

(1990) 04 GUJ CK 0019
In the Gujarat High Court

Attarhusen Badamia Husseni

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 30-04-1990

Acts Referred:

Gujarat (Bombay) Primary Education Act, 1947 — Section 24, 24, 25, 54
Gujarat Panchayats Act, 1961 — Section 131

Citation : (1990) 2 GLR 1291

Hon'ble Judges : P.R. Gokulakrishnan, C.J;N.B. Patel, J

Bench : Division Bench

Judgement

P.R. Gokulakrishnan, C.J.—This Letters Patent Appeal is against the order passed by the learned single Judge, dismissing Special Civil Application No. 3233 of 1989. In Special Civil Application No. 3233 of 1989, the appellant herein has prayed for issue of a writ of mandamus or any other appropriate writ for quashing and setting aside the Resolution dated 7th March, 1989 and the Circular dated 31st March, 1989, which were annexed as Annexures "A" and "B" to the Special Civil Application. The learned single Judge of our High Court, after referring to these Resolution and Circular dated 7th March, 1989 and 31st March, 1989 respectively and also Sections 24 and 54 of the Gujarat (Bombay) Primary Education Act, 1947 and also referring to Section 131 of the Gujarat Panchayats Act and Schedule III Part II Sub-clauses (h) and (i), came to the conclusion that the constitution of the Advisory Committee for advising on the question of transfers are within the powers of the Government and as such, these Resolutions, which are sought to be quashed, cannot be said to be illegal or without jurisdiction. With these findings, the learned single Judge has dismissed the Special Civil Application. As against this order, the present Letters Patent Appeal has been filed.

2. Mr. Vakharia, learned Counsel appearing for the appellant, mainly contended that such Advisory Committee cannot be constituted by the Government and there is absolutely no provision in the Bombay Primary Education Act to constitute such a Committee. He also refers to Sections 24 and 54 of the Bombay

Primary Education Act. As far as Section 54 of the Act is concerned Mr. Vakharia may be correct to the extent he says that it has nothing to do for giving the powers to the State Government to constitute such Advisory Committee. As far as Section 24 concerned, Mr. Vakharia states that the power u/s 24 to issue directions can be only by the Director of the Primary Education and cannot be by the Government. He also states that such directions cannot be for constituting a Consultative Committee in order to advise the officer concerned on the question of transfer.

3. This submission of Mr. Vakharia has to be considered in relation to the Resolution and Circular passed by the Government and the Director of Primary Education respectively, which are annexed as Annexure "A" and "B" to the Special Civil Application. For the purpose of completing the narration, we reproduce both the Resolution and the Circular herein:

Regarding constitution of transfer committee for the transfer of Primary Teachers Government of Gujarat, Education Department Resolution No. PTR : 1188-2830-K, Sachivalaya, Gandhinagar. Dated : 7th March, 1989

Read : (1) Letter No. 29-PNS-7-88-CHH-GUJ-17831 dated 4th October, 1988 from the Director of Primary Education, Gandhinagar.

RESOLUTION

At present the transfers of Primary Teachers are done by the District Primary Education Officer keeping in view the general instructions issued by the Director of Primary Education. In the vast field of the Primary Education and in view of very large number of Primary Teachers are available in adequate number in every primary school and more particularly in remote and backward area of the district and with a view to help the District Primary Officer in taking decisions for transfers of the primary teachers, it is hereby resolved to constitute an Advisory Committee of the following members:

(1) District Panchayat President - Chairman (2) President of the District Primary Education Committee - Member (3) The District Development Officer - Member (4) The District Education Officer - Member (5) A representative of the Director of Primary Education - Member (6) District Primary Education Officer - Member/ Secretary

Before effecting the transfers of the primary teachers, keeping in view the general instructions issued by the Director of Primary Education, the District Primary Education Officer has to consult the above referred Advisory Committee.

By order and in the name of Governor of Gujarat. J.M. Sutariya Section Officer, Education Department. To The Director of Primary Education Gandhinagar, The Development Commissioner, Gandhinagar, All District Primary Education Officers, All District Development Officers. No. 29/PNS/7/89/CHH/GUJ/6301/41 C/o. The District Primary Education Block No. 12, First Floor, Old Sachivalaya, Gandhinagar, Date : 31-3-1989 To - All District Primary Education Officers of all

District Education Committees. - The Administrative Officer, District Education Committee, Dang - Ahwa, Gandhinagar. Sub : Regarding Constitution of an Advisory Committee for the transfers of primary teachers.

By the Resolution No. PRT/118/2830/K dated 7th March, 1989 of the Education Department, in order to be helpful to the District Primary Education Officer, in every District an Advisory Committee has been constituted the Chairmanship of the District Panchayat Presidents. Thus, keeping in view the general instructions issued by the Director of Primary Education, the District Primary Education Officer will consult the above referred Advisory Committee before effecting the transfers of Primary Teachers. In order to maintain continuity of the policy in every District in the matter of transfer of Primary Teachers after consultation with the Advisory Committee, the District Primary Education Officer has to strictly observe the following conditions:

1. The instructions given in Circular dated 17th October, 1987 and subsequent circulars with regard to the transfer of Primary Teachers hold good. In other words, in the proposals for transfers of Primary Teachers, the above instructions should be strictly followed while consulting the Advisory Committee and the District Primary Education Officer has to issue orders for transfers of the Primary Teachers by following the above referred instructions.
2. In view of the instructions issued by this officer, in those cases where previous sanction of this office is necessary, in all such cases previous sanction of this office will have to be taken before effecting the transfers.
3. All the proposal of transfers of Primary Teachers with all the details as mentioned in Circular No. 29/NPS/7/88/CHH/GUJ/6795/83 dated 9th March, 1988 and details as per Statement No. 2 will be placed before the Advisory Committee for consultation and the signatures of all the members will be taken in token of their consent.
4. After consulting the Advisory Committee, the District Primary Education Officer has to issue orders of transfers of District Primary Teachers under his seal. It is not necessary to mention the orders of the Advisory Committee.

It is requested that these instructions may be brought to the notice of Advisory Committee.

Sd/- I.E. Vohra, Director of Education, Primary Education, Gujarat State, Gandhinagar. Copy for information to - - Presidents. All District Panchayats. Secretary, - Education Department, Sachivalaya, Gandhinagar.

3.1. Thus, it is seen from the Resolution dated 7th March, 1989 that the same was passed on the letter written by the Director of Primary Education. The Circular dated 31-3-1989 was passed by the Director of Primary Education himself. In the Circular dated 31-3-1989, Clause 3 states:

All the proposals of transfers of Primary Teachers with all the details as

mentioned in Circular No. 29/PNS/7/88/CHH/GUJ/6795/83 dated 9th March, 1988 and details as per Statement No. 2 will be placed before the Advisory Committee for consultation and the signatures of all the members will be taken in token of their consent.

The Resolution dated 7th March, 1989 clearly states that before effecting the transfers of the Primary Teachers, keeping in view the general instructions issued by the Director of Primary Education, the District Primary Education Officer has to consult the above referred Advisory Committee. Thus, reading the Circular and the Resolution, it is clear that the Advisory Committee is constituted only in respect of effecting transfers. Admittedly, the District Panchayat Education Committee has no say in effecting the transfer. The power to keep particular number of teachers in a school and other powers vested in it have not been disturbed by either the Resolution or the Circular referred above. As a matter of fact, these powers and also the general instructions issued by the Director of Primary Education regarding the manner and method of promotion, transfer and disciplinary action are kept intact and it is only the question of actual transfers that are made subject to the consultation of the Advisory Committee. It is only a consultation and not concurrence of the Committee that is envisaged. In the interest of the administration the Government thought it fit, that too on the letter written by the Director of Primary Education, to constitute such a committee. Hence, it cannot be said that such a power in the interests of the administration exercised by the Government will be beyond the scope of the Bombay Primary Education Act. Even apart from these general instructions given by the Government in the interest of primary education, Section 24 is broad enough to include any instructions for the purpose of deciding the transfers of the primary teachers. The contention by Mr. Vakharia that such instruction can be given only by the State Government, in our view, cannot be countenanced. The State Government, which is the ultimate authority to decide the policies . as regards the transfers, can invoke Section 24 of the Bombay Primary Education Act for the purpose of constituting a Committee in respect of transfers so as to advise the District Primary Education Officer in such transfers. It will not interfere with the fundamental rights of the teachers, in as much as the Committee is constituted not for deciding the promotions or disciplinary action, but for advising in cases of transfer. Hence, on the facts and circumstances of the present case, which deal only with regard to the transfers of the primary teachers and constitution of the Advisory Committee, we do not think that such a constitution of an Advisory Committee, will in any way come into conflict with any of the powers conferred upon the authorities mentioned in the Bombay Primary Education Act. Correctly, the Government has constituted the Advisory Committee and the learned single Judge, after discussing the relevant provisions of the Bombay Education Act, has found that such constitution of the Advisory Committee is in order.

4. For the reasons stated by us in paragraphs supra and also for the reasons stated by the learned single Judge, we do not find any merits in this Letters Patent Appeal and as such, the same is dismissed. Notice is discharged.