
(1985) 02 GUJ CK 0003
In the Gujarat High Court
Case No : Spl. C.A. No. 5359 of 1982

Indravadan Joshi

APPELLANT

Vs

Govt. of Gujarat and Others

RESPONDENT

Date of Decision : 21-02-1985

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1985) 1 GLR 549 : (1985) 2 LLJ 571

Hon'ble Judges : S.B. Majmudar, J

Bench : Single Bench

Judgement

1. In this petition under Art. 226 of the constitution of India, the petitioners who are the office bearers of the Gujarat State Non-Government Adhyapan Mandir Karamchari Sangh have made a grievance regarding the inaction on the part of the 1st respondent State of Gujarat in referring the questing regarding revision of pay scales of teaching and non-teaching staff of non-Govt. primary teachers training colleges in the State of Gujarat to the third pay commission, respondent No. 2 herein for inviting its recommendations on the matter. Thus the grievance has been made on behalf of the entire teaching and non-teaching staff of the non-Government primary teachers training colleges in the State.

2. In order to appreciate the grievances of the petitioners it is necessary to note at the outset a few relevant facts. In order to train primary school teachers who have to man both Government and Private Primary Schools in the State, Primary Teachers Training Colleges are being run. They are called Adhyapan Mandirs. They are in all 67 such Primary Teachers Training Collages in the State. Out of these 67 colleges, 24 colleges are full fledged Government Colleges. They are run by Government directly while 43 colleges are Private Non-Government Primary Teachers Training Colleges but they receive cent per cent. grant from the State and whatever fees are recovered from the students for being taught at these colleges are transmitted to the State treasury. Thus even though these 43 Private Non-Government Colleges are strictly speaking not belonging to the State

Government, they are practically acting as "agencies of the Government". The entire administration in these collages is run by the State funds and whatever is received is collected by the State Government. It appears that in these 43 Private Non-Government but fully Government aided Primary Teachers Training Collages more than 600 employees are working both on the teaching and non-teaching side. Mr. Patel the learned counsel for the petitioner, on instructions, gave a break up as under.

43 Principals 298 Lecturers 43 Laboratory Assistants 76 Clerks 76 Teachers for misc. work like craft etc. 43 Watchmen --- 579 Total --- 3. The grievance of the petitioners is that the 1st respondent-State of Gujarat, while appointing the Third Pay Commission and referring to it for its recommendations the questions regarding the revision of pay scales of various employees - both Government and Non-Government employees as per the terms of reference, did not think it fit to include the grievances voiced by the teaching and non-teaching staff of Non-Government Primary Teachers Training Colleges. That the State of Gujarat has covered the teaching and non-teaching staff of private Secondary and Primary Schools in the terms of reference, but it has not covered the teaching and non-teaching staff of Training Colleges which are private colleges, but receiving cent per cent. grant-in-aid from the State Government. It is the submission of the petitioners that this inaction on the part of the 1st respondent-State has been ex-facie arbitrary, discriminatory and irrational and cannot stand the test Art. 14 of the Constitution of India.

4. The petitioner contend that the pattern of education in the State of Gujarat broadly consists of the following net work.

(1) At the bottom of the education set up are the schools catering to primary education. They impart education of students studying in standards I to VII.

(2) Schools imparting secondary education to students of standard VIII to X.

(3) Schools giving higher secondary education to students in standards XI and XII.

(4) University education imparted in colleges either run by the statutory Universities or by private collages affiliated to such Universities and which impart education in 3 years degree course.

5. The Primary Education which is at the bottom of the set up is governed by the Bombay Primary Education Act, 1947. The Secondary Education which comes next is regulated by the provisions of Gujarat Secondary Education Act, 1972. The Higher Secondary Education is governed by Grant-in-Aid Code and by now, the Higher Secondary Education is also governed by the provision of Higher Secondary Education Act, 1984. As regards University Education, it is governed by various statutory provisions establishing the concerned Universities in the State. That education is at the apex of the educational set up in the State.

6. The petitioners contend that the State of Gujarat decided to refer amongst

other, the salary problems concerning the teaching and non-teaching staff working in various educational institutions in the State at different leaves to the Third Pay Commission. So far as the staff concerned with the institutions imparting primary education in the State is concerned the questions pertaining to such staff whether working in primary schools run by Government or by Municipalities or by Panchayats or by private managements were all referred to third Pay Commission for its recommendations. As stated above, they are all governed by the provisions of Bombay Primary Education Act.

7. So far as the schools imparting secondary education are concerned, they are either Government schools or Private schools which receive cent per cent. grant. Problems pertaining to teaching and non teaching staff in all these schools so far as their salary structures are concerned, are also referred to the Third Pay Commission for its recommendations. Similarly, the staff working in higher secondary schools both teaching and non teaching has also been given an opportunity to put forward its proposals before the Third Pay Commission in connection with revision of its pay scales.

8. So far as University education is concerned, the staff employed on the teaching side is governed by the recommendations of the University-Grants-Commission. But so far as non teaching staff in such colleges whether Government colleges or University colleges or staff members attached to private colleges affiliated to Universities are concerned, their grievances regarding the revision of pay scales are also referred to the Commission. It is, therefore, contended by the petitioners that when problems covering salaries of teaching and non teaching staff of various educational institutions catering to the educational requirements of students at different levels are all referred to the Third Pay Commission for its recommendations, there was no rhyme or reason for the State in hostilely treating the teaching or non teaching staff of present colleges by excluding them from the purview of the Third Pay Commission so far as their grievance regarding upward revision of pay scale is concerned.

9. The petitioners have highlighted the important characteristics of the Primary Teachers Training Institutions or Adhyapan Mandirs as under.

(1) In the State of Gujarat, there are 67 primary training colleges, out of which 24 colleges are Government colleges and 43 colleges are private or non-Government colleges;

(2) Any student who has passed SSC examination with mathematics and science is entitled to admission to these colleges according to the merits and the standards of admission is determined by the Government itself. After the result of the SSC examination, all the applications for admission are arranged according to the merits within a period of 10 days and are sent to D.E.O. for approval and admissions are given accordingly;

(3) The qualifications of the teachers to be appointed in these colleges are determined by the Government by the Grant-in-Aid Code. The management

makes appointment as per these qualifications. Normally in each College, there are either 2 or 4 classes and for each class, 2 teachers (trained graduates) are appointed. Where there are 2 classes, there are 4 teachers, 1 Udyog teacher and 1 clerk and where there are 4 classes, there are 8 teachers, 2 Udyog teachers and 2 clerks in addition to the Principal of the College. The Principal or the teacher in these colleges must possess B.A., B.Ed., or B.Ed.;

(4) Fees are collected by the colleges and the entire amount of the fees is to be deposited with the Government. Standards of fee are determined by the Govt. itself;

(5) There is annual inspection by the D.E.O. as well as by the panels of 5 members appointed by the Government;

(6) The Grant-in-Aid Rules which are applicable to the Govt. and non-Govt. secondary schools are applicable to the primary teachers training colleges;

(7) The scheme of direct payment of salaries to the teaching and non-teaching staff recently introduced by the Govt. of Gujarat for secondary schools is also made applicable to the Primary Teachers Training Colleges;

(8) From the very beginning, the teaching and non teaching staff in the Primary Teachers Training Colleges are governed in all respects by the same Rules which govern the teaching and non teaching staff in the secondary schools;

(9) The pay scales given to the secondary teachers should also generally be given to the teachers of the Primary Teachers Training Colleges.

10. It is under these circumstances, contend the petitioners that when the State of Gujarat though it fit to refer the problems pertaining to the staff both teaching and non teaching working in different educational institutions to the Third Pay Commission for its recommendations, the petitioners, who were similarly situated like the secondary school teachers in Non-Government i.e. private but Government aided secondary schools as well as Higher Secondary Schools and who are also discharging similar functions like the teaching and non-teaching staff working in Govt. Primary Teachers Training Colleges or Adhyapan Mandirs in the State could not have been differently treated and could not have been singled out by an expressly hostile treatment of excluding them from the term of reference to the Third Pay Commission. They have, therefore, filed the present petition for issuance of a writ of mandamus or any other appropriate writ declaring the Government Resolution dated 14th May, 1982 Annexure-A under which the Third Pay Commission has been constituted and is requested to make its recommendations to cover the listed cadre of employees in so far as it excludes the teaching and non teaching staff of Non-Government Primary Teachers Training Colleges in the State, to be null and void and praying for suitable directions to respondent No. 1-State to draw up a supplementary reference to the Third Pay Commission for considering the grievances of the petitioners.

... .. 11. I now proceed to deal with the following main contentions canvassed by Shri Patel in support of the petition.

(1) Once the State Government, in its administrative wisdom, decided to refer the problems concerning pay-scales of staff members of Non-Government educational institutions like Primary, Secondary and Higher Secondary Schools to the Pay Commission, there was no reason why the petitioners who are working in the colleges which equip the primary teachers with necessary training for ultimately being employed in primary schools which would be either Government schools or Non-Government schools should be excluded and their such exclusion is patently arbitrary and violative of Art. 14 of the Constitution of India.

(2) There cannot be any question of delay on the part of the petitioners which can be urged now to defeat their just claim as the delay if any has occurred after this petition was admitted by this Court and it remained pending for couple of years, but no fault can be found with the petitioners for the same. No one should suffer because of the Court's delay and proper direction should be issued to the respondents - namely the State of Gujarat and Third Pay Commission to consider the grievances of the petitioners.

(3) Lastly, it is urged that if this Court finds that it will be impracticable or almost impossible for the Third Pay Commission to entertain the petitioners' grievances at this stage and if it is likely to upset its entire time schedule for completing the final report, then this Court may issue suitable directions to the State of Gujarat to hear the petitioners even after the report of the Pay Commission is received so that proper relief can be given to the petitioners ultimately by the authority which has to decide in light of the Third Pay Commission's Report.

12. So far as the first grievance of the petitioners is concerned, it must be stated that it is indefensible. The terms of reference for inviting recommendations of the Third Pay Commission which are laid down in Government Resolution dated 14th May, 1982 clearly indicate that the State of Gujarat, in its administrative wisdom, decided to refer the problems pertaining to revision of salary of all the staff members - both teaching and non-teaching in primary, secondary and higher secondary schools. So far as the Government schools are concerned, reference was automatic as the problem concerning all Government employees - both teaching and non teaching and even in other departments were automatically referred by the very first term of reference, but so far as the Non-Government schools were concerned, the salary questions pertaining to teaching and non teaching staff, in all the primary, secondary and higher secondary schools were referred for recommendations. Even questions of salary structures for non teaching staff of the Universities including private colleges affiliated to Universities also got referred. As already indicated earlier, so far as the teaching staff of the University colleges and affiliated colleges are concerned, the questions pertaining to their revision of salaries are catered to by the University-Grants-Commission. Thus, they have got an adequate remedy in the other field, but so far as the non-teaching staff is concerned, its problems are referred to the

Third Pay Commission. The conjoined reading of various terms of references for inviting recommendations on various topics from the Third Pay Commission as visible from the Government Resolution annexure-A so far as the educational field is concerned, project the following picture.

13. The categories of staff listed below have got an opportunity to get their grievances about revision of salaries considered by the Third Pay Commission.

1. Primary Schools : All the non teaching and teaching staff in Govt., municipal, Panchayat or private State aided primary schools are permitted to file their representation before the Commission and to vindicate their grievances regarding higher pay scales.

2. Secondary Schools : Teaching and non-teaching staff of all Govt. and private Govt. aided secondary schools are equally given the benefits of the terms of reference.

3. Teaching and non-teaching staff in all the Govt. or private higher secondary schools gets similar benefits.

4. The non-teaching staff of University, colleges and private colleges affiliated to the Universities also get similar benefits.

5. All non-teaching staff of secondary teachers training colleges which is included in the non-teaching staff of the Universities get similar benefits.

6. All non-teaching staff members of private colleges affiliated to various Universities also are covered by the terms of reference.

7. All teaching and non-teaching staff working in physical training colleges which are all Government run colleges and which train the primary teachers so that they can impart physical training to students studying in primary schools are also covered by the terms of reference.

8. All teaching and non-teaching staff of Primary Teachers Training Colleges run by the Govt. also get this advantage.

14. When the aforesaid categories of employees who are connected with the educational field have been given an opportunity to have their grievances placed before the Third Pay Commission for its recommendation, there is no earthly reason to single out only the teaching and non teaching staff working in Primary Teachers Training Colleges which are private colleges but which are having cent per cent. grant from the Government and which are practically the agencies of the State. These employees are absolutely similarly situated like the Government employees working in Government Adhyapan Mandirs, i.e. Primary Teachers Training Colleges. It is merely a co-incidence that some employees work in Government Adhyapan Mandirs which belong to the State Government while others discharge similar type of duties in private Adhyapan Mandirs which are also getting cent per cent grant from the Government. It is now well settled that educational institutions getting 100% grants from the Government are limbs or

instrumentalities of Government itself. They are covered by the sweep of Art. 12 of the Constitution of India. In a recent decision of the Supreme Court in Civil Application No. 2137 of 1984, the Supreme Court's Division Bench of D. A. Desai and Khalid, JJ., speaking through D. A. Desai, J. held on 11th December, 1984 that Government aided private educational institutions are State agencies or instrumentalities against whom petitions can be filed under Art. 226 of the Constitution of India. Under these circumstances, it must be held that the exclusion of the cases of the petitioners and the employees represented by them from the purview of the Pay Commission is ex-facie unjustified and has to be treated as arbitrary and violative of the guarantee of Art. 14 of the Constitution of India. The submission of Mr. Gandhi, the learned Counsel for the respondents is that if all the Government aided institutions have to be brought within the purview of the Pay Commission, the Third Pay Commission will never be able to complete its work and that there are many other social institutions which are aided by the Government grant may also clamour for such reference. It is true that the State of Gujarat is required to give and even otherwise it gives grants to many social institutions, but only because of that, the staff members working in such institutions cannot claim reference of their grievances as a matter of right to the Third Pay Commission. It is for the State to consider which type of institutions should be brought within the purview of the Pay Commission. This is entirely a policy matter. No one can have any right in the same. Thus, if Government aided social institutions are kept out of the purview of Pay Commission's recommendations so far as the staff working in such institutions is concerned, no grievances can be made by such staff members as they cannot claim to be discriminated for the simple reason that no one similarly situated like them would be covered by reference. But so far as the petitioners are concerned, their grievances stand on a different footing. It was open to the State of Gujarat not to refer any salary questions pertaining to the staff working in private educational institutions and it was perfectly open to the State only to refer the problems pertaining to the staff members working in Government educational institutions simpliciter. But that has not been done. The State of Gujarat, in its administrative wisdom, thought it proper to extend the coverage of reference to staff members working in Non-Government private educational institutions as seen above. Once that decision is taken, there was no reason for the first respondent-State to exclude the part of similarly situated employees also working in Non-Government educational institutions which are receiving cent per cent grant, from the purview of the Third Pay Commission. It is at this stage that the discriminatory treatment becomes visible. It is also pertinent to note that primary teachers working in Non-Government, State aided primary schools are covered by the reference. But the staff members in the colleges which train them to be good primary teachers and in a way who are concerned with the making up of good primary teachers are excluded. Such staff members on the teaching side can obviously be visualized to be on a stage which is higher than primary teachers and they may well compare with secondary teachers. Secondary teachers in Non-Government private aided schools have also got the benefit of

reference. Under these circumstances, it is obvious that excluding from the purview of the Third Pay Commission only the teaching and non-teaching staff of Non-Government primary teachers training colleges in view of the otherwise comprehensive terms of references of the Commission as seen from annexure-A must be treated arbitrary and discriminatory on the part of the respondents.

15. In this connection, it is pertinent to note one aspect of the matter which was highlighted by Mr. Patel, the learned Counsel for the petitioners. He invited my attention to the Desai Pay Commission recommendations and stated that even at the time of the earlier Pay Commission, namely Desai Pay Commission, the teaching and non teaching staff of Non-Government Primary Teachers Training Colleges was left out of the purview of the Pay Commission. They themselves went to the Commission. Desai Pay Commission felt the justness of their grievance, but could not give them any relief as the term of reference did not include such staff members and at that stage, it was too late for the petitioners to come to this Court for getting proper directions against the Second Pay Commission and the State of Gujarat. It is under these circumstances that this petition was moved quite in time by the present petitioners on the present occasion as seen above. Mr. Patel learned Counsel for the petitioners also invited my attention to the report of the basic education programme evaluation committee issued in 1971 by the State of Gujarat in the Education Labour Department. In para 5.11 of Chapter 2, dealing with educational and national objects, it has been stated in that report that the work carried out by the members of staff in Adhyapan Mandir is of special type and it consumes more time. No trained graduates prefer to come to Adhyapan Mandir to serve so long as he gets service in Secondary School. The reason is that the basic scales of primary teachers and the pay-scales of teachers in Adhyapan Mandir are at par while teaching in secondary schools results in more opportunity of earning. The work is also less tedious and less in quantity. The work put in by a lecturer in Adhyapan Mandir can be immediately tested on individual basis. Thus, less employees show their willingness to join as teachers in Adhyapan Mandirs. Under these circumstances, as compared to teachers in secondary schools, teachers teaching in Adhyapan Mandir should get at least Rs. 75/- more by way of salary, Mr. Patel also invited my attention to the report of the Non-Government Primary Teachers Training College Committee which was published by the then State of Bombay yeas back. The said Committee has also made similar recommendations. I am strictly not concerned with the propriety or justness of these claims. All that I want to emphasize is that the teaching and non-teaching staff of Non-Government Primary Teachers Training Colleges in the State can have a legitimate grievance regarding non revision of their pay-scales to an appropriate extent and they may be entitled to urge before the Commission that the may be given parity with the pay-scales available to teaching or non-teaching staff in the secondary schools or even more than that. All these grievances could be legitimately urged by the petitioners before the Third Pay Commission. That opportunity is lost to them. Mr. Patel also contended that if the matter would

have been referred to the Pay Commission and if the Pay Commission had recommended to grant appropriate pay-scales for the petitioners, it would not have been possible for the first respondent to deviate from the recommendations without giving special reasons. Even that opportunity is lost to the petitioners. These may be effects of the exclusion of the petitioners from reference. The effects themselves may not justify the petitioners' case for reference. But their case for reference is justified from the fact that persons similarly situated and doing exactly the identical work have got opportunity to vindicate their grievances regarding pay-scales before the Third Pay Commission. There was no reason why the first respondent should have discriminated against the petitioners and should have deprived them of such an opportunity. The said act of the first respondent, therefore, must be treated to be discriminatory and violative of the guarantee of Art. 14 of the Constitution of India. The first contention of Mr. Patel has, therefore, to be accepted.

16. Before parting with the first contention. I must not one submission of Mr. Gandhi, the learned advocate for the respondents. He stated that as agreed to in affidavit-in-reply, pay-scales recommended by the Third Pay Commission, for teaching and non teaching staff in Government Adhyapan Mandirs, if accepted, will be made available to the petitioners. Hence, there is not need to make any reference at this stage. This argument ignores the petitioners' case that they claim even more than what can be given to staff working in secondary schools. Even otherwise, representation made by teaching and non teaching staff Government Adhyapan Mandirs can naturally not reflect the full view point of petitioners. Thus, the picture which the petitioners can represent on their own cannot be projected by any one else, Mr. Patel, learned advocate for the petitioners stated that representation filed by the staff of Government Adhyapan Mandirs is on general lines and represents the overall view of class III and IV servants and does not reflect the moot points of petitioners' case for suitable parity and additional weightage. Consequently, it can be seen that mere granting of similar benefits as made available to staff of Government Adhyapan Mandirs can ever be a substitute for a full fledged reference.

17. So far as the second contention is concerned, Mr. Patel is right when he submitted that the delay which has occurred between the filing of this petition and its final hearing before me today is not due to the fault of the petitioners. It is obvious that a litigant can be found fault with for not coming to the Court in proper time, but once he comes to the Court in proper time, and if delay takes place after filing of the petition and if it is found that delay is not attributable to any dilatory tactics adopted by the litigant, it cannot be said from any view point that such a litigant must suffer for the belated disposal of his case by the Court. On the facts of this case, it must be held that the petitioners were vigilant all throughout. They came promptly to this Court years back. This petition could not be heard earlier. It is due to certain well known reasons. It is not the case of the respondents that the petitioners had deliberately delayed the hearing of the petition. On the contrary, they seem to have made many efforts from time to

time for getting this petition fixed early for final hearing. But their efforts were of no avail. Under these circumstances, the delay rests entirely on the shoulders of this Court and the delay which has been caused in this Court in giving expeditious hearing to the petitioners, cannot be permitted to rebound on the petitioners and their just cause cannot be made to suffer. It is well settled that no one should be permitted to suffer on account of the delay or any error of the Court. Thus, this is a case in which delay which has occurred in disposal of this petition is on account of reasons beyond the control of the petitioners. Therefore, strictly speaking, the argument regarding delay cannot be of any avail to the respondents. However, one aspect of the matter cannot be lost sight of. By passage of time, many good caused became infructuous and proper reliefs cannot be given as the intervening events make it impossible to give such reliefs. From that limited angle, the question regarding grant of proper relief to the petitioners will have to be considered at this stage. It is impossible to close our eyes to the stark realities of the situation. The Third Pay Commission during the pendency of this petition has marched ahead and has practically ended all its hearings on the matters referred to it by the first respondent-State. I am told that now the Commission is preparing its final report. It is obvious that reference by the State of the petitioners' cases at this stage cannot be permitted to disturb the working of the Commission which is entirely a separate body. The Third Pay Commission had no control over the administrative decisions of the State when it decided to refer only certain matters to the Commission and excluded from that reference the problems of the petitioners. Nor is the Pay Commission responsible for the delay caused in the expeditious disposals of this case by this Court. This aspect of the matter, therefore, also cannot be lightly brushed aside. In my view, therefore, a just solution will have to be found out to solve this stalemate and tangle. The State of Gujarat cannot escape the issuance of a writ of mandamus directing it to refer the petitioners grievances for recommendations to the Third Pay Commission. However, the Third Pay Commission which is an independent body has to be safeguarded against the possibility of disruption of its time bound schedule. It had to submit its final report within one year from the date of its commencement. It is true that the said time limit is now left behind and the Pay Commission has continued its work thereafter. However, the necessity for the submission of the final report by the Commission at the earliest cannot be lost sight of. So, if the time bound schedule of the Commission is not safeguarded, the entire apple cart would get upturned and all other employees who are not at all concerned with the controversy may suffer. Having given my anxious thought to this aspect of the matter, I have come to the conclusion that the third submission canvassed by Mr. Patel deserves to be accepted as it offers a just and workable solution to this stalemate and tangle. In my view, interest of justice would be served if the first respondent is directed now to make a reference to the Third Pay Commission inviting its recommendations in connection with the revision of pay scales of teaching and non teaching staff of the Non-Govt. Primary Teachers Training Colleges in the State and that such reference can be directed to be made as early as possible. However, once this reference is

received by the Commission, it should be left to the sole discretion of the Third Pay Commission to decide as to whether it will be in a position to entertain the representations of the petitioners and to complete the hearing of their grievance by 30th April, 1985 and whether it will be feasible for the Third Pay Commission to include within its final report, one or two paragraphs pertaining to the grievances of the petitioners. If that can be done without any inconvenience and if it does not disturb its time bound schedule for submitting its final report, the said exercise may desirably be undertaken by the Third Pay Commission, but if on the other hand, the Third pay Commission finds that it is not possible to do so, then it may inform the first respondent-State as well as the petitioners accordingly. In that eventuality, after the final report is received from the Third Pay Commission, the first respondent-State will have to give hearing to the petitioners regarding their grievances centering round the revision of pay-scales of both teaching and non teaching staff of Non-Government Primary Teachers Training Colleges in the light of the recommendations of Third Pay Commission and it will be open to the petitioners to represent to the 1st respondent seeking appropriate parity and even something more from the first respondent and after hearing the petitioners' grievance, proper pay rules shall be promulgated by the first respondent so far as the grievances of the petitioners are concerned. For that purpose, the petitioners will be entitled to file suitable representation to the 1st respondent after final report of the pay commission is received. Thereafter, the first respondent shall fix up suitable date for hearing the petitioners and after hearing them, shall decide their representation and intimate to them the decision thereon. In my view, these directions would strike a golden mean and would meet the ends of justice. Rule is accordingly made absolute.