

**(1983) 11 GUJ CK 0015**  
**In the Gujarat High Court**

Hirjibhai Lavjibhai Ladani

APPELLANT

Vs

Upleta Nagar Palika and Another

RESPONDENT

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**Date of Decision :** 29-11-1983

**Acts Referred:**

Bombay Primary Education Act, 1947 — Section 20 , 24(1), 24(1)

**Citation :** (1984) GLH 5 : (1984) 1 GLR 487

**Hon'ble Judges :** A.M. Ahmadi, J

**Bench :** Single Bench

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**Judgement**

A.M. Ahmadi, J.—The petitioner who was initially appointed as a Junior Clerk in the primary school run by the Shikshan Samiti of Upleta Nagarpalika, was promoted as Head-clerk-cum-Accountant pursuant to the recommendations of the Staff Selection Committee. The petitioner was in due course confirmed as Head-clerk-cum-Accountant by the Administrative Officer, Nagar Prathmik Shikshan Samiti, Upleta, by his order dated 3rd October 1972. The President of the Nagarpalika by his order dated 15th April 1978 transferred the petitioner to the Accounts Branch of the Municipality. The petitioner has challenged this transfer order by this petition principally on the ground that the President of the Nagarpalika has no power or authority to transfer him since the said power vests in the Administrative Officer alone. The petitioner, therefore, prays that appropriate writ be issued against the respondents for quashing and setting aside the said order dated 15th April 1978 whereby he is transferred to the Accounts Branch of the Municipality.

2. On behalf of the respondents, no affidavit-in-reply is filed. Mr. S.M. Shah, the learned advocate for the respondent No. 1 stated at the Bar when the petition was called on for hearing that he was instructed to inform the court that the Nagarpalika has no strong views so far as the right to transfer the petitioner is concerned and it would abide by such order as the court may make in the light of the provisions of the Bombay Primary Education Act, 1947 (hereinafter referred to as the Act).

3. The Act was enacted to provide for compulsory primary education and to make better provision for the management and control of primary education in the State. The Sections of the Act are divided into XI Chapters. Section 2 defines various expressions used in the Act. We may notice a few of them with which we are concerned. Section 2(1) defines "Administrative Officer" as an officer appointed u/s 21 or 22. Section 21 provides that every School Board shall have an Administrative Officer, who shall be the Chief Executive Officer of the board. It further provides that the Administrative Officer shall be appointed by and shall be a servant of the State Government, he shall draw his pay and allowances from the State revenues. Section 22, which begins with a non-obstante clause, enables the State Government to delegate the power to appoint an Administrative Officer to an authorized Municipality. The Administrative Officer appointed by the authorised Municipality shall be the servant of the authorized Municipality and shall draw his pay, allowances, etc. from its primary education fund. It is clear from the above provisions that if an Administrative Officer is appointed u/s 21 of the Act, he shall be a servant of the State Government, but if he is appointed by the authorized Municipality, to which the State Government has by notification delegated its power to make appointment, he shall be the servant of the authorized Municipality. Section 2(6) of the Act defines an "Authorized Municipality" to be a Municipality which is authorized by the State Government u/s 16(1) to control all approved schools within its area. The expression "Approved school" as defined by Section 2(2) of the Act means a primary school maintained by the State Government or by a School Board or by an authorized Municipality or which is for the time being recognized as such by a School Board or by the State Government or by an Officer authorized by it in this behalf. Section 16(1) is an enabling provision which empowers the State Government to authorise any Municipality constituted under the Bombay District Municipal Act, 1901, or under the Bombay Municipal Boroughs Act, 1925, or under any other corresponding law to control all approved schools within its area. Section 17 enumerates the duties and functions of the authorized Municipality. It is, therefore, clear that the Municipality can control all approved schools within its area if the State Government has authorised it to do so u/s 16(1) of the Act. It may be stated that there is no dispute that the Upleta Nagar Palika is an authorized Municipality.

3.1. Chapter II deals with the constitution of the District and Municipal School Boards. "District School Board" means a School Board constituted for a district u/s 3. "Municipal School Board" means a School Board constituted for the area of an authorised Municipality u/s 3. Section 3 provides for constitution of a District School Board as well as a Municipal School Board for each area of an authorised Municipality. Section 4(1) states that each School Board shall consist of members not less than 12 and not more than 16 in number. u/s 10, every School Board must elect a Chairman and a Vice-Chairman from amongst its members. Chapter III sets out the power, duties and functions of the District School Boards, authorised Municipalities and Municipal School Boards. Section 16(1) to which a

reference has been made earlier empowers the State Government to authorise any Municipality to control all approved schools within its area. Section 17 sets out the duties and functions of an authorised municipality. Section 18 enumerates the powers and functions of Municipal School Boards. This indicates the nature of the control to be exercised by the authorised Municipality or the Municipal School Board, as the case may be.

4. The administrative machinery has been provided for in Chapter-V of the Act. Section 20 provides that every District School Board with the approval of the State Government and every authorized Municipality shall maintain an adequate staff of Assistant Administrative Officers. Supervisors, Attendance Officers, clerks, primary teachers and inferior servants and other staff (including engineering staff) as in the opinion of the State Government be necessary for the administration, management and control of approved schools within its area. The staff so maintained, shall be servants of the District School Board or the authorized Municipality as the case may be. Their salary, allowances, etc. shall be paid from the primary education fund. The State Government is empowered to prescribe the duties to be performed by the staff maintained under the said provision. Sections 21 and 22 then provide for the appointment of an Administrative Officer, to which reference has been made earlier. Section 28 provides for the creation of a Staff Selection Committee, with which we are not concerned. It may suffice to say that the appointments to the posts referred to in Section 20 have to be made by the Staff Selection Committee, of which the Administrative Officer is the Secretary. That takes me to Sub-section (1) of Section 24 on which reliance was placed by Mr. Nanavati for the petitioner. That sub-section reads as under:

24(1) The Administrative Officer shall have power, subject to such general instructions as may be issued from time to time by the Director, to promote, transfer and take all disciplinary action (including removal or dismissal) against the staff maintained u/s 20.

Plainly, the power to transfer a member of the staff maintained u/s 20 vests in the Administrative Officer by virtue of this sub-section. Sub-section (2) of Section 24 next provides that if any person is aggrieved by any order passed under Sub-section (1) involving disciplinary action, he may appeal to a Tribunal consisting of the Chairman of the School Board and the Education Inspector of the district. If there is any difference of opinion between the said two members of the Tribunal, provision is made for reference of appeal to the Director of Education, whose decision is made final. The power to examine the record of any order made by the Administrative Officer or the Tribunal or the Director is conferred on the State Government under Sub-section (4) of Section 24 of the Act. In other words, the entire machinery in regard to taking of disciplinary action against the staff maintained u/s 20 has been set up u/s 24 of the Act.

5. Section 44 of the Act provides for the maintenance of the primary Education fund by every District School Board and authorized Municipality. The fund shall

consist of various items in Clauses (a) to (g) of Section 44(2) of the Act. Chapter IX deals with control and Section 48 lays down that the State Government may appoint such officers (including inspecting officers) as it may deem necessary for the purpose of giving effect to the provisions of the Act. The nature of the power to be exercised by the State Government has been indicated in the subsequent sections. The last provision, to which my attention was invited is Section 65 which provides that notwithstanding anything to the contrary contained in the provisions relating to primary education in the Bombay District Municipal Act, 1901, the Bombay Local Boards Act, 1923, and the Bombay Municipal Boroughs Act, 1925, the provisions of the Act, shall have effect. This is the scheme of the Act.

6. It is an admitted fact that at the relevant point of time, "me petitioner was serving as a Head-clerk-cum-Accountant in the primary school managed by the Nagar Prathmik Shikshan Samiti of Upleta Nagarpalika. He was transferred under the impugned order to the Account Branch of the Nagarpalika. The petitioner contends that since he belongs to the staff of the primary school, the President of the Nagarpalika had no right or authority to transfer him as a member of the staff belonging to the Municipality by posting him in the Accounts Branch of the municipality. In support of his contention, he strongly relies on the fact that he was appointed as a Head-clerk-cum-Accountant on being selected by the Staff Selection Committee appointed u/s 23 of the Act. On his selection, he was given appointment by the Administrative Officer by his order dated 3rd October 1972. It is his say that in view of his appointment by the Administrative Officer pursuant to his selection by the Staff Selection Committee, the President of the Nagarpalika had no right or authority to transfer him to the Accounts Branch of the Municipality as such a right was conferred by the statute on the Administrative Officer alone under Sub-section (1) of Section 24 of the Act. That sub-section in unmistakable language states that the Administrative Officer shall have the power, subject to such general instructions as may be issued by the Director, to inter alia transfer any member of the staff maintained u/s 20. It has not disputed that the petitioner was a member of the staff maintained u/s 20 and, therefore, ex-facie, the power to transfer him was conferred upon the Administrative Officer alone by virtue of Sub-section (1) of Section 24 of the Act. My attention has not been invited to any provision in the Act, which specifically confers the power of transfer of a member of the staff maintained u/s 20 on the President of the Nagarpalika. The power to take disciplinary action against a member of the staff maintained u/s 20 is also conferred on the Admintrative Officer. An appeal is provided to the Tribunal against any order involving disciplinary action. The State Government has been conferred with the general power to call for and examine the record of any order made by the Administrative Officer or the Tribunal and in the event of a disagreement between the members of the Tribunal, the Director, against any member of the staff referred to in Sub-section (1) of Section 24 of the Act. These provisions make it amply clear that a separate machinery has been set up u/s 24 for taking

disciplinary action against the members of the staff maintained u/s 20. Section 24(1) specifically confers the power of transfer on the administrative Officer and in the absence of any provision to the contrary, there can be no doubt that the power can be exercised by the said officer alone and by none else. If that be so, it appears that the President of the Nagarpalika has no power to transfer the petitioner from the primary school to the Accounts Branch of the Municipality. The power to transfer is specifically conferred on the Administrative Office under sec 24(1) of the Act. My attention has not been drawn to any provision under the Municipalities Act pointing out that any such power has been conferred upon the President of the Nagarpalika.

7. In view of the above, the impugned order of transfer must be quashed and set aside since it is not shown that under the provisions of the Act, the President of the Nagarpalika was competent to order the petitioner's transfer in the face of the power having been specifically conferred on the Administrative Officer under Sub-section (1) of Section 24 of the Act. Rule is made absolute accordingly. No order as to costs.