

(2009) 11 GUJ CK 0102

In the Gujarat High Court

Case No : Special Civil Application No. 2620 of 1994

Chandrakantbhai Jalnapurkar

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 11 GUJ CK 0102

Hon'ble Judges : Rajesh H. Shukla, J

Bench : Single Bench

Advocate : R.K. Mishra, for the Appellant; Monali Bhatt, AGP, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh H. Shukla, J.—The present petition is filed by the petitioner - Association for the prayers, inter alia, that the teachers in the Government aided schools receiving salaries by way of direct pay system are entitled to the benefit of higher grade scales (Government Resolution dated 5th July, 1991).

2. It has been further prayed to quash and set-aside the order of Director of Primary Education, Gandhinagar dated 3rd October, 1992 (at Annexure-"B") as arbitrary, illegal and against the statutory provisions.

3. The petition is filed by the Association of the recognised private primary schools" teachers of the State of Gujarat challenging the order dated 3rd October, 1992 (at Annexure-"B") as arbitrary and discriminatory on the grounds that the teachers in the public schools discharging the same nature of duties are getting the benefits which are now denied to the members of the Association who are teachers in private schools aided by the State Government. It has been contended that all the teachers in public schools are given the benefit of 9:18:27 popularly known as three-tier system which have been denied to the members of the Association who are teachers in private schools aided by the State Government. Therefore, it is violative of Articles 14 and 16 of the Constitution of

India and, therefore, required to be quashed and set-aside.

4. Learned Counsel Mr. Mishra refers to this aspect and referring to the averments made in paragraph 6 of the petition, submitted that the Sarela Pay Commission appointed by the State of Gujarat has extended all the benefits to the teachers of private schools receiving the Government aid and they have been treated in the matters of pay-scales and benefits on the same footing as teachers in the public schools. In other words, the benefits have been extended to the private schools aided by the Government.

5. Learned Counsel Mr. Mishra has submitted that, however, by this Resolution the benefit of 9:18:27 i.e. three-tier system is denied and, therefore, it is arbitrary.

6. In support of his submission that parity must be applied, learned Counsel Mr. Mishra has also referred to and relied upon the judgment of the Hon'ble Apex Court in the case of Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others,

7. Learned AGP Ms. Bhatt resisted this and referring to the Resolution (at Annexure-"B"), submitted that the parity or the benefit of the pay-scale and other benefits were given on the same footing to the teachers in the private schools aided by the Government like the teachers in the public schools. However, as stated in this Resolution at Annexure-"B", this was confined or limited to only the pay-scales and the benefits which have been referred to in the earlier Government notification which has also been clarified. Therefore, as stated in this Government Resolution, such benefits of three-tier system cannot be made available which is also intimated to the petitioner-Association vide communication dated 17th September, 1992. She has further submitted that the benefits are made available to such teachers in the private schools aided by the Government or the employees in the Panchayats, etc. by a policy decision. She submitted that the medical allowance has been given by a resolution and, therefore, the members of the petitioner Association cannot claim that they should be given this benefit. She further submitted that there is no rule or policy pointed out on the basis of which the claim has been made by the petitioner Association. Learned AGP Ms. Bhatt further submitted that in any case, it is a matter of policy decision for extending the benefit and the Court may not examine whether the policy is justified or not when particular benefits or pay-scales may be given to the Government employees but may not be given to the other employees like in the present case to the teachers of the private primary schools aided by the Government.

8. In view of the rival submissions, it is required to be considered whether the present petition can be entertained or not.

9. The main emphasis of learned Counsel Mr. Mishra is on the ground that the teachers who are the members of the petitioner Association are treated on a different footing and they have been denied the benefits. However, learned

Counsel Mr. Mishra has not been able to point out that on the basis of which rule or policy such a claim has been made. He has only emphasised the claim on the basis of the scheme i.e. Government Resolution dated 5th July, 1991 (at Annexure-"A") and submitted that this benefit of the scheme is mutatis mutandis to other employees of Panchayats and private primary schools. Therefore, as the members of the petitioner Association who are primary school teachers; they would be covered by this scheme. It is required to be appreciated that if the Resolution at Annexure-"A" is considered in a proper perception, it would be very clear that it refers to the earlier scheme and has a specific reference to the benefits being provided to those who do not got a chance of promotion. Therefore, in order to provide such benefit against the stagnation, it is well established that such scheme or benefit is made available as three-tier system i.e. 9:18:27 benefit. One of the clauses of this very Government Resolution dated 5th July, 1991 i.e. clause (4) which again has a reference to the chance of promotion. It, therefore, implies that had it been a case of Government school providing the avenues of promotion, the question of stagnation would arise and, therefore, to give the benefits such scheme has been evolved known as three-tier system. In a private school aided by the Government, there are no such rule, policy or promotional hierarchy and, therefore, by very nature of thing such policy may not be applicable. The submission and the emphasis by learned Counsel Mr. Mishra that it applies to Panchayat employees and primary school teachers by implication cannot be accepted. It is well accepted that the Court cannot examine whether the policy or a particular policy is made applicable or not. The scope of judicial scrutiny would be limited and that too when it has been pointed out specifically that there is violation of any rule, policy and/or discrimination. Therefore, the petitioner has to first establish their case based on any rule or policy. Then only, it could be examined whether there is any violation thereof and denial of any benefit. Merely because one set of employees like teachers in the Government/Public schools are getting some benefit it is not necessary that the same benefit in every respect should be made available to the other set of employees. In fact, they form a different class itself inasmuch as the primary teachers in Government schools or public schools form one class and the primary teachers in private schools aided by the Government form different class. It is well accepted by catena of judicial pronouncements that reasonable intellegia based on reasonable classification is permissible and it does not amount to any discrimination or violation of Articles 14 and 16 of the Constitution of India. Therefore, it cannot be complained of that in absence of any vested right based on any statute, rule or policy the persons like the members of the petitioner Association have to first establish that such policy is applicable to them or they are covered under the policy then only the question could be examined about any discrimination within the class.

10. Learned Counsel has placed reliance on the judgment reported in Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others, however, it could not have any application to the facts of the present case for the reasons

that it has a reference to the pay-scale and other allowances viz. medical allowance and dearness allowance. Even, in this judgment, the Hon''ble Apex Court has expressed that they should be given some benefit. However, as observed in paragraph 4 of the judgment, it has been recommended to evolve a scheme leaving it to the Government. Therefore, again it is a matter of policy decision which, the Court cannot intervene.

11. Here, on the facts, the policy or the Government Resolution dated 5th July, 1991 (at Annexure-"A") does not apply to the petitioner Association and the teachers of the petitioner Association which, they want to be covered by it. In the absence of any such policy expressed by the Government, the Court cannot make or adopt a policy for a particular class. Moreover, it has not been pointed out as to how the Government Resolution/communication dated 3rd October, 1992 can be said to be arbitrary or illegal. In fact, it is only a communication which has clarified about the policy of the Government.

12. Therefore, the Court is of the opinion that the present petition deserves to be dismissed and accordingly stands dismissed. Rule is discharged. No order as to cost.