the order dated 5-11-1981 passed by the District Primary Education Officer, Jamnagar and the petitioner was, therefore, constrained to file this petition challenging the legality of the order Annexure "A" dated 23-5-1983 read with the order Annexure "B" dated 5-11-1981 passed by the District Primary Education Officer, Jamnagar. On 14-6-1983 while issuing notice returnable on 28-6-1983, this Court also granted

interim relief to the petitioner in terms of para 14(E) continuing the petitioner in service as primary teacher and, thereafter, on 28-7-1983 the Rule was issued and interim relief was continued. This is how the petitioner is continuing in service.

4. No return has been filed on behalf of the respondents and Mr. Uraizee, learned A.G.P., appearing on behalf of the respondents, has submitted that neither he has instructions in this matter nor he has any papers.

5. I have heard Learned Counsel.

6. It appears from the copies of the documents annexed with the Special Civil Application that the order dated 5-11-1981 was passed against the petitioner on the basis of the observations made by the Director of Education in the order Annexure "E" dated 18-11-1980, which was in relation to one Mrs. Indira P. Dasani. From the narration of the facts, as have been given with regard to the case of Mrs. Indira P. Dasani in the order i.e. Annexure "E" dated 18-11-1980 passed by the Director of Education and the narration of the facts, as have been given by the petitioner, in this petition, as also on the basis of the contents of the impugned order dated 5-11-1981. I do not find that the impugned order dated 5-11-1981 could be passed against the petitioner by taking it to be a case in parity with that of Mrs. Indira P. Dasani. Be that as it may, the fact remains that the observations, which were made against the petitioner while passing the order Annexure "E" in the case of Mrs. Indira P. Dasani by the Director of Education, had been made without any notice to the petitioner and the petitioner was never granted any opportunity of hearing before recording these observations against her while passing the order in the case of Mrs. Indira P. Dasani. Since the order had been passed by the Director of Education, i.e., respondent No. 2, District Education Officer (Primary), District Panchayat, Jamnagar proceeded to pass the order against the petitioner and, thereafter, the respondent No. 2 passed the order dated 23-5-1983 on the representation of the petitioner after the disposal of her Special Civil Application No. 484 of 1983 on 10-3-1983.

7. It is not disputed that the petitioner was given appointment in the year 1973 and, thereafter, she has continued in service as stated by her and as referred to hereinabove in the earlier part of the order. The decision taken by the District Primary Education Committee, Jamnagar in petitioner's favour in the meeting, which was held on 15-2-1979, remains uncontroverted and the fact that she had been continuing in service since 4-6-1979 has been recorded by the respondent No. 2 while passing the order Annexure "A" dated 23-5-1983 on her representation. It appears from the record available in the form of copies of the documents with this Special Civil Application that so far as untrained primary teachers were concerned, the requirement was S.S.C. and the petitioner was appointed as untrained primary teacher only in the year 1973. Having considered the record in its entirety, I am of the opinion that this petition deserves to be allowed on the following grounds:

1. The petitioner was appointed in the year 1973 and at that time she held the qualification of S.S.C.
2. Later on she had improved her qualifications, graduated herself and has also passed B.Ed. and thus, she acquired the qualifications for appointment as a trained teacher.
3. The qualification of Bachelor in Education, passed by her in the year 1978, in no case can be placed on a lower pedestal than that of P.T.C.
4. The appointment could not be denied to her on the ground that only the holders of qualification of P.T.C. could be appointed as primary teachers.
5. Whereas there is higher qualification of B.Ed, acquired by her and after acquiring that higher qualification, the District Primary Education Committee, Jamnagar had passed a Resolution in its meeting held on 15-2-1979 in petitioner's favour, she could not be denied the benefit of such Resolution based on her qualification of B.A. and B.Ed.
6. The facts of the case of the petitioner are entirely different than those of Mrs. Indira P. Dasani and the order in the case of Mrs. Indira P. Dasani has been passed by the Director and certain observations were made against the petitioner in that order without notice or opportunity to the petitioner and, therefore, the order, passed on the basis of such observations made at her back, can not be sustained.
7. The petitioner is continuing in service since June 1979 and the District Primary Education Committee had resolved to treat her as continuing in service from 25-11-1974.
8. The Civil litigation was withdrawn as stated by the Learned Counsel for the petitioner, which remains uncontroverted and even while passing the order on 10-3-1983 in Special Civil Application No. 484 of 1983 this Court had directed to maintain the status quo with regard to the petitioner's services and she was allowed to make representation and prior to the passing of this order on 10-3-1983 she was continuing in service under the orders passed by the Civil Court.
9. After the passing of the impugned order dated 23-5-1983, when the present Special Civil Application was preferred, she was allowed to continue in service under the interim orders of this Court and she has been continuing in service since 1983 under the interim orders of this Court, which was never sought to be vacated or modified during the pendency of this Special Civil Application for a period of over 12 years by now.
8. In this view of the matter, this Special Civil Application is allowed. The impugned orders dated 5-11-1981 and 23-5-1983, i.e., Annexure "B" and "A" respectively are hereby quashed and set aside. The petitioner, shall be entitled to all consequential benefits. Rule is made absolute accordingly. No order as to

costs.