
(2009) 11 GUJ CK 0002

In the Gujarat High Court

Case No : Special Civil Application No. 18736 of 2007 and Civil Application No. 8731 of 2009 Special Civil Application No. 18736 of 2007

Bharatiben M. Trivedi

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 17-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14
Gujarat Secondary Education Act, 1972 — Section 33

Citation : (2009) 11 GUJ CK 0002

Hon'ble Judges : Jayant M. Patel, J

Bench : Single Bench

Advocate : G.M. Joshi, for the Appellant; Niraj Soni, AGP for Respondent 1 and Tushar Mehta, for Respondent 3, for the Respondent

Judgement

Jayant Patel, J.—With the consent of the learned Counsel appearing for both the sides the matter is finally heard, when Civil Application No. 8731 of 2009 comes up for hearing.

2. The short facts of the case appears to be that in the year 1995-96 the applications were invited by Amreli Municipality for filling up the post of Head Master/Principal in the Girls' High School, which was under the control of Amreli Municipality. The petitioner applied for the post and she was selected and she was offered appointment on 19.7.1996. It appears that thereafter the State Government, in purported exercise of power u/s 33 of the Gujarat Secondary Education Act, 1972 (hereinafter referred to as 'the Act?'), the management was taken over by the Government and the name of the School was changed. Though the petitioner was declared surplus, she was required to be continued on the same post. However, the petitioner was posted as teacher in the other School. Under these circumstances, the petitioner has approached this Court by challenging the order dated 17.7.2007. As the petitioner was posted as teacher, she was also relieved. Under these circumstances, the present petition.

3. Heard Mr. Joshi, learned Counsel appearing for the petitioner and Mr. Soni, learned AGP for the State Authorities.

4. As such on the aspects of factual position namely; the appointment of the petitioner as Head Master in the Girls' High School by the Municipality; taking over of the School Management by the Government from the Municipality; continuation of the petitioner as Head Master for some time at the same School; and the declaration of the petitioner as surplus teacher; are not in dispute. It is also undisputed position that if the petitioner is declared surplus, either on account of the fact that the Institution, which is taken over by the Government is not desirous to continue the earlier staff or on account of the other circumstances, the protection of salary is required to be extended to the petitioner. The only dispute appears to be that even if she is to be posted, whether she is required to be posted as Head Master in other School aided by the Government or not? It has been submitted that she cannot be posted as teacher, which is a lower post than the post of Head Master. It has been submitted that, therefore, the impugned action vide order dated 17.7.2007 of posting the petitioner as teacher is illegal and deserves to be quashed and set aside.

5. Whereas, it was contended by the learned AGP that the pay of the petitioner is protected even as that of the Head Master as existed prior to the taking over of the management or after taking over of the management before she was declared as surplus. Therefore, she should not have any valid grievance for her posting as teacher. He also submitted that if the petitioner is to be continued as Head Master in a School which is under the control of the Government, the requirement is that she should have been cleared by the Gujarat Public Service Commission, which is lacking in the case of the petitioner, therefore, she cannot be posted as Head Master in the Government School. It has also been submitted that there are other grounds on the basis of which the petitioner cannot be continued in Government School as Head Master, including the question that no proper selection, etc. However, he submitted that as per the policy of the Government, only the pay is to be protected, which has been protected, therefore, the impugned action cannot be said to be illegal or arbitrary.

6. If the petitioner is recruited and appointed as Head Master, the cadre, which is held by her, is required to be maintained at the time when she is either declared surplus or to be transferred on account of the surplus declared or otherwise. When it is undisputed position that the petitioner was recruited and appointed as Head Master by Amreli Municipality, even if the State Government has exercised the power u/s 33 of the Act for taking over the management of the School, it would not make any difference so far as the maintenance and protection of the cadre of the post, which is held by the petitioner prior to the taking over of the management. As per Scheme of Section 33 of the Act, there is power with the State Government to take over the management of any School for a period prescribed therein. But such power is only for taking over of the management and it would not adversely affect the existing staff of the School whose

management is taken over by the Government. It may be that on account of the policy decision the Government may exercise the action of engaging its own staff in the School and at that time, since the petitioner or the earlier staff of the School were in aided private School, they may be transferred or posted at any other aided private School, but at that stage also, the pay and cadre, which was held by the teacher concerned or the staff of the School, whose management is taken over is required to be protected. It is true that as per the policy of the Government, while extending the protection of pay to the surplus teacher, there is no financial loss to the teacher, but such policy does not provide any enabling power to transfer or post such protected teachers in the lower cadre also.

7. The learned AGP has not been able to show any provision in the policy of the Government or the Resolution, enabling the placement of such surplus teacher of an aided private School at a lower cadre on account of the declaration of surplus or any other circumstances.

8. Under these circumstances, it was required for the respondent authority to maintain the cadre of the petitioner, which was as that of the Head Master and to place her at any other private aided School in the District. However, the power is not exercised accordingly. Hence, the impugned order and the action of the respondent authority transferring the petitioner as teacher can be said as arbitrary and also illegal and would be violative of Article 14 of the Constitution of India.

9. In the result, the impugned order - Annexure-H is quashed and set aside with the direction that the respondent shall post the petitioner as Head Master in any other private School in the District, as early as possible, preferably within a period of two months from the date of receipt of the order of this Court.

10. Mr. Joshi, learned Counsel appearing for the petitioner, contended that the salary has also not been paid to the petitioner after the impugned order, whereas Mr. Soni, learned AGP contended that as the petitioner did not join at the transferred place, the salary has not been paid. It is an admitted position that the salary is protected, therefore, even if the petitioner is transferred or posted, she will be entitled for the same pay-scale as she was drawing at the time when the impugned order was passed. It is on account of the fact that the petitioner was posted in the lower cadre, the petitioner could be said as having justified in not joining the duty at the place of the lower cadre. There is no evidence produced on record to show that the petitioner was gainfully employed during the aforesaid period at any other place.

11. Under these circumstances, the petitioner would be entitled for the salary for the interregnum period, since the action of placing the petitioner in the lower cadre is found to be illegal by this Court as per the observations made hereinabove. Therefore, the consequence of entitlement of salary on account of such illegal action would follow.

12. Hence, the petition is allowed to the aforesaid extent. Rule made absolute

accordingly. No order as to costs.

13. In view of the aforesaid order in the main Special Civil Application, the Civil Application would not survive and shall stand disposed of accordingly. Direct service is permitted.