

(2022) 07 GUJ CK 0020

In the Gujarat High Court

Case No : R/Special Civil Application No. 2218 Of 2019

Maksudbhai Abdulrasul Mansuri

APPELLANT

Vs

State Of Gujarat & 4 Other(S)

RESPONDENT

Date of Decision : 11-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 07 GUJ CK 0020

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Tejal A Vash, Utkarsh Sharma, DK Chaudhari, Niyati Vaishnav, Inakin M Raval

Final Decision : ?Dismissed

Judgement

Biren Vaishnav, J

1. RULE returnable forthwith. Mr.Utkarsh Sharma learned AGP waives service of notice of Rule on behalf of the respondent Nos.1 and 2, Ms.Niyati Vaishnav learned advocate for Mr.Pinakin Raval learned advocate waives service of notice of Rule on behalf of the respondent no.3, Mr.D.K.Chaudhary learned advocate waives service of notice of Rule on behalf of the respondent No.5. Though served, nobody appears for respondent no.4.

2. With the consent of learned advocates for the respective parties, the petition is taken up for final hearing.

3. Heard Ms.Tejal Vashi learned advocate for the petitioner and the concerned advocates for the respective respondents.

4. By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the communication dated 08.01.2019, by which, he was declared as surplus at Prantiya School and expected to be transferred. That was because, according to him, by virtue of the order dated 20.06.2014 passed

in Special Civil Application No.8644 of 2014, the respondent no.5 had sought placement at Prantiya. It appears that after having secured placement at Prantiya, by virtue of an interim order dated 20.06.2014 passed in Special Civil Application No.8644 of 2019, the respondent no.5 on 10.11.2017, based on this order, requested the Court that since her grievance does not survive, the petition be disposed of. The petition was disposed of. However, in the present petition, by an order dated 12.02.2019, the Court had protected the petitioner by passing the following order:

" Heard learned advocate Ms. Nirali Oza for learned advocate Ms. Tejal Vashi for the petitioner and learned Assistant Government Pleader Mr. K. M. Antani for the respondent state, on service of copy of the petition in advance.

2. The petitioner who is Vidhya Sayahak seeks to set aside order dated 8.1.2019 passed by respondent No.4, whereby, according to the petitioner, he is declared surplus.

3. It was submitted by learned advocate for the petitioner that one Rathod Dakshaben Ashwinchandra who happens to be Vidhya Sahayak in the very subject serving in the same school where the petitioner has been, had an occasion to file Special Civil Application 8644 of 2014, in which while issuing Notice on 20. 6.2014, this court granted ad interim relief directing the respondent No.3 to allow the said petitioner Rathod Dakshaben Ashwinchandra to participate in the Upper Primary Section Camp to be organised on 21.6.2014, which was however made subject to final outcome of that petition. The said petition was, submitted learned advocate, surreptitiously withdrawn as recorded in order dated 10.11.2017.

4. It was submitted that now in place of said Rathod Dakshaben Ashwinchandra, the petitioner is sought to be declared surplus. On the other hand learned Assistant Government Pleader questioned entitlement of relief to the petitioner on the ground that what is styled as order dated 8.1.2019 is only yadi whereby the petitioner is shown in the statement of surplus.

5. Essentially it is not possible to make any distinction as sought to be suggested by learned Assistant Government Pleader. The yadi declaring the petitioner as surplus on the contrary would indicate that the consequential order is offing. The apprehension is prima facie well founded.

6. Notice returnable on 7.3.2019.

7. By way of ad-interim relief, it is directed that the status quo with regard to the service conditions of the petitioner shall be maintained by the respondent authorities.

Direct service is permitted."

5. Subsequent developments indicate as pointed out by Shri Chaudhary learned advocate for the respondent no.5 that by virtue of the respondent no.5 having

been permitted to attend the camp on 27.11.2020, she has been transferred from Prantiya to Koteswar. In view of this development, the issue would become academic.

6. Accordingly, the order dated 08.01.2019 is hereby quashed and set aside. The interim order shall operate as final order. Petition is disposed of in the above terms. Rule is made absolute to the aforesaid extent.