

(2019) 06 GUJ CK 0008
In the Gujarat High Court

Case No : R/Special Civil Application No. 11866 Of 2017

Balvantsinh Rupsinh Jhala

APPELLANT

Vs

District Education Officer & 1 Other(s)

RESPONDENT

Date of Decision : 12-06-2019

Acts Referred:

Citation : (2019) 06 GUJ CK 0008

Hon'ble Judges : N.V.Anjaria, J

Bench : Single Bench

Advocate : Dhaval M Barot, Manan Mehta, Manish J Patel

Final Decision : Disposed Of

Judgement

N.V.Anjaria, J

1. Heard learned advocate Mr.Dhaval Barot for the petitioner and learned Assistant Government Pleader Mr.Manan Mehta for the respondents.

2. The petitioner, who is a Primary Teacher, is aggrieved by order dated 15.06.2017 of the District Primary Education Office, Himmatnagar, District

Sabarkanatha, whereby the petitioner from his school, being TalodÂ3 Primary School, Group Talod, Taluka Talod, District Sabarkantha, came to be

transferred to school known as Sadhufalo Primary School, Group Delvada (CHO), Taluka Poshino. The order appears to have been passed on the

ground of surplus at the school and to adjust the Primary Teachers accordingly.

3. It is the case of the petitioner that he was appointed as Primary Teacher on 19.02.1986 in Vavdi Primary School. He served at different schools

and finally posted at Talod School No.3, where he came to be transferred as per the impugned order. Like the petitioner, his wife Soniben is also a

Primary Teacher, who has been at Kalipura (Badoara) Primary School, Taluka

Talod, District Sabarkantha, working since 08.05.2010. It is the case of the petitioner that he has been staying with his family at Talod and that his parents are aged about eighty years. The petitioner has a son studying in Standard XI at Talod. It is stated that the petitioner and his wife have social responsibility and since the petitioner is now transferred away from Talod, they would face serious difficulties.

3.1 The petitioner made a representation dated 28.03.2017 asking the authorities to transfer him at a place in the same taluka where his wife is serving. It is stated that the petitioner was called for attending the camp pursuant to the representation, still however, the authorities passed the impugned order transferring the petitioner to Poshino.

3.2 Reliance is placed on the policy Resolution dated 23.05.2012 of the Education Department of the State Government which lays down the rules and conditions regarding transfer of Primary Teachers and Vidhya Sahayaks. One of the ground on which a Primary Teacher or Vidhya Sahayak may opt for transfer is that the spouse has been serving at a particular place as Primary Teacher. In such case, in order to see that the husband and wife stays together, they are transferred and posted in the same taluka. The petitioner wants benefit of this stipulation of the policy to seek his transfer back to the Talod Taluka.

4. The petition was contested by filing affidavit on behalf of respondent No.2 Primary Education Officer, wherein it was inter alia stated that the Resolution dated 21.08.2018 came to be passed by the Education Department in modification of aforementioned Resolution dated 23.05.2012 and it was provided that a teacher has a right to come back to his parent school within two years if there vacancy has occurred. While it was sought to be held that the petitioner cannot seek such transfer as a matter of right, it is unequivocally stated on oath by the deponent in the affidavit that the case of the petitioner may be considered as per the policy of the Government dated 23.05.2012 and 21.08.2018 in future.

4.1 Learned advocate for the petitioner on the basis of the above statement in the affidavit stated that when the policy contemplates the transfer of husband in Talod where the wife is also serving as Primary Teacher, the impugned order displacing the petitioner and posting him to a different place, is contrary to State Government's own policy. It was submitted that there should

be no impediment in implementing the policy and positing the petitioner in the taluka where the wife is serving. On the other hand, learned Assistant Government Pleader submitted that the impugned order is passed due to surplus teacher and that there is no vacancy for the transfer at the primary school in Talod Taluka.

5. Having considered the facts and rival case as above and having noticed the policy of the State Government in respect of the transfer of the Primary

Teachers, there is no gainsaying that the transfer is permitted under the policy to ensure that the spouse are made to serve as Primary Teacher in the

same taluka. On this ground either husband or wife are entitled to seek transfer as per conditions of the aforesaid Resolution dated 23.05.2012 read

with Resolution dated 21.08.2018. However, since the stand is forthcoming that presently there is no vacancy in the Primary School in Talod Taluka,

where the petitioner wants transfer, the petitioner's case may be considered as and when such vacancy arises.

6. In the aforesaid view, the present petition is disposed of by directing the respondents to transfer the petitioner to a Primary School in Talod Taluka

in which taluka the wife of the petitioner has also been working, as soon as the vacancy is available in the school in the said Talod Taluka. The

petitioners case will be immediately considered once the vacancy arises, for being transferred to a school at Talod Taluka in accordance with the

policy.

7. The petition stands disposed of in the aforesaid terms. Direct service is permitted.