

(2011) 02 GUJ CK 0004

In the Gujarat High Court

Case No : Letters Patent Appeal No. 2918 of 2010 in Miscellaneous Civil Application - for Restoration No. 212 of 2010 in Special Civil Application No. 4197 of 1991 and Letters Patent Appeal No. 2145 of 2010 in Special Civil Application No. 4197 of 1991 and Civil Ap

Balanand Vidya Sabha Trust and Others	APPELLANT
Vs	
Narabeshanker Govindji Moda and Others	RESPONDENT

Date of Decision : 14-02-2011

Acts Referred:

Citation : (2011) 02 GUJ CK 0004

Hon'ble Judges : Jayant M. Patel, J;J.C. Upadhyaya, J

Bench : Division Bench

Advocate : Nanavaty,s 1-3, for the Appellant; Ketan A. Dave, for Respondents 1, 4, 6 and H.J. Nanavati, for Respondents 2, 3, 5, for the Respondent

Judgement

Jayant Patel, J.—Both the appeals are admitted. The advocates for the concerned Respondents counsel waive notice of admission.

2. As the matters are interconnected, they are being considered by this common order.

3. The relevant facts are that the main Special Civil Application No. 4197/91 was preferred for the relief inter alia to challenge the judgment and order of the Tribunal dated 22.02.1991, Annexure-A to the main Special Civil Application and the Resolution of the Government dated 25.09.1987, Annexure-B to the main Special Civil Application was also challenged and further proceedings of execution were also challenged in the said petition.

4. If one considers the matter in entirety, it appears that by virtue of Government Resolution dated 25.09.1987, certain benefits of the pay-scale were extended to the teachers working in unaided schools. Based on the said resolution, the Respondents herein who are teachers, preferred petition before the Education Tribunal and the Education Tribunal based on the resolution of the

Government, directed for payment of the monetary benefits w.e.f. 01.04.1987 as per the Government Resolution dated 25.09.1987. Against the said order of the Education Tribunal, the main Special Civil Application No. 4197/97 appears to have been filed. Since the Tribunal had based its order upon the Government Resolution dated 25.09.1987, the very Government Resolution was challenged in the Special Civil Application. Further, as based on the order of the Tribunal, the other proceedings were taken out including that of execution, the challenge was also made in the said petition. It appears that thereafter, when the petition came up for hearing before the learned Single Judge, the learned Single Judge found that the original Petitioners were not cooperating with the conducting of the matter and therefore, the matter was dismissed for default. Thereafter, the learned Single Judge further observed that the Petitioners will pay the amount in question to the Respondents alongwith interest at the rate of 12% from the date of the application.

5. It appears that thereafter, Misc. Civil Application No. 212/10 came to be filed for restoration and recalling of the order and the learned Single Judge vide order dated 15.02.2010, rejected the said application. It is against both the orders dated 16.02.2009 in the main Special Civil Application as well as the order dated 15.02.2010 in the Misc. Civil Application for restoration, the present appeals before us.

6. We have heard Mr. Buch for the Appellants, Mr. Ketan Dave for Respondents 1, 4 and 6 and Mr. Nanavati for Respondents 2, 3 and 5.

7. As such, so far as the challenge to the legality and validity of the Government Resolution dated 25.09.1987 is concerned, the issue is already covered by the decision of this Court in the case of Swaminarayan Education Trust v. State of Gujarat and Ors. 1993 (3) GLR on 1713 in the said decision, at para 26, it was concluded by this Court as under:

26. In the result the petitions are partly allowed. The prayer that the impugned resolution dated September 25, 1987 issued by the Education Department, Government of Gujarat, Sachivalaya, Gandhinagar, be quashed and set aside is rejected. However, the impugned resolution is held to be illegal and ineffective in so far as it directs that the teachers of unaided private primary schools be also paid actual salary at the revised pay scale mentioned in the resolution for the period commencing from April 1, 1987 to September 24, 1987. The judgment and order passed by the Primary Education Tribunal in petitions other than Special Civil Applications No. 2549, 2550, 2551 and 2552 of 1992 is ordered to be modified. The direction given by the Tribunal that the Respondent-Teachers should be paid revised pay scale mentioned in the resolution for the period commencing from April 1, 1987 to September 24, 1987 is quashed and set aside. Except this modification the judgment and order passed by the Tribunal is confirmed....

8. The aforesaid shows that the Government Resolution for payment of revised

pay-scale is to apply from 25.09.1987, i.e., the date on which the Government Resolution was issued and not from 01.04.1987. The second aspect held by this Court is that such direction can be issued by the Government to the unaided private primary school.

9. In view of the aforesaid decision of this Court in the case of Swaminarayan Education Trust (supra), the impugned order passed by the Tribunal so far as it directs for payment of the pay-scale from 01.04.1987 to 24.09.1987 would be required to be set aside. Even the learned Counsel for the Respondent teachers have also fairly conceded that they are not pressing the recovery of the pay-scale from 01.04.1987 to 24.09.1987, but they have restricted it from 25.09.1987 only. In view of the aforesaid position, we find that no further discussion may be required on the said aspects and the order of the Tribunal would be required to be modified.

10. The second contention raised for non-applicability of the Government Resolution to unaided primary school, in our view, is also covered by the above referred decision of this Court in the case of Swaminarayan Education Trust (supra) and therefore, the same cannot be accepted.

11. In view of the aforesaid observations and discussions, even if the main Special Civil Application is considered on merits, the Petitioners would be entitled to the relief only to the extent of modification of the impugned order passed by the Tribunal for direction to pay the amount as per the revised pay-scale from 25.09.1987 instead of 01.04.1987. The remaining part of the observations and the order passed by the Tribunal does not deserve to be interfered with since the issue is covered by the above referred decision of this Court.

12. We may record that this Court on 13.12.2010, before consideration of the matter on merits, had passed the following order -

1. These appeals have arisen from the original proceedings in petition of the Appellants which was filed in the year 1991 and which was dismissed by learned single Judge on account of patent non-cooperation of the Appellants. The Appellants had, in the original petition, challenged judgment and order dated 22.2.1991 of the Gujarat Primary Education Tribunal in applications of Respondent Nos. 1 to 6 herein, who worked as teachers under the Appellant and sought wages at the rate prescribed by the Government. The petition of the Appellants, i.e. SCA No. 4197 of 1991, was admitted on 23.12.1991 and stay against back-wages for the past period was granted on condition that current wages would be paid to the Respondents as per G.R. dated 25.9.1987. Admittedly, the Appellants never paid wages to the Respondents concerned in accordance with G.R. dated 25.9.1987. Thus, the Respondents were continued in service till several years after the above order dated 23.12.1991 without complying either with the impugned order of the Tribunal or the order of this Court granting interim relief. When the petition of the Appellants came to be heard for final disposal, non-cooperation of the Appellants was clearly

pronounced by their learned advocate and the Court was left with no alternative but to dismiss the petition.

2. With the above background, it was submitted by learned Counsel Mr. Nirad Buch, appearing for the Appellants, that they had in fact arranged to file affidavit-in-reply which was required to be filed, along with details of the service record as well as the amounts payable to the Respondents. He, however, submitted that the Appellants were facing financial crunch and were not in a position to make any definite statement about paying or even depositing the amounts of their admitted liability.

3. As against the amounts of admitted liability calculated by the Appellants, which comes to around Rs. 4,70,176/-, the amounts due to the Respondents as calculated by them exceed Rs. 6,00,000/-

4. In the above facts, it prima facie appears that the Appellants have resorted to gross abuse of the process of Court and committed contempt of Court, consistently for 18 years so as to withhold the amounts payable to the Respondents and ultimately, practically invited an order otherwise than on merits, so as to carry on the litigation upto this stage. The Appellants are still stated to be running the school and the Respondents are stated to have been discharged from service in the year 1994 to 1996, with only one Respondent having resigned in the year 1999.

5. Therefore, pending admission hearing of the appeals and the application made therein, the Appellants are directed to deposit with the Registry of this Court, without prejudice to rights and contentions of the parties, the total amount of Rs. 4,70,176/- of admitted liability, with 10% interest p.a. for the last ten years, latest by 11.02.2011. That date is fixed according to suggestion of learned Counsel Mr. Buch. The appeals and the civil application shall be listed for hearing on 14.02.2011. It was stated at the bar on behalf of the Respondents concerned, by learned Counsel Mr. Ketan Dave and Mr. H.J. Nanavati, that in the meantime the Respondents will not press hearing of execution proceedings, if any are initiated by any of the Respondents. Notices are not required to be issued and served as the contesting Respondents have appeared through their advocates. These proceedings may not be allowed to be withdrawn even with consent of learned advocates for the Respondents, in the peculiar facts and circumstances of the case.

13. Today, the learned Counsel for the Appellants contended that there is no financial capacity to deposit the amount and therefore, the amount has not been deposited by way of compliance to the earlier order.

14. The aforesaid denial to comply with the order as such can be said as without any supporting material of the balance sheet, the availability of fund with the Trust, etc., but we find that when on merits also the case is considered, no further observations deserve to be made on the said aspects, save and except the directions as may be given by this Court for actual payment of the amount.

As regards liability to pay the interest is concerned, the Tribunal has not ordered for interest specifically and the learned Single Judge did observe for interest at the rate of 12% and in the above referred order passed by this Court on 13.12.2010, the interest was observed 10%. We find that even otherwise also, liability to pay the interest can be considered by way of a compensatory measure since the right to receive the amount had accrued and was not paid and the money was not available for enjoyment by the teachers concerned.

15. In view of the aforesaid observations and discussions, the main Special Civil Application No. 4197/10 is restored. The main Special Civil Application is allowed to the extent that the order of the Tribunal for payment of the amount in question shall operate from 25.09.1987 and the other relief as prayed in the petition are not granted.

16. Consequently, the Respondents shall be paid the amount by the Appellants accordingly with the interest at the rate of 10% p.a. from the date on which the amount became payable until realised. The Respondents shall also be at the liberty to proceed with the execution proceeding before the Tribunal in light of the decision of this Court in the present appeals.

17. Letters Patent Appeals are allowed to the aforesaid extent. No order as to costs.

18. In view of the order passed in the Letters Patent Appeal, all interim Civil Applications shall not survive and shall stand disposed of accordingly.