
(2011) 04 GUJ CK 0124
In the Gujarat High Court

Case No : Special Civil Application No's. 12478, 12479 and 13415 of 2010

Narsinh Hathibhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Citation : (2011) 04 GUJ CK 0124

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Dipen A. Desai, for the Appellant; Maulik G. Nanavati, Asstt. Government Pleader for Respondent 1 and Devang Vyas, for Respondent 4, for the Respondent

Judgement

Abhilasha Kumari, J.—The Petitioners herein are Teachers working in Ashramshalas in the State of Gujarat. The grievance of the Petitioners is that their salaries are not being paid as the State Government has not accorded approval to their initial appointments.

2. Rule has been issued in all the petitions and interim relief, directing payment of arrears of salary and continued payment of salary, has been granted, which is still in force.

3. Similarly situated teachers had filed a number of petitions before this Court, being Special Civil Application No. 14957 of 2010 and cognate matters, which came to be disposed of by a common order dated 25.01.2011 of this Court. Mr. Dipan A. Desai, learned advocate for the Petitioners and Mr. Maulik G. Nanavati, learned Assistant Government Pleader, both agree that the issue involved in the present petitions being similar, they can be disposed of in light of the abovementioned order.

4. The relevant part of the common order dated 25.01.2011 passed in Special Civil Application No. 14957 of 2010 and cognate matters reads thus:

2. Today when the matters have been taken up for hearing, Mr. Maulik G. Nanavati, learned Assistant Government Pleader has made a statement, upon instructions from the Secretary, Tribal Development, State of Gujarat. The said statement is reproduced hereinbelow:

The State Government would withdraw its resolution/order dated 04.08.2010 impugned in some of the petitions, to the extent that the Government has refused to approve the engagement of the service of the Petitioners and other teaching staff of Ashramshalas across the State, on the ground that their engagement by the respective Trust/Societies is not in accordance with the terms and conditions mentioned in the No Objection Certificate issued by the Commissioner, Tribal Development, or is otherwise not proper and legal. The Government would also withdraw impugned order dated 16.09.2010 and all other consequential orders passed by the State authorities. Considering that a large number of petitions have been filed before this Court by such teachers whose engagement in service has not been approved as well as the numerous representations received from them praying for reconsideration of its decision by the State Government, the Department would constitute a Committee to reconsider the issue of regularity/ irregularity in the engagement of these teachers by the respective Ashramshalas. The Committee would comprise of 3 officers of the State Government - one officer from the Department of Tribal Development not below the rank of Deputy Secretary, one from the office of the Commissioner, Tribal Development not below the rank of Deputy Director and one from the Education Department or the Tribal Research and Training Institute. The Committee would issue individual notices to each of the Ashramshalas across the State, calling for a response from them as to whether the teaching staff recruited by it is as per the conditions enumerated in the No Objection Certificate, whether the recruitment procedure prescribed by law has been scrupulously followed, and whether the recruitment is otherwise in accordance with the rules and guidelines. If it is found that any person has been appointed by the Ashramshala de-hors the prescribed conditions, or by not following the prescribed procedure, or that the appointment of any person is otherwise found to be not in consonance with rules and law on the subject, an opportunity of hearing would be given to both the management of the Ashramshalas and the concerned person/Petitioner. After affording a due opportunity of hearing to the management of each Ashramshala and also the person whose appointment is not found to be proper and considering their respective submissions, the Committee shall give a report to the Secretary, Tribal Development. After considering the report of the Committee, the Government shall take a decision on whether to frame a one time scheme to regularize the engagement of those teachers/ Petitioners who have been appointed irregularly by the management of the Ashramshalas, subject to such conditions as are found reasonable. It is, however, made clear that this concession on the part of the Government of reconsidering the cases of the Petitioners and other teaching members of the concerned Ashramshalas does not confer any legal, equitable or other indefeasible right in

their favour of being granted approval. Also, this concession may not be construed as any promise being held out by the Government to favourably consider their respective cases.

3. The learned Assistant Government Pleader has submitted that the concession granted by the State Government to reconsider the cases of the Petitioners and other teaching staff whose appointments by the respective Ashramshalas have not been granted approval, is a one-time measure and that it may not be construed as a promise held out by the Government for favourable consideration of the cases of the Petitioners.

5. In light of the statement made by the learned Assistant Government Pleader as recorded hereinabove and considering the submissions made by the learned Counsel for the respective Petitioners, this Court does not propose to enter into the merits of the case, therefore, the following order is passed:

(1) Upon withdrawal of resolutions/orders dated 04.08.2010 and 16.09.2010 by the State Government, all consequential orders of termination of service of the Petitioners passed by the management of different Ashramshalas across the State are quashed and set aside and the Petitioners will continue in service and be paid salary for the intervening period, unless their services have been discontinued by the Ashramshalas for any other reason.

(2) Any order regarding stoppage of salary of the teachers/Petitioners passed by the respective Ashramshalas as a consequence of orders dated 04.08.2010 and 16.09.2010, and any other consequential orders passed by the State authorities, are hereby quashed and set aside.

(3) Till such time as the State Government takes a final decision regarding grant/non-grant of approval to the appointments of teaching staff in different Ashramshalas, including the Petitioners, the service conditions of the Petitioners shall not be changed or altered in any manner, to their disadvantage.

(4) The State Government shall release the necessary grant for payment of the salaries of Assistant Teachers working in Ashramshalas, including the Petitioners, till such time as the final decision is taken.

(5) The managements of different Ashramshalas shall co-operate with the State Government by providing necessary documents regarding all persons employed by them, when called upon to do so.

(6) As these petitions have not been decided on merits, the rights and contentions available to the respective parties are kept open.

(7) As the statement recorded hereinabove envisages reconsideration of the appointments of the teachers/Petitioners in Ashramshalas across the State, it may not be considered as a promise held out by the State Government to any of them.

(8) Upon a final decision being taken by the State Government, if any adverse

order is passed against any of the Petitioners, the concerned Petitioner shall be given an intimation in writing by RPAD immediately, and the said order shall not be implemented for a period of one month from the date of receipt of the order.

6. With the above directions, all these petitions stand disposed of. Direct Service of this order is permitted.

4. As the issues involved in the present petitions are similar to those that arose in the petitions that have been disposed of by the abovementioned order, it is directed that the directions contained in Paragraph-5 of the order dated 25.01.2011 shall apply in the case of the present Petitioners, as well. With the above directions, the petitions are disposed of.

5. Rule is discharged. There shall be no orders as to costs.