

(2017) 02 GUJ CK 0123
In the Gujarat High Court

Case No : 13451 of 2009, 2061 of 2012, 13452 of 2009, 13453 of 2009, 13534 of 2009

CHUNILAL TRIKAMLAL THAKKAR R.D.A. THAKKAR AND S N D APPELLANT
Vs

SECRETARY & ORS RESPONDENT

Date of Decision : 10-02-2017

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 21](#), [Article 226](#), [Article 19](#), [Article 16](#), [Rule 1\(K\)](#) - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Amendment of the Schedule - Power of High Courts to Issue certain writs - Protection of certain rights regarding freedom of speech, etc - Dissolution of a District or a Regional Council

Citation : (2017) 02 GUJ CK 0123

Hon'ble Judges : S G Shah

Bench : Single Bench

Advocate : K B Pujara, Amita Shah

Final Decision : Allowed

Judgement

1. Heard learned advocate Mr. K. B. Pujara for the petitioner and learned AGP Ms. Amita Shah for the respondent in all the matters. Perused the record. All these petitioners have sought indulgence of this Court under Articles 14, 16, 19, 21 and 226 of the Constitution of India. The issue raised in these five petitions are almost common except qualification of petitioner in Special Civil Application No.13534 of 2009. Even qualification of other petitioners are almost similar i.e. graduate or post graduate with B.Ed. and therefore, all these petitions are disposed of by this common judgment, since discussion with reference to concerned documents in the form of different G.R.s. and basic facts with reference to such G.R.s and service record of all the petitioners would be almost common. The basic details of all the five petitioners as scheduled by learned advocate for the petitioner in all the matters is to be taken on record, which shows the following basic information:-

SCA Nos. Name Date of Birth Edu. Quali. Joining Date Retirement Date

13451/ 2009 Chunilal Trikamlal Thakkar 01/06/59 M.Com. B.Ed. 16.8.1983
01/06/17

13452/ 2009 Kanjibhai Tokarbhai Makwana 01/06/63 B.A. B.Ed. 01/09/87
01/06/21

13453/ 2009 Kailashben Jairamdas Thakkar 07/03/60 B.Com. B.Ed. 16.8.1983
07/03/18

13534/ 2009 Mahendrabhai Mohanlal Parmar 21/7/51 SSC, Diploma in Tailori -ng
03/12/73 21.7.2009 (Retired)

2061/ 2012 Jani Sitaram Himmatlal 01/06/55 B.A. B.Ed. 01/10/82 1.6.2013
(Retired)

2. Whereas, the impugned order/judgment is also common in case of four petitioners in above list i.e. order/judgment dated 24-25.09.2009, being judgment of the Gujarat Primary Education Tribunal on applications by all the above petitioners being Applications No.278, 279, 280 and 260 of 1996 respectively for petitioners No.1 to 3 and 5 in above cases; whereas, so far as petitioner in Special Civil Application No.2061 of 2012 is concerned, the impugned order/judgment is by way of similar judgment dated 7.10.2011 by the same Gujarat Primary Education Tribunal in Application No.259 of 1996. Thereby, though petitioners are different in all the petitions, the impugned order is common against all of them and respondents are also common and therefore, all these petitions are disposed of by this common judgment.

3. All the petitioners have prayed to quash and set-aside the impugned judgment in respective petitions, detail of which is discussed herein above and thereby consequential order of District Education Officer, Patan and to hold and declare that they are entitled to pay-scale of trained primary teachers as per G.R. dated 1.12.1997 as amended by G.R. dated 1.7.1999. It is also prayed by all the petitioners to hold and declare that the respective applications by them before the Tribunal stood withdrawn and thereby, proceedings before the Tribunal were abandoned as per the disclosure of withdrawal submitted by way of purshis before the Tribunal by all of them. In view of such disclosure, it is submitted that once there is a disclosure on record regarding withdrawal of the applications, and when Tribunal has failed to consider the applications as withdrawn, the impugned judgment is without jurisdiction and thereby, null and void and has no effect. Petitioners have also prayed to quash and set-aside the direction regarding recovery of any amount from the petitioner by the impugned judgment of the Tribunal.

4. The petitioners have also prayed to stay the operation and execution of the impugned judgments. While admitting the petition by order dated 22.12.2009, the co-ordinate bench has granted ad-interim relief as prayed for in relevant para of each petition, whereby, operation and execution of impugned order was

stayed. Such relief is continued till date and thereby it is now clear that respondents were restrained from executing the impugned order and to recover the amount as per such impugned order.

5. Before discussing the entire set of facts, documents on record and merits so also issue raised in the petition, it is to be recollected here that though the Tribunal has, by impugned judgment, held that petitioners are not entitled to the salary as per the pay scale of Trained Primary Teacher, the Tribunal has specifically confirmed that if any of the opponent ? institution has already paid the salary as per pay scale of Trained Teachers to any such petitioner till filing of the application before the Tribunal, such educational institution and opponents before the Tribunal were restrained thereby, they are not allowed to recover the salary which was already paid to concerned petitioners/ teachers. Therefore, if such order of the Tribunal is not challenged by any of the respondents, then it becomes final and to that extent, there is now clear situation and position between the parties that respondents are now restrained from recovering any amount that might have been paid as per pay scale of Trained Teachers, till filing of such applications before the Tribunal. However when Tribunal has permitted to recover the difference of such salary, by final impugned judgment which is a subject matter of disputes between the parties, if any amount paid pursuant to interim relief granted by the Tribunal, and therefore petitioner has prayed to stay the execution and implementation of such order of recovery before this Court. As recorded here-in-above, this Court has stayed such recovery in the year 2009 and therefore, now so far as question of recovering any amount from petitioner is concerned, except confirming such interim order by the final judgment considering the settled legal position, that when there is no fault on the part of the petitioners in getting such amount at the relevant time, such amount cannot be recovered from them.

6. In any case, as aforesaid, when respondents have not challenged the impugned order so far as it is against them with reference to non-recovery of the salary paid earlier, now it becomes clear that they have accepted such decision and therefore, irrespective of outcome of this petition, they could not recover the amount of difference of salary from the petitioners, whereas amount if any paid because of the interim relief granted by the tribunal can never be said to have received by the petitioner because of their fault. When such amount was paid pursuant to order by judicial authority its recovery cannot be fallowed in routine manner and without specific reasons.

7. Another primary issue is surprising when Tribunal has failed to appreciate the disclosure by the petitioners to withdraw such application. The perusal of the impugned judgment by the Tribunal makes it clear that all the applicants have somewhere in the year 2001 disclosed on record of the Tribunal that they do not want to proceed further in any such application and they would like to withdraw the application. Surprisingly, instead of dealing with such application at the earliest, it was kept pending till the year 2008, i.e. for a long period of 7 years

for no valid reason at all and ultimately, when original applications were taken up for final disposal by the Tribunal somewhere in the year 2008 and though Ld. Advocates for the petitioner again, applied for withdrawal of the main application, the Tribunal has recorded that Tribunal has not permitted the applicant to withdraw all such applications and the notice was issued to both the sides i.e. applicant, though applicants before the Tribunal were very much present before the Tribunal through their advocates so also to the opponents. It is also evident from record that Tribunal is in receipt of reply by the respondents by post and therefore, probably, even respondents had not cared to even appear before the Tribunal. However tribunal had proceed further in such applications without considering the fact that there was disclosure by the original applicants being present petitioners to withdraw the main applications. In view of such clear position on record, it is disclosed by the Tribunal itself in the impugned judgment, and therefore when no further evidence or material is required at this stage, it becomes clear that Tribunal has acted beyond its jurisdiction in deciding the main application on merit, when original applicants have already disclosed in writing before the Tribunal that they do not want to proceed further in any such application and would like to withdraw the same. The reason for such withdrawal would be discussed in detail hereinafter but it may be recollected here that it is because of the decision of the fact that by different G.R.'s Government has agreed to grant pay scale of trained teachers to teachers like present petitioners, thereby it becomes clear that petitioners are entitled to benefits of G.R.'s dated 1.12.1997. The learned advocate for the petitioners have rightly relied upon following judgments to confirm that in case of withdrawal of litigation, the judicial authority shall not proceed further on merits and that withdrawal of litigation is absolute right of the litigant who has initiated such litigation at any stage and there cannot be any objection by other side or even by the concerned authority, so as to refuse such withdrawal. There may be some exception in such general rule, but by and large, for the petitions like such, no such exceptions can be attracted in any manner, whatsoever. Therefore, detailed discussion and reproduction of relevant passages from all following judgments are not material :- (1) Bijayananda Patnaik Vs. Satrughna Sahu & Ors. reported in AIR 1963 SC 1566.

(2) Hulas Rai Baij Nath Vs. Firm K. B. Bass and Co. reported in AIR 1968 SC 111.

(3) K. S. Bhoopathy & Ors. vs. Kokila & Ors. reported in (2000) 5 SCC 458.

(4) Mahalaxmi Co-operative Housing Society Ltd. vs. Ashabai Atamaram Patel reported in AIR 2013 SC 961.

8. In view of above clear settled legal position regarding withdrawal of petition, prima facie it becomes clear that the impugned order is unwarranted and cannot sustain in eyes of law and therefore, petitioner is right in praying for setting aside the impugned order because of such failure on the part of the Tribunal i.e. not to allow the petitioner to withdraw the petition and then to dismiss it on merits. Thereby even on such single ground, the impugned order needs to be

quashed and set aside and it is to be declared that original applications filed before the Tribunal had disposed of as withdrawn and thereby whatever benefit petitioners were getting before filing such petition would continue in their favour.

9. However, to avoid any complications, here-inafter between the parties; and more particularly, when respondents are resisting his petition, at this stage even after their stand before the Tribunal that pursuant to G.R. dated 1.12.1977, when petitioners were appointed after 1.01.1977, they are entitled to benefit of G.R. dated 1.12.1997, and thereby salary in the scale of Trained Teacher; It would be appropriate and necessary to deal with all issues raised in this petition before concluding that impugned order is null and void only on such single ground of nonpermitting withdrawal of main application.

10. Now therefore one more thing is clear on record before the Tribunal. The stand of the respondent was very much clear before the tribunal which is reflected in para 11 of the impugned judgment that petitioners are entitled to the salary in the scale of Trained Teacher with effect from 01.12.1997, therefore when respondents themselves have admitted the claim of the petitioners in their reply before the Tribunal and thereafter when petitioners have prayed to withdraw the petition, the Tribunal has no reason or authority to proceed further and to decide against the petitioners, when petitioner claim was admitted by the respondents. However, surprisingly even after such specific stand by the respondents before the Tribunal, in present petition again, respondents are resisting the claim of the petitioner on different ground and therefore also, all other issues are required to be dealt with in detail so as to see that there may be no further applications and multiligation on such issues.

11. In above background, if we now peruse the merits of disputes between the parties, it becomes clear that all the petitioners are serving as teacher with respondent No.1, the concerned institution. All the petitioners are having qualification of graduation or post graduation with B. Ed. except Mahendrakumar Mohanlal Parmar, being petitioner in SCA No.13534 of 2009 who was holding diploma in Tailoring. It is undisputed fact that though all were appointed in accordance with law and rules at the relevant time and there was no complaint regarding their appointment and service as such. It is also clear that if, at all there is any lacuna or irregularity so far as their pay scales are concerned, the respondent authority had vide their letter dated 28.06.1996 conveyed the respondent education institution, where petitioners were serving, that irregularity, if any, found during examination of establishment of such institution during the year 1991/92 has been let gone and thereafter there remains no issue so far as service of the petitioners are concerned. However, it seems that even after such clarity when some authority of the respondents have refused to extend benefit of pay scale of Trained Teachers to the petitioners, petitioners have filed respective applications before the Tribunal, details of which is disclosed here-inabove and hence not reproduced. However it becomes clear that even after letter dated 28.06.1996, let going the irregularities if at all there is any

without pointing out any specific irregularity and after extending such benefit by the respondent to the petitioners, on 01.12.1997, the Government has itself issued one G.R., copy of which is at Annexure-F. Whereby now it is the decision of the Government itself that for primary schools, though initially there was disclosure of eligibility as PTC only, after careful consideration of the issue and considering previous orders, the Government has decided to approve different educational qualification as eligibility criteria for the post of Primary Teachers pursuant to rule 1(K) of the Mumbai Primary Education Rules, 1949. Thereby now eligible qualification for the primary teacher would be amongst any of the following degree namely (1) SSC or PTC as per the decision of the Government at the relevant time, (2) SSC and B.Ed., however with a rider that 5% post shall be filled up of such category. (3) Graduation, B.Ed. and (4) SSC or ATD however with a rider that amongst which 7% is to be filled for the subject of Drawing and Music as per recommendation of Education Committee. Therefore amongst above eligible qualifications for the post of Primary Teachers now when PTC is not the only eligibility criteria, but there are different educational criteria and more particularly adding the educational qualification of Graduate, Post Graduate and B.Ed. as one of the criteria for selecting such primary teacher, it becomes clear that the stand of the respondents before the Tribunal as discussed here-in-above was correct at the relevant time that pursuant to such G.R., when petitioners who are graduates, Post Graduates and B. Ed. are eligible for pay scale as of Trained Teachers and therefore, issue raised by the respondent at such stage is unwarranted. It is also relevant to recollect here that because of such G.R., when there would be additional cost for paying salary etc. Government had sanctioned a considerable amount of Rs. 99.27 lacs at the relevant time.

12. In view of such G.R., therefore now when Government itself has agreed to add the educational qualification of graduation, post graduation and B. Ed. as eligible educational criteria for appointment of Primary Teacher, and to pay them salary of Trained Teacher, now it does not suit to the respondent to plead and pray differently under the pretext of some order/judgment of High Court in different cases. Even if it is so, it becomes clear that such situation arose only because of indecisiveness and selectiveness of the respondents in dealing with such subjects. It is evident that respondents are interpreting and considering the same G.R. differently at different point of time as per their desire and needs and may be in some cases, looking to the nature of the petitioners also. When G.R. dated 01.12.1997 was very much clear but not confirming the date of its implementation, by order dated 10.07.1999, i.e. almost after two years respondents have issued one another G.R. now confirming that benefit of G.R. dated 01.12.1997 is to be made effective from the date of G.R. itself i.e. 01.12.1997, therefore, there is reason to believe that the respondents are aware of extending such benefit when they reconfirm the execution of G.R. dated 01.12.1997 even after two years.

13. Surprisingly, though pursuant to such G.R., when respondents have admitted such position in their reply before the Tribunal, which is recorded by the Tribunal

in para 11 of the impugned judgment, by the Tribunal in impugned judgment. Now respondents at present are interpreting it differently, may be for the reasons as stated here-in-above.

14. In addition to above G.R. and impugned order, petitioners have produced relevant documentary evidence to prove that otherwise they are been extended the benefit at the relevant time without any difficulty and complaint, however it seems that at least in the case of Mahendrakumar Mohanlal Parmar, petitioner of SCA No. 13534 of 2009 when he was to retire in the month of July 2009, on attaining the age of superannuation, the respondents have issued one letter dated 23.11.2009 conveying the employer-institution of such petitioner to consider the recovery of difference of amount of salary paid to him while forwarding pension papers and probably that has given the cause for such petitions.

15. Though facts and details are very much clear as discussed here-in-above whereby when respondents have no option but to admit that petitioners are entitled to salary in the scale of Trained Teachers pursuant to G.R. dated 01.12.1997, the respondent No.3 has resisted the petition by filing an affidavit-in-reply dated 30.04.2010, now respondents have come forward with altogether different story that G.R. dated 1.12.1997 is not effective and operational because of judgment and order dated 20/21.06.2000 in the case of Jayantigar S. Gosai v. State of Gujarat & Anr. Reported in 2000(4) GLR 3265. The sum and substance of the defence version in such affidavit-in-reply is to the effect that though there are previous GR, however it was only because of the judgment by the High Court in the case of Satishkumar Shah v. State of Gujarat SCA No. 2931 of 1988, when such judgment in the case of Satishkumar Shah has been overruled by the Division Bench in case of Jayantigar S. Gosai, now the authority issued one another G.R. on 16.01.2007 disclosing that effect of G.R. dated 05.06.2004 and 22.07.2004 are now canceled. However irrespective of such disclosure on record it becomes clear that even G.R. dated 16.01.2007 does not disclose anything with reference to G.R. of 01.12.1997. To that effect, if we peruse the judgment in the case of Jayantigar S. Gosai though it is by Division Bench, may be because of reference to it but the fact remains that even in such judgment by Division Bench, there is no reference to G.R. dated 01.12.1997 and even by such judgment, the Division Bench has nowhere confirmed that G.R. dated 01.12.1997 is illegal. Thereby it was never quashed and set aside by any judicial pronouncement.

16. Therefore, now the only defence raised at the end of the respondents is to the fact that they have passed different G.R. pursuant to the direction by the High Court at the different time and therefore, when last G.R. is based upon the judgment delivered by the Division bench overruling the judgment by the single Judge, the G.R. issued pursuant to the judgment of Division Bench only remains in force and it is to be considered. However, I do not find any substance in such submission for the reason that the judgment of Division Bench in the case of

Jayantigar S. Gosai (supra) in the G.R. dated 16.01.2007, which is stated to be issued pursuant to such judgment of Division Bench, in any manner whatsoever, touches the legality or validity of G.R. dated 01.12.1997 and none of the above documents i.e. either the judgment by the Division Bench or the latest G.R. by the Government is either quashed and set aside or canceled the G.R. dated 01.12.1997.

17. Irrespective of such defence, now one thing is certain and clear that though initially because of the judgment of High Court, when Government has already, without challenging such judgment before the higher competent authority accepted that judgment and issued some G.R. at the relevant time and thereby without having extended such benefit of pay scale of Trained Teachers to the teachers like petitioner, then now instead of sticking to their stand, they should not have changed their version only because of one another judgment in the case of Jayantigar S. Gosai (supra). It is evident that first judgment of single judge was never objected by the Government and it was never challenged but when some officers of the respondents may be in different districts have failed to follow the judgment in the case of Satishkumar Shah (supra) so also G.R. of 01.12.1997 and when some other Teachers have to prefer certain petitions, it is only because of different opinion of different Court, the matter was referred to larger bench and thereby, larger bench has decided the case of Jayantigar S. Gosai (supra), taking different view than the view which was in force for couple of years, therefore respondents - Government Authorities shall be careful in dealing with such subjects at all time and it is for them to come out with specific decision either to challenge particular judgment or to follow it in true sense, rather than issuing different G.R.'s with different provisions at different times and thereby creating a situation like present. I have reason to say so because irrespective of what is stated by the Division Bench in such reported judgment of Jayantigar S. Gosai (supra), when National Council for Teachers Education, New Delhi has now decided that for eligibility for being appointed as primary teacher, the educational qualifications may include even Graduate, Post Graduate and B. Ed. and thereby it cannot be restricted to only PTC candidates, now respondents have come forward with G.R. dated 27.04.2011 again adding the educational qualification of graduation and Post Graduation in any field, same as in the field of education i.e. B. Ed. as one of the qualification for eligibility criteria for such primary teachers. In fact, even before such G.R. dated 27.04.2011, relying upon the regulations by National Council for Teachers Education, in fact respondents i.e. authority of State Government have themselves issued one G.R. dated 27.04.2010 confirming the educational qualification as one of the eligibility criteria which present petitioners are holding and which is confirmed by National Council for Teachers Education.

18. However in any case when benefit was extended to petitioner based upon policy of the Government at the relevant time, such benefit cannot be withdrawn by other G.R., since such later G.R. cannot be made effective from retrospective effect, more particularly when again new and later G.R. is again confirming

similar benefit to similarly situated persons.

19. Therefore, it can be said that now even without challenging the judgment in case of Jayantigar S. Gosai (supra), respondents - State Authorities have themselves come forward with new Government Resolution, so as to include qualification like the qualification which is held by the present petitioner i.e. graduation and post graduation in any field and graduation in the field of education i.e. Bachelor of Education as eligibility educational criteria for the post of primary teacher and with clarity that they shall be paid the same salary as per trained teacher; it does not suit to the government authorities to plead that they will change their stand as and when they think proper, in as much as, in the present case, their stand before the tribunal was different from their stand before this Court.

20. Therefore, when all petitioners except Mahendrabhai Mohanlal Parmar being petitioner of Special Civil Application No. 13534 of 2009 are holding educational qualification of graduation in any field with graduation in the field of education and when they are selected by following due process of law and when they are serving from the date of their joining as such, which is between the year 1982 to 1987 in case of different petitioners and they were paid salary as per pay scale of trained teachers through out more than three decades, now there is no scope or reason to reverse the clock as if nothing has happened.

21. So far as Government Resolution dated 01.12.1997 is concerned, respondents have already extended benefit of such Government Resolution in their favour and confirmed that petitioners are entitled for the same, long back before the tribunal in the year 2008 itself. In view of such facts and circumstances, judgment of tribunal in all such petitions needs to be quashed and set aside with consequential relief.

22. However, before concluding we have to consider the case of Mahendrabhai Mohanbhai Parmar because he is holding degree of SSC with Diploma in Tailoring.

23. So far as Mahendrabhai Mohanbhai Parmar is concerned, it is undisputed fact that in addition to his basic qualification of passing SSC examination, he has cleared drawing examination by the Government of Gujarat in 1988 and, therefore, he was awarded with Certificate of intermediate drawing competition. He has also cleared Rashtrabhasha Hindi Pravesh Pariksha in 1987. At the time of his appointment, he was holding a Diploma issued by Ideal Tailoring and Cutter Institute of Ahmedabad. It seems that since such Diploma was not by any government agency, though petitioner was appointed in the year 1973 based upon such qualification it was only in the year 1995 when first time, respondent - government authorities have come forward with a plea that such Diploma cannot be considered as equivalent to PTC and hence petitioner cannot be considered as trained teacher and cannot be paid as per the scale of trained teacher. However, it cannot be ignored that before such order dated 30.03.1995 as back as in the year 1981, petitioner has already cleared and required qualification of BA and

after such degree, he has also cleared an examination by Technical Examination Board for the course of Garment Making, somewhere in the month of June 1997. Therefore on receipt of letter dated 30.03.1995, petitioner has preferred an Application No. 340 of 1996 before the Gujarat Primary Education Tribunal, wherein as aforesaid, initially though there was a stay against recovery, ultimately by impugned order, the tribunal has held that petitioner is not entitled to salary in the scale of trained teacher. It is also evident that there was no admission on the part of the respondent authorities about the claim by the petitioner and thereby there is no application of withdrawal and to that extent, only this petition would defer from other petitions. However, the basic issue remains the same that once petitioner has been appointed in the year 1973 relying upon his qualification of Diploma in Tailoring and after extending all benefits as trained teacher till 1995, whether respondents can withdraw all such benefits or not.

24. Irrespective of such legal issue, the petitioner has pointed out that there are several Government Resolutions which otherwise confirm that there is nothing wrong in appointing the petitioner as such, at the relevant time and, thereby, if appointment is regularized as per the Government Resolution then there cannot be a discrimination in salary. Petitioner has relied upon Government Resolutions dated 31.05.1965, 15.09.1965, 11.02.1969, 22.10.1970 and 15.02.1973 and 14.02.1990. The bare reading of all such Government Resolutions makes it clear that at different point of time, the government has considered different eligibility criteria as eligibility criteria of appointment of primary teachers which includes clearing of examination of DTEC for Drawing Teacher, Basic Teachers Certificate by Rajasthan, Teachers Diploma in Needle Crafts and Tailoring and Tailoring Class for Women and Children Garments for Tailoring teacher and so on. Whereas in letter dated 14.02.1990 it has been considered by the government that teachers who are holding Teachers Diploma shall be considered as equal to PTC pass candidate or PTC pass teachers and it is also made clear that since name of the diploma class has been changed to Women and Children Garment Making, they are to be treated at par and it is also further clarified that all such qualification are to be considered equally and at par and, therefore, there is no reason for the respondent to revise the pay scale of the petitioner only after 1995.

25. However, pending application before the tribunal, the petitioner has retired on attaining age of superannuation w.e.f. 21.07.2009 whereas the tribunal has delivered the impugned judgment on 25.09.2009 i.e. after the retirement of the petitioner. Therefore, petitioner is relying upon the decision in case of State of Punjab vs. Rafiq Masih reported in (2015)4 SCC 334, pursuant to which it becomes clear that respondent cannot recover the amount after 22 years.

26. However, the sum and substance of defence version is only to the effect that since petitioner was not fulfilling the eligibility criteria on the date of appointment, he cannot be given salary of trained teacher. In fact, such defence could not survive after June 1997 since petitioner has acquired technical

certificate by the Gujarat State Technical Examination Board and, therefore, such ground would not remain in force.

27. Therefore, considering the overall facts and circumstances when respondents could not find any other irregularity in appointment of the petitioner and when petitioner was selected as tailoring teacher based upon his qualification, at the relevant time and now when petitioner has cleared the examination and acquired requisite qualification in 1997, there is no reason to allow the recovery of salary which was already paid to the petitioner till his retirement, pursuant to decision in the case of Rafiq Masih (*supra*).

28. Therefore, in view of above facts and circumstances all these petitions are allowed. Thereby consolidated judgment dated 24-25.09.2009 in applications Nos. 278, 279, 280 and 260 of 1996 and judgment and order dated 25.09.2009 in Application No. 260 of 1996 are hereby quashed and set aside. Thereby petitions are allowed as prayed for which results into confirmation that all the petitioners are eligible to get salary in the pay scale as that of trained primary teacher in view of Government Resolution dated 01.12.1997 and considering their qualifications. Order of recovery against any of the petitioner is also quashed. It is made clear that except Mahendrabhai Mohanlal Parmar and Jani Sitaram Himmatlal are getting salary as such and, therefore, now respondents are restrained from recovering any amount and modify their scale on the issue raised in this petition.

29. Rule is made absolute accordingly. Direct Service is permitted.