

(2016) 02 GUJ CK 0209

In the Gujarat High Court

Case No : Special Civil Application No. 10826 of 2003

Mukeshkumar Jaswantbhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 26-02-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 226

Citation : (2016) 02 GUJ CK 0209

Hon'ble Judges : V.M. Pancholi, J.

Bench : Single Bench

Advocate : Bipin P. Jasani, Advocate, for the Appellant; Swapneshwar Gautam, AGP, for the Respondent

Final Decision : Allowed

Judgement

V.M. Pancholi, J.—1. This petition is filed under Article 226 of the Constitution of India, wherein, the petitioner has prayed for the following reliefs:

"(A) YOUR LORDSHIPS may be pleased to admit and allow the present petition with cost.

(B) YOUR LORDSHIPS may be pleased to issue appropriate writ, order or direction by quashing and setting aside the impugned action of the respondent No. 3 by alteration in condition of service by converting the post of Assistant Teacher of petitioner to Sahayak and for withholding the regular monthly salary for the post of Assistant Teacher in the pay scale of Rs. 5000-8000 and raising the recovery as violative of Article 14 and 16 of the Constitution of India and against the principle of natural justice and further be pleased to declare that the petitioner is entitled and eligible to get the regular monthly salary in the pay scale of Rs. 5000-8000 as Assistant Teacher.

(C) YOUR LORDSHIPS may be pleased to issue appropriate writ, order or direction, by staying the impugned order of the respondent No. 4 as per Annexure-J for further implementation, execution and operation and further be

pleased to direct the respondent No. 3 and 4 not to convert the post of Assistant Teacher of petitioner in any manner and to pay the regular monthly salary in the pay scale Rs. 5000-8000 as Assistant Teacher to the petitioner, pending admission, hearing and final disposal of this petition."

2. Heard learned advocate Mr. Bipin Jasani for the petitioner and learned AGP Mr. Swapneshwar Gautam for respondents No. 1 to 3. Though served, respondent No. 4 has not filed appearance.

3. Learned advocate for the petitioner submitted that respondent No. 4 School is registered as non granted Uchchatar Uttar Buniyadi Ashram Shala under the provisions of Gujarat Secondary Education Act and the Regulations framed there under. The said institution is availing the grant from the State Government. The Government provides grants inclusive of direct payment of salary of the petitioner as well as other teaching and non teaching staff. It is pointed out from the documents annexed with the petition that the respondent No. 2 issued NOC for recruitment of Assistant Teacher having qualification of B.A., B.Ed. Hindi and Gujarati subjects in open category to the respondent No. 4 by his communication dated 10.01.2002. Respondent No. 4 has therefore issued the advertisement in the concerned newspaper inviting applications for the post of Assistant Teacher in secondary section having subjects B.A., B.Ed., Hindi and Gujarati. Petitioner was qualified and therefore, he applied for the said post. He was called in the interview and after following the due process, petitioner was appointed on the post of Assistant Teacher by appointment letter dated 17.08.2002 and he was entitled to the salary and other allowances as per the Government rules and regulations. The appointment of the petitioner was also approved by the respondent No. 2. Petitioner joined the service as Assistant Teacher with the respondent No. 4-Ashramshala and he was getting salary in the pay scale of Rs. 5000-8000/-. However, suddenly by an impugned order dated 11.03.2003, the respondent No. 4 informed the petitioner that as per the Government Resolution 02.07.1999, new appointment is required to be made as Shikshan Sahayak and the employee is required to be paid fixed pay as stated in the said Government Resolution and therefore, as per the instruction received from the concerned respondent authority, Rs. 10,450/- is required to be recovered from the petitioner. Hence, he was directed to deposit the said amount. Petitioner therefore immediately preferred this petition and this Court by an order dated 16.02.2004 admitted the petition and stayed the impugned order produced at Annexure: G.

4. Learned advocate Mr. Jasani submitted that Government Resolution dated 02.07.1999 is not applicable to the petitioner and the respondent has wrongly relied upon the same. In fact, NOC was granted by the respondent No. 2 for the post of Assistant Teacher. Advertisement was accordingly issued. Interview was held for the post of Assistant Teacher and appointment of the petitioner was also made on the post of Assistant Teacher, which was duly approved by the respondent No. 2. Therefore, it was not proper on the part of the respondent

authorities to contend that appointment of the petitioner was on the post of Shikshan Sahayak and that too, on fixed salary. It is also submitted by the learned advocate for the petitioner that petitioner is working on the post of the Assistant Teacher till then and in view of the interim order passed by this Court, no recovery is made from the petitioner. He therefore submitted that present petition be allowed by quashing and setting aside the impugned order.

5. On the other hand, learned AGP Mr. Gautam appearing for the respondent authorities referred to the averments made in the affidavit filed on behalf of the respondent No. 3 and submitted that petitioner was appointed as Shikshan Sahayak in Uchchatar Uttar Buniyadi Ashram Shala run by the respondent No. 4. Learned AGP referred to the Government Resolution dated 02.07.1999 and submitted that as per the said resolution, the Government has decided to appoint Shikshan Sahayak on fixed pay basis for initial period of five years. Learned AGP has referred to the said Government Resolution, which is produced at page 35 of the compilation. He further submitted that the petitioner has wrongly drawn the salary in the pay scale of Rs. 5000-8000. It was a mistake, which was subsequently rectified when it came to the notice of the authority. Respondent No. 3 therefore, informed the respondent No. 4 to recover the salary which was wrongly given to the petitioner. Accordingly, the respondent No. 4 has passed the impugned order and thereby, no illegality is committed by the respondent authority. It is contended that mistake if committed can be rectified at any time by the authority and therefore, petitioner is not entitled for any relief as prayed for in the petition and hence, the petition be dismissed.

6. I have considered the arguments advanced on behalf of learned advocates appearing for the concerned parties. I have also gone through the material produced on record. From the record, it has emerged that the respondent No. 2-Commissioner has issued NOC to the respondent No. 4 appointing Assistant Teacher for the subjects of Hindi and Gujarati. The said document is produced at page 16. On the basis NOC given by the respondent No. 2, the respondent No. 4 issued the advertisement in the concerned newspaper inviting the applications from the interested qualified persons for the post of Assistant Teacher, B.A., B.Ed. for the subjects of Hindi and Gujarati. Said advertisement is produced at page 19. Petitioner was called for the interview on 18.05.2002. The said call letter is produced at page 20. Petitioner was called for the interview for the post of Assistant Teacher. After the petitioner was selected, the respondent No. 2-Commissioner by a letter dated 16.08.2002 granted sanction to the respondent No. 4 School for the appointment of the petitioner on the post of Assistant Teacher. The said document is produced at page 21. On the basis of the approval granted by the respondent No. 2, petitioner was appointed on 17.08.2002 on the post of Assistant Teacher. Appointment order is produced at page 23. Petitioner has accepted the said appointment and was working as Assistant Teacher with the respondent No. 4. Thus, from the documentary evidences produced on record, it is crystal clear that petitioner was appointed on the post of Assistant Teacher and not on the post of Shikshan Sahayak as contended by the learned

AGP. It is also clear that Government Resolution dated 02.07.1999 is not applicable in the case of the petitioner because he was appointed on the post of Assistant Teacher. It is not the case of even the respondent authority that Assistant Teacher would not be entitled to get the salary in the pay scale of Rs. 5000-8000. The only contention taken by the respondent authority is that as per Government Resolution dated 02.07.1999, appointment is required to be made in the secondary section as Shikshan Sahayak on fixed salary of Rs. 4000/- for a period of 5 years. However, as observed herein above, when the NOC was given for the post of Assistant Teacher, advertisement was issued for the post of Assistant Teacher, interview was also held for the said post, sanction was granted by the Commissioner for the said post and when the petitioner was appointed on the post of Assistant Teacher, it was not proper on the part of the authority to contend that petitioner was appointed on the post of Shikshan Sahayak on fixed salary. Thus, the impugned order passed by the respondent authority is required to be quashed and set aside. If the impugned order is quashed and set aside, respondents are not entitled to make any recovery from the petitioner. At this stage, it is also required to be noted that the order of recovery was passed by the respondent No. 4 without even issuance of notice to the petitioner and no opportunity of being heard was given to the petitioner. Therefore also, the said order is required to be quashed and set aside.

7. In view of the aforesaid discussion, impugned order is quashed and set aside. Petitioner is entitled to claim the benefit as Assistant Teacher, the post on which he was appointed. Petition is accordingly allowed. Rule is made absolute. No order as to costs.