

(2019) 06 GUJ CK 0009
In the Gujarat High Court

Case No : R/Special Civil Application No. 13505, 13506, 13508, 13509, 13510, 13511, 13512, 13513, 13515, 13516, 13518, 13519, 13520, 13521, 13522, 13524, 13525, 13526, 13527, 13528, 13529, 13530, 13531, 13532, 13533, 13534, 13535, 13536, 13537, 13538, 13539, 13540,

Heemaben Ashvinkumar Barot

APPELLANT

Vs

District Education Officer & 2 Other(s)

RESPONDENT

Date of Decision : 28-06-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2019) 06 GUJ CK 0009

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

Bench : Single Bench

Advocate : Vaibhav N Sheth, KM Antani

Final Decision : Allowed

Judgement

Special Civil Application Number and Name of the petitioner", Designation and Date of Joining

13505/2018 Heemaben Ashvinkumar Barot, "District Coordinator 29th March, 2016

13506/2018 Niravkumar Ramabhai Patel, "District Coordinator 17th March, 2012

13508/2018 Rathod Dharmendra Somabhai, "District Coordinator 08th December, 2014

13509/2018 Ranjitbhai Bhagwanbhai Makwana, "District Coordinator 08th August, 2016

13510/2018 Solanki Vinodkumar Danjibhai, "Computer Operator 02nd November, 2011

13511/2018 Jigar Nitinbhai Shah, "District Coordinator 11th April, 2012

13512/2018 Nayankumar Chamanlal Parmar,"District Coordinator (IEDSS) 08th August, 2016

13513/2018 Ghanshyamsinh Mohabatsinh Solanki,"District Accounts Officer 29th September, 2015

13515/2018 Pratapkumar Mansukhbhai Chudasama,"District MIS Officer 04th August, 2016

13516/2018 Harsha Pravinbhai Bodar,"Gender Coordinator 29th September, 2015

13518/2018 Shah Pujaben Jayeshbhai,"Gender Coordinator 19th May, 2014

13519/2018 Hardik Bhagvandas Chavda,"District Coordinator (IEDSS) 09th August, 2016

13520/2018 Abhesang Mansnagbhai Patel,"District Coordinator (IEDSS) 04th August, 2016

13521/2018 Shah Trushna Satischandra,"District Coordinator (IEDSSS) 08th August, 2016

13522/2018 Devalbhai Ashvinkumar Barot,"District Gender Coordinator 03rd November, 2015

13524/2018 Maneshkumar Natubhai Patel,"District Accounts Officer 23rd March, 2016

13525/2018 Dhingani Savankumar Vinodbhai,"District Coordinator 30th April, 2012

13526/2018 Vinodkumar Babubhai Patel,"District Coordinator 24th September, 2015

13527/2018 Samirabanu Gulammohammad Shaikh,"Gender Coordinator 07th October, 2015

13528/2018 Dhavalkumar Ashvinkumar Patel,"Gender Coordinator 23rd March, 2017

13529/2018 Thakore Jaydipsinh Ranpalsinh,Computer Operator

13530/2018 Dipeshkumar Dipakbhai Bhatiya,District Coordinator

13531/2018 Pritiben Shankarlal Patel,"Gender Coordinator 28th September, 2015

13532/2018 Hasmukhkumar Jayantilal Patel,"Gender Coordinator 16th January, 2016

13533/2018 Vikrambhai Natvarbhai Patel,"Computer Operator 12th January, 2013

13534/2018 Patel Dharmishtaben Natubhai,"Computer Operator 24th September, 2015

13535/2018 Hiren Dilipbhai Joshi,"District Accounts Officer 24th September, 2015
13536/2018 Rugani Ravindra Madhusudan,"Computer Operator 15th April, 2011
13537/2018 Jignaben Kantibhai Patel,"Gender Coordinator 01st April, 2016
13538/2018 Nishantbhai Bhupenedrakumar Darji,"District MIS Coordinator 07th December, 2016
13539/2018 Keyurkumar Rameshchandra Patel,"District MIS Officer 16th October, 2013
13540/2018 Kalpeshbhai Babubhai Patel,"District MIS Officer 08th August, 2016
13541/2018 Tushar Gagjibhai Solanki,"Computer Operator 13th June, 2011
13542/2018 Rinkuben Natvarlal Thakkar,"Computer Operator 13th June, 2011
13543/2018 Jalpaben Rameshbhai Patel,"Computer Operator 28th September, 2015
13544/2018 Manoj Vinodbhai Manjusha,"Computer Operator 28th September, 2015
13545/2018 Sagar Naranbhai Patel,"District Coordinator 01st April, 2016
13546/2018 Makwana Birendrakumar Hirabhai,"Computer Operator 03rd March, 2014
13547/2018 Niravkumar Bharatkumar Panchal,"Assistant Project Coordinator 12rd December, 2014
13548/2018 Dipsang Hathisang Mori,"District Coordinator (IEDSS) 04th August, 2016
13550/2018 Dipikaben Gordhanbhai Solanki,"District Coordinator (IEDSS) 08th August, 2016
13551/2018 Nirajkumar Harshadbhai Patel,"District Coordinator 01st April, 2016
13642/2018 Saiyed Irshadali Mumtazali,"Computer Operator 24th August, 2011
13644/2018 Mistri Krunal Jayantilal,"District Coordinator 13th July, 2015
13645/2018 Munafbhai Fakirmohammad Shaikh,"Accounts Officer 06th October, 2015
13646/2018 Bhumika Dalpatbhai Lad,"Accounts Officer 30th March, 2016
16030/2018 Jalpaben Babubhai Chaudhary,"District Coordinator (IEDSS) 06th August, 2016

3.4 It is to be noted that while petitioners came to be appointed under the Scheme at the District level, other persons out of the class were given",

appointment at the State level. All these employed persons, either at the District level or at the State level, were appointed under the same Scheme in",

similar circumstances, by the mode of appointment and the duties attached to the post were similar.",

3.5 The services of the petitioners are governed by Resolution dated 11th October, 2017 of the State Government. Those who were appointed under",

the State level also stand governed by the very Scheme and the Resolution. All those persons either at the District level or at the State level institute a,

single class of employees, of having been appointed under the Rashtriya Madhyamik Shiksha Abhiyaan. The services of all these employees at the",

District level as well as at the State level came to be dispensed with simultaneously.,

3.6 It is not in dispute that after the services of all the petitioners along with those posted at State level came to be terminated upon a Note dated 31st,

July, 2018, as per communication dated 02nd August, 2018 aforementioned, the District Education Office recommended on 04th August, 2018 that",

services of each of the 46 petitioners were satisfactory and they worked efficiently and it was recommended by the said authority that petitioners,

were required to be taken back and needed to be reinstated in service.,

3.7 The events may be recapitulated as under,

(i) On 02nd August, 2018 the contracts of all the petitioners were not renewed and their services came to be terminated on the basis of a 'Note' or",

'Noting' dated 31st July, 2018 put by higher authority without affording any opportunity of hearing. Moreover, 10 of the employees who were",

appointed at State Level by Rashtriya Madhyamik Shiksha Abhiyan were also terminated by the same order dated 02nd August, 2018,",

(ii) On 04th August, 2018 the District Education Officer recommended that the Services of each petitioner being 47 in numbers is satisfactory and",

efficient and they may be taken back and their services be reinstated,",

(iii) On 06th August, 2018 the employees appointed and terminated at State Levels made a representation to take them back in their services,",

(iv) On 10th August, 2018 the 10 employees of State Level came to be reinstated by the respondent authorities to their original post under Rashtriya",

Madhyamik Shiksha Abhiyan,",

(v) On 01st October, 2018 the Rashtriya Madhyamik Shiksha Abhiyan (RMSA)

came to be merged in Sarva Shiksha Abhiyan (SSA) by way of",
government resolution to said effect for its effective implementation and the work and services rendered by the petitioners is being done by strangers,
who are unqualified given by the office of District Education Officer.,

4. Learned advocate for the petitioners submitted that the termination was in the nature of group victimisation which was effected in arbitrary manner.,

It was submitted that District Education Officer recommended for taking the petitioners back in service but the same was not attended to though,

similarly placed persons were taken back at the State level. It was submitted that the term was arbitrary and irrational when some of the employees,
were taken back and the petitioners were kept out of service.,

4.1 The petitions were contested by filing reply on behalf of respondent No.2 wherein it was contended inter alia that the petitioners were engaged on,

contractual basis and that their rights could not extend beyond the contract. It was submitted that the Court may not exercise the jurisdiction to grant,

relief as it would amount to extending the term of the contract which is not permissible to be done by the writ court. It was sought to be contended,

that there was no termination of employment but it was non-continuation of contract.,

5. It is an admitted position on record that employees at the State level were continued and reinstated. It is also admitted position that except the,

present petitioners, all the employees whose services were terminated came to be reinstated in service. As per the facts given out in the affidavit-in-",

reply, there were 209 contractual posts sanctioned across the State. 69 employees were employed at the District level. Posts were also sanctioned at",

the State level. It further emerged that Rashtriya Madhyamik Shiksha Abhiyan Scheme was subsequently merged with Sarva Shiksha Abhiyan as per,

the Resolution dated 01st October, 2018 passed by the State Government. The Sarva Shiksha Abhiyan Scheme is an independent functional Scheme",

at the District level across the State. The educational programmes under the Scheme is continuous process, where the services of the petitioners are",

utilised.,

5.1 What were the content of the Note or Noting which became the basis for termination of services was never known. The Note was not produced,

on record. Nor it was referred to by the respondents in their reply. It turned out

to be action of abrupt termination of services behind the back of the, petitioners. In the totality of facts, there was an element of justification in the contention of the petitioners that opportunity of hearing ought to have", been accorded to them. For the fact that the reinstatement was permitted of the employees at the State level, there was no plausible explanation. It", was a clever pleading on part of the respondents that for those who were reinstated at the State level, the work was available, resting there", conveniently. It is not the case of the respondents that petitioners' non-reinstatement was due to non-availability of work. Rather, it could hardly be", disputed that the Scheme under which the petitioners working on the different posts was a continuous process and when the Scheme was continued", the absence of availability of work could hardly be pleaded. On the contrary, the District Education Officer recommended for taking all the petitioners", back in service.,

5.2 While it is true that jurisdiction of the writ court under Article 226 of the Constitution would not be exercised to extend the contractual period", which is also the ground on which the petitions sought to be defended by the respondents, the facts of the case raise a different scenario. There is a", striking dissimilar treatment, and therefore discrimination, meted out to the petitioners. On one hand the petitioners are kept out of service and on the", other hand, all other persons except the petitioners including the persons at the State level came to be reinstated. Though there was a recommendation", dated 04th August, 2018 in case of the petitioners that the petitioners had been discharging their services efficiently and they are required to be", reinstated, the same was not followed. Such recommendation was also there in respect of others who were reinstated.",

5.3 In GRIDCO Limited v. Sadananda Doloi [(2011) 15 SCC 16], the Supreme Court observed as under.",

â??A conspectus of the pronouncements of this court and the development of law over the past few decades thus show that there has been a notable, shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the", contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to, be the State. Remedy for a breach of a contractual condition was also by way of

civil action for damages/ compensation. With the development of, law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It", is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ Court is, entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that", would vitiate the action, no matter the action is in the realm of contract. â?? (Para 26)",

6. In light of the facts obtained and discussed hereinabove, the decision on part of the respondents in excluding the petitioners for different treatment", of not reinstating them, as against those similarly situated employees posted under the Scheme who were reinstated, could be said to be suffering from", vice of unreasonableness, unfairness and irrationality and contrary to the tenets of Article 14 of the Constitution. It is not possible to treat the", petitioners as belonging to heterogeneous class so as to justify different treatment to them. In not reinstating the petitioners, breach of Article 14 is", manifest. Therefore, the defence on part of the respondents that the action was in realm of contract could not be countenanced. The relief deserves to", be accrued to the petitioners.,

7. Thus, all the petitioners are entitled to be reinstated in service by extending them the equal treatment with those similarly situated employees who", are reinstated since all could be said to be belonging to a single class for the purpose of treatment to them. The reinstatement of the petitioners shall be, on the same post, in the same status and on same conditions. The respondents shall act through their competent authority to pass the order of", reinstatement within a week from the date of service of copy of this order. However, on the principle of no-work-no-pay, monetary benefit will not be", paid to the petitioners.,

All the petitions are allowed accordingly.,

Direct service is permitted.,