

**(2005) 06 GUJ CK 0011**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 2519 of 1996

Induben B. Rawal and Others

APPELLANT

Vs

Sharda Shishu Vihar Primary School and Others

RESPONDENT

**Date of Decision :** 27-06-2005

**Acts Referred:**

Bombay Primary Education Act, 1947 — Section 40B(5), 40E, 40F, 40F(4), 40G(2)  
Constitution of India, 1950 — Article 226, 227

**Citation :** (2005) 06 GUJ CK 0011

**Hon'ble Judges :** A.S. Dave, J

**Bench :** Single Bench

**Advocate :** Chetan K. Pandya, for the Appellant; Baiju Joshi, for respondent No. 1, Manisha L. Shah, Assistant Government Pleader and D.M. Bambhania, for the Respondent

## Judgement

A.S. Dave, J.—This writ petition under Articles 226 and 227 of the Constitution of India is filed against order dated 10th July 1995 passed by the Gujarat Primary Education Tribunal in Application No. 353 of 1989, by which, the application filed by the petitioners and other 13 teachers with regard to grant of pay-scale as determined by the Desai Pay Commission and the Central Pay Commission with effect from 1.1.1973 and 1.1.1986 and as per the resolutions passed by the State Government on 28th December 1976 and 25th September 1987.

2. The petitioners submitted that the school-management is duty bound to follow the Rules framed under the Bombay Primary Education Act and Schedule F to the said Rules. Initially, the petitioners had filed Special Civil Application No. 5540 of 1986 in the High Court of Gujarat. However, at the relevant point of time, since the Gujarat Primary Education Tribunal was constituted and came into existence on 22nd May 1986, the matter was transferred to the Tribunal for adjudication of the issues involved in the petition. After considering the contentions and submissions made by the parties, the Tribunal rejected the claim of the petitioners and declared that the Tribunal has no jurisdiction to entertain such demands prior to 22.5.1986 and the said demands were not accepted. It was

further held that the Tribunal had jurisdiction to decide the matter only after 22.5.1996. So far as the present case is concerned, it was held that the petition was filed in the High Court on 16th October 1986 and, therefore, it was decided that, except Ansuyaben Trivedi, other applicants were entitled to get difference of salary as per the Desai Pay Commission from 22.5.1986 to 25.9.1987 and from 29.5.1985 till the date they are entitled to get the revised pay-scale and allowances as per the Central Pay Commission.

3. Except petitioner Nos. 10 and 13, other petitioners have accepted and entered into an agreement with the respondents to get the salary and other allowances and difference of salary as per the judgment of the Tribunal.

4. Shri Chetan Pandya, learned counsel for the petitioners, submitted that the claim of the petitioners prior to constitution of the Gujarat Primary Education Tribunal ought to have been adjudicated by the Tribunal as per the provisions of Section 40F of the Bombay Primary Education Act, 1947. Sub-section (4) of Section 40F relates to the duty of the Tribunal to entertain and decide disputes of the nature referred to in Section 40E and deal with and decide all applications and proceedings made or transferred to it under Sub-section (2) of Section 40G and also entertain and decide appeal made under Sub-section (5) of Section 40B. In this view of the matter, according to Shri Pandya, the claim of the petitioners with regard to grant of salary as per the Desai Pay Commission and the pay revision in accordance with the Government Resolutions dated 28.12.1976 and 25.9.1987 issued by the Education Department, ought to have been decided by the Tribunal irrespective the fact of constitution of the Gujarat Primary Education Tribunal with effect from 22.5.1986. The learned advocate for the petitioners relied upon the judgment of this Court in Ramjibhai Morarbhai Patel Vs. Additional Development Commissioner and Another, to strengthen his submission about the pay-scale to be given to the primary teachers as fixed by the State Government from time to time for the teachers serving in public or private primary schools. He has, further, submitted that, as per the Government Resolution dated 25.9.1987, the teachers of the recognized private primary schools are entitled to pay-scale and allowances as recommended by the Central Pay Commission and prior thereto, there were also directions to give pay-scale and allowances according to the Desai Pay Commission.

5. Shri Pandya, learned counsel for the petitioners, has further submitted that, in the matter of grant of pay-scale or difference and arrears of pay-scale and other allowances, the Tribunal has erred in adopting cut-off date as 22.5.1986 the day on which the Tribunal was constituted. Even otherwise also, as per the requirement of Schedule F to the Bombay Primary Education Rules, the school management is duty bound to follow the Rules and Regulations and other Government Resolutions and circulars framed by the Government from time to time.

6. Shri Baiju Joshi, learned counsel appearing for respondent No. 1 has defended the order of the Tribunal on the ground that initially the petitioners filed Special

Civil Application No. 5594 of 1986 on 16.10.1986 and that was the first time when the petitioners agitated their grievances and, therefore, according to him, the decision of the Tribunal to curtail the benefits to be given to the petitioners with effect from 22.5.1986 is just, reasonable and in accordance with law. In support of his argument, Shri Joshi relied upon the decision of this Court in *State of Gujarat and Ors. v. Arvindbhai Saburbhai Solanki and Ors.*, 2003 (4) GLR p.3309 and submitted that the effect of the order of the Tribunal with regard to payment of arrears of salary is the date on which the application was made by the petitioners for their claim. He has specifically relied upon paragraphs 7 and 8 of the said judgment and submitted that, in the present case, the claim of the petitioners was delayed by at least ten years from the date of Government Resolution on 28.12.1976 with regard to pay-scale of primary teachers on implementation of the Desai Pay Commission with effect from 1.1.1973. He has further drawn the attention of this Court to the requirement of payment of salary to the teachers of primary school with regard to getting prior sanction of the Director, Primary Education, before implementation of the revised or recommended pay-scale of Desai Pay Commission to the primary teachers of recognized private schools. He has, on instructions, submitted that, except petitioners Nos. 10 and 13, others have as such no grievances against the order of the Tribunal with regard to date of grant of arrears of salary and other allowances as claimed.

7. Mrs. Manisha L. Shah, learned Assistant Government Pleader, has submitted that there is no error of law in exercise of power by the Tribunal and, therefore, according to her, this is not a fit case warranting exercise of power under Articles 226 and 227 of the Constitution of India.

8. Having heard learned counsel for the parties and perused the record, I do not find any substance in the contentions raised by learned advocate for the petitioners, except with regard to refusal by the Tribunal to exercise the jurisdiction for the cases where the cause of action had arisen prior to the constitution of the Tribunal. The issue is with regard to the effect given by the Tribunal for grant of pay-scale to the petitioners from 22.5.1986 the day on which the Tribunal was constituted and had become functional. In the facts and circumstances of the case, when the application submitted by the petitioners was delayed by about ten years. For the first time the petitioners had agitated their claim only before the High Court when they had filed Special Civil Application and the matter was transferred to the Tribunal in the year 1986.

9. It is necessary to advert to some of the provisions of the Bombay Primary Education Act, 1947 to decide the controversy. Section 40E of the said Act reads as under:

40E Dispute to be decided by Tribunal.

Where there is any dispute between the manager of a recognized private primary school and teacher in service of such school, which is connected with the

conditions of service of such teacher, the manager or, as the case may be, the teacher may make an application to the Tribunal constituted u/s 40F for the decision of the dispute.

Sub-section (4) of Section 40F of the Primary Education Act reads as under:

(4) It shall be the duty of the Tribunal to entertain and decide disputes of the nature referred to in Section 40E and deal with and decide all applications and proceedings made or transferred to it under Sub-section (2) of Section 40G and also entertain and decide appeal made under Sub-section (5) of Section 40B.

Sub-section (2) of Section 40G of the said Act reads as under:

40G. Bar of Jurisdiction of courts

1. xx xx

2. All suits and proceedings between the manager of a recognized private primary school and a teacher in service, of such school relating to disputes connected with the conditions of service of such teacher; which are pending in any civil court on the date of the commencement of the Bombay Primary Education (Gujarat Amendment) Ordinance, 1986 Guj Ord. 6 1986, shall be transferred to and continued before the Tribunal.

Provided that nothing in this section shall apply to execution proceedings and appeals arising out of decrees or order passed by such court before the commencement of the Bombay Primary Education (Gujarat Amendment) Ordinance, 1986 (Guj. Ord. 6 of 1986), and such execution proceedings and appeals shall be decided and disposed of as if the Bombay Primary Education (Gujarat Amendment) act, 1986 (Guj. 24 of 1986), had not been passed.

The Tribunal has jurisdiction to entertain and decide disputes of the nature referred to clause 4 of Section 40F. Not only that, as per the provisions of Section 40F, the Tribunal shall have jurisdiction to settle, decide and deal with any question which is by or under this Chapter required to be settled, decided or dealt with by the Tribunal. It is clear from the above referred Section 40E, Sub-section (4) of Section 40F and Sub-section (2) of Section 40G that there is no bar on the Tribunal to decide the disputes which are referred to or transferred to it even before the date of constitution of the Tribunal. Sub-section (4) of Section 40F makes it clear that the Tribunal has to decide all applications and proceedings made or transferred to it under Sub-section (2) of Section 40G and, therefore, as per the requirement of Sub-section (2) of Section 40G, all suits and proceedings between the Manager of a recognized private primary school and a teacher in service relating to disputes connected with the conditions of service of such teacher, which are pending in any Civil Court on the date of commencement of the Bombay Primary Education (Gujarat Amendment) Ordinance, 1986 shall be transferred to and continued before the Tribunal. Proviso to Sub-section (2) of Section 40G provides that nothing in this section shall apply to execution proceedings and appeals arising out of decrees or order passed by such civil

court before constitution of the Tribunal.

In view of the above statutory provisions, it becomes clear that there is no bar for exercise of the jurisdiction by the Tribunal qua the proceedings transferred from the Civil Courts, where the claim lodged may have been prior to the date of constitution of the Tribunal, no such embargo can be put for the application filed before the Tribunal, after its constitution, but the claim or the cause of action in such application may have arisen prior to 22.5.1986 i.e the date when the Tribunal came into existence, subject to plea of limitation and reasonable explanation of delay, if any, for filing such application.

In view of the above, it cannot be said that any embargo is imposed upon the Primary Education Tribunal to decide the matters of the claims which had arisen before constitution of the Tribunal. To this extent, the view of the Tribunal that it has only jurisdiction to decide the matters pending from the date of constitution of the Tribunal is illegal, erroneous and contrary to the provisions of Sub-section (4) of Section 40F of the Act and it requires to be quashed and set aside and, accordingly, the above conclusion of the Tribunal is declared illegal and invalid.

The rest of the order is not disturbed for the reasons stated hereinbelow

10. In the present case, the claim made by the petitioners is only in the year 1986 and, therefore, the direction issued by the Tribunal with regard to the claim made by the petitioners on the basis of the Government Resolution dated 25.9.1987 is just and proper and it is also in consonance with the well settled principles of the power of the Court to decide the issue in the matter of grant of pay-scale, allowances and arrears of pay- scale and allowances. In the present case, it is an admitted position that the grievance agitated by the petitioners about the pay- scale on the basis of the Desai Pay Commission and the Central Pay Commission was in the year 1986 by filing Special Civil Application No. 5540 of 1986 on 16.10.1986, which came to be transferred to the Tribunal and, therefore, the order passed by the Tribunal cannot be said to be in any manner unreasonable or contrary to the provisions of law. Even in the matter of motor accidents claims, the award or decision is given effect from the date of application. In the present case, when, as per the instructions of learned counsel for respondent No. 1, except petitioners Nos. 10 and 13, others have accepted the judgment of the Tribunal, and rightly so, the perseverance of petitioner Nos. 10 and 13 on the issue of getting revised pay-scale as per the Desai Pay Commission and the Central Pay Commission with effect from 1.1.1973 and 1.1.1986 respectively, is not justified, since, before filing of Special Civil Application No. 5540 of 1986, at no point of time, any grievance was made. In the circumstances, so far as the issue of jurisdiction of the Tribunal with regard to Section 40F of the Act and power to take decision on the issues prior to 22.5.1986 is concerned, it is declared that u/s 40E read with Section 40F(4) of the Bombay Primary Education Act, the Tribunal has jurisdiction to adjudicate issues even prior to the date of its constitution. However, in the facts and circumstances of the case, the claim made by the petitioners is only in the year

1986 and, therefore, the direction issued by the Tribunal with regard to the claim made by the petitioners on the basis of the Government Resolution dated 25.9.1987 is just and proper and does not require any interference by this Court.

11. In the result, the petition is partly allowed. Rule is made absolute accordingly with no order as to costs.