
(2022) 07 GUJ CK 0058

In the Gujarat High Court

Case No : R/Special Civil Application No. 8052, 8055, 8156, 8161, 8165,, 8167, 8169,, 8172, 8175, 8176, 9062, 9064, 9338, 9341, 9345,, 9344, 9483, 9445, 9444, 9447, 9496, 9493, 9495, 9533, 9581, 9602, 9613, 9606, 9645, 9619, 9662, 9659, 9663, 9676, 9710, 9711, 9

Patel Chandrikaben Gokaldas

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 18-07-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 226, 229

Citation : (2022) 07 GUJ CK 0058

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Gaurav Chudasama, P.P.Majmudar, Shalin Mehta, Sudhanshu Jha, Shikha Panchal, N.R.Desai, Bhavesh J. Patel, Manisha Lavkumar Shah, Shruti Pathak, Utkarsh Sharma, P.S.Champaneri

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1 By way of these petitions under Article 226 of the Constitution of India, the petitioners who were working as primary teachers have challenged Clause-7 of Chapter-H of the New Transfer Policy of the State dated 01.04.2022. According to the petitioners, the policy to the extent which provides that as and when the deputation period of Block Resource Clusters BRC/CRC/URC are over and when their time for repatriation comes, the clause provides that they shall be repatriated to their mother school and their initial seniority shall be counted from the date of their being in that mother school, is not only bad on count of the principle of legitimate expectation, promissory estoppel, that it is unreasonable, and that it is retrospective in operation.

2 The group of petitions was argued irrespective of individual facts in each petition by the learned counsels for the respective parties, inasmuch as, there

was a consensus that irrespective of the facts of each individual case, arguments would be confined to the validity of Clause-7 of Chapter-H of the Policy of Transfer dated 01.04.2022.

3 The learned counsels for the petitioners who have argued at length for the petitioners are Mr.Shalin Mehta, learned Senior Advocate assisted by Ms.Shikha Panchal, Mr.Gaurav Chudasama and Mr.P.P,Majmudar, learned counsel for the respective parties. For the State arguments have been advanced by Ms.Manisha Lavkumar Shah, learned Government Pleader assisted by Ms. Shruti Pathak, learned Assistant Government Pleader for the State and also by Mr.Utkarsh Sharma, learned AGP.

4 Cause of action in each petition and compelling them to approach the Court is their respective transfer orders passed by the Competent Authorities dislodging the petitioners from their respective schools on account of the operation of Clause-7 of Chapter-H of the Government Policy of Transfer dated 01.04.2022.

5 Facts in brief would indicate that the State, prior to the policy of transfer dated 01.04.2022, had in place a policy circular of 23.05.2012 by which transfer policy of teachers was governed. In respect of such policy, Clause-25 of the policy provided that as and when a situation arises that a CRC / BRC had to be repatriated as a teacher, on the basis of his original seniority he would be repatriated to his mother school if there was a vacancy. In absence of a vacancy in the mother school, he or she would alternatively be placed on a vacant post of the pay-centre alternatively in absence of a vacancy at a pay-centre he would be placed at the vacant post of the same taluka and in the absence of vacancy there he would be posted at the post available in the nearby taluka. By the impugned Clause-7 of Chapter-H of the resolution dated 01.04.2022, the State Government tweaked the policy and by the Clause under challenge it provided that as and when BRCs/CRCs/URCs on the end of their deputation in the event of their repatriation would be placed at the original school / mother school only. As a result of the event of repatriation, such BRCs/CRCs being placed in the same school would result in a surplus or addition to the establishment of that school. Consequently, the junior teacher who is working in the school where the BRC/ CRC candidate has to be repatriated has to move out.

6 The learned counsels for the petitioners have submitted that this policy operates and causes heartburn and injustice to the teachers who have been placed in the schools little knowing that on repatriation of a BRC/CRC/URC they will have to be displaced as a result of this new policy Clause which was otherwise flexible. It was the case of the counsels for the petitioners that by virtue of the policy dated 23.05.2012, in case of repatriation of a BRC/CRC/URC it was not necessary for such a BRC/CRC/URC to be placed at the original school. In case of the original school being already occupied and the post not being vacant, such BRC/CRC would be placed in the vacant post at the pay-centre if not at the pay-centre then the same taluka and if not in the same taluka at a vacant post in a nearby taluka. This flexibility in the policy would not result in

automatic dislodgement of a teacher who has otherwise been placed by virtue of a transfer in the school sought to be placed by an incumbent BRC/CRC.

7 The learned counsels for the petitioners would submit that by virtue of the Clause impugned i.e. Clause-7 of Chapter-H, now as a matter of right a BRC or a CRC on repatriation has to be placed in the original school and even if there is no vacancy, the teacher posted against the vacancy has to move out. For instance, it is the case of the petitioners that many of the petitioners have opted for the place where these BRCs/CRCs were working as such schools were nearby the schools where their spouse was working. By virtue of the operation of Clause-7, the very intention of the policy of Couple Transfer is frustrated.

7.1 The learned counsels for the petitioners would further submit that the BRCs/ CRCs have accepted their deputation to other schools with open eyes and at that point of time not being aware or being aware and responsible to the fact that when the tenure of deputation would end it would not necessarily result in repatriation to their mother school.

7.2 The other ground of challenge to these transfers made by virtue of the implementation of Clause-7 of the Policy is on the ground that the respondents are trying to implement the rules retrospectively when the circular itself in the last paragraph of its enunciation of the policy suggest that it would be enforced henceforth. When the petitioners were transferred to the places of their choice or options, the policy that was in place was that of 23.05.2012 which had no clause envisaged in the present policy and therefore, retrospective implementation of the policy is in violation of Article 14 of the Constitution of India.

7.3 The case of the petitioners also is that there is total non application of mind on behalf of the respondent – State, inasmuch as, after operating the policy, at the very vacancy where the BRC/CRC had been repatriated they have been again sent on deputations and the vacancies which were therefore given to those CRCs or BRCs have now again become vacant. For the purposes of challenging the policy on the ground of it being retrospective, reliance is placed on the decision of the Hon'ble Supreme Court in the case of M/s Shanti Conductors (p) Ltd & Anr vs. Assam State Electricity Board & Ors., reported in 2019 (19) SCC 529. Reliance is placed on paragraph 64 of the decision of the Hon'ble Supreme Court. Reliance is also placed on a decision of the Hon'ble Supreme Court in the case of M/s. Jai Mahakali Rolling Mills vs. Union of India & Ors., reported in 2017 (12) SCC 198., which explains the word "retrospective" to mean looking backwards contemplating what is passed etc. The submission is that the Circular dated 01.04.2022 cannot be made applicable to the transfer camps. The petitioners had at the relevant points accepted their transfers to the places which are not now sought to be filled in by the BRCs / CRCs when in fact even when the online options were displayed, these posts were shown as posts which were clear and vacant and not with a rider that such posts were vacant as a result of a deputation of a BRC and CRC therefore putting the petitioners to guard that in the event of the BRC / CRC returning, the petitioners have to return to their fold

or face transfer camps for being posted elsewhere.

8 Ms.Manisha Lavkumar, learned Government Pleader, through her written notes as well as an affidavit-in-reply, filed common to all cases in Special Civil Application No. 9062 of 2022 would take the Court through the historical perspective of the policy of transfer in relation to Clause-7 of Chapter-H of the new policy. Explaining briefly the concept of CRC/BRC, she would submit that the concept of deputation of teachers as Cluster Resource Coordinators and Block Resource Coordinators (for short CRCs/BRCs) was introduced at the time of 'Sarva Shiksha Abhiyan' Scheme. The Scheme was introduced by the Central Government and was adopted by the State Government. The teachers under this Scheme were deputed as Block Co-ordinators and Cluster Co-ordinators to ensure better functioning of schools within the State of Gujarat. The role of such Cluster Resource Co-ordinators and Block Resource Co-ordinators was outlined in the framework of implementation of 'Sarva Shiksha Abhiyan'.

8.1 Ms.Shah, learned Government Pleader, would further submit that the purpose of such deputation was for the development of the centre where the teachers were deputed with a purpose of developing a strong human resource pool. It was the duty of such co-ordinators of conducting regular school visits, organize teacher training and monthly meetings to discuss academic issues and design strategies for better school performance. The purpose was to improve the quality of education and these Co-ordinators would monitor the progress of quality of education in the schools in which they were deputed. The Scheme thereafter was replaced by a Scheme known as 'Samagra Shiksha' which had an over reaching programme extending from pre-school to class 12 with a broader goal of improving school effectiveness. The Scheme envisaged that it would subsume the Schemes of Sarva Shiksha Abhiyan for elementary education, Rashtriya Madhyamik Shiksha Abhiyan for secondary and higher secondary education and teacher education for capacity building of teachers. The concept of Block Resource Co-ordinators and Cluster Resource Co-ordinators was a concept where such appointments were made from amongst teachers or Vidhya Sahayaks who can perform the functions enumerated and they would play a key role in implementation of educational programmes. A Cluster would comprise of seven to eight schools and a Block would include within it seven to eight clusters. Reliance was placed on the appointment orders of such BRCs or CRCs whose appointments were made by the state Project Director of the Sarva Shiksha Abhiyan and the tenure of appointment of such BRC/CRC was for a maximum period of five years and such appointments were made on deputation. After completion of five years, the candidate was required to be repatriated to his parent school as a result of he having opted for being appointed as BRC/CRC while maintaining his or her lien in the school in which he or she was originally appointed.

8.2 Ms.Lavkumar, learned Government Pleader, would defend Clause-7 of Chapter-H of the policy of 01.04.2022 on the ground that as a result of the policy

circular dated 23.05.2012, what happened was issues were faced by teachers who were sent on deputation that on their repatriation they were unsure of being sent to their parent school where a vacancy would otherwise be filled in. In light of the policy resolution, if there was no vacancy in their parent school, they would be repatriated to the schools of nearby pay centres and in absence of a vacancy in the nearby pay centres, they would be repatriated to the taluka schools where a vacancy would occur. That resulted in a reluctance of the Vidhya Sahayaks showing their willingness to go on deputation for a period of five years and it was on account of these administrative exigencies that the need arose that when it was necessary for the State to appoint a larger number of BRCs and CRCs, a policy which would assure their repatriation to their lien post was framed. For the purpose of declaring surplus, it was therefore decided that upon their repatriation they shall be accommodated to their parent school. The teachers were declared surplus then were to give an option to select the school according to the vacancies available in the transfer camps. Such preference was to be exercised as per the seniority inter se among those declared surplus and such teachers could then choose their parent school in the successive transfer camp. She would further demonstrate by annexing a statement at the written arguments that the resolution maintained a fair play in terms of "Last In, First Out" as only those teachers who were appointed subsequent to the BRC/ CRC were likely to be affected in terms of service and that too in the eventuality of being junior most.

8.3 Ms.Lavkumar, learned Government Pleader would submit that transfer is an exigency of government service, a teacher cannot insist on working on a place of his or her choice at all times. Appointment orders made in case of the petitioners clearly stipulate the applicability of the government policies framed from time to time. Clause 25 of the earlier policy would therefore not create a legal or a fundamental or a vested right for a teacher to stay at the place where transferred for all times to come. The policy has undergone a change whereby a period of five years has resulted in the incident of repatriation and therefore, it cannot be said that the policy is retrospective, arbitrary, unreasonable or in contravention of the provisions of the Right of Children to Free & Compulsory Education Act, 2009.

8.4 Ms. Manisha Lavkumar, learned Government Pleader, has cited the following decisions in support of her submissions:

1 K.Phani Ramesh vs. Dy. Director, Navodaya Vidyalaya & Ors., reported in 2002 (9) SCC 506.

2 Kunal Nanda vs. Union of India & Anr., reported in 2000 (5) SCC 362.

3 Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey & Ors., reported in 2004 (12) SCC 299.

4 Union of India & Ors., vs. Janardhan Debanath & Anr., reported in 2004 (4) SCC 245.

5 National Hydroelectric Power Corporation Ltd vs. Shri Bhagwan & Anr., reported in 20011 (8) SCC 574.

6 Union of India vs. V.V.F. Ltd., reported in 2020 (20) SCC 57.

7 Ekta Shakti Foundation vs. Govt., reported in 2006 (10) SCC 337.

9 In light of these submissions made by the learned counsels, the short question that needs to be answered is whether Clause-7 of Chapter-H of the policy by the Government Resolution dated 01.04.2022 can be held to be bad on account of it being unreasonable, arbitrary on the ground of promissory estoppel and also on account of it operating retrospectively.

10 The State in its wisdom to promote Sarva Shiksha Abhiyan based on the concept and the spirit of the Right of Children To Free & Compulsory Education envisaged a policy known as 'Sarva Shiksha Abhiyan'. Under the policy, it was necessary for the State to man certain posts of teachers by Block Resource Co-ordinators or Cluster Resource Co-ordinators. This was in light of carrying forward the purpose of Right to Education Act. One of the clauses for management and monitoring of the Sarva Shiksha Abhiyan indicated that during the last few decades, schools supervision had grievously suffered due to insufficiency of staff and administrative neglect. It was under the S.S.A therefore, that this was sought to be remedied by establishment of BRCs and CRCs. It required periodic inspection and supervision of schools to observe the infrastructural facilities and the administrative aspects. Under this therefore a Block Resource Co-ordinator had a special staff of five to seven. There were a number of Cluster Resource Co-ordinators. For instance, every 15 villages had one Cluster Resource Co-ordinator and between these two staff resource centres a person would visit each school in every two months or a month with the purpose of providing curricular support to teachers. With this aspect of education in mind, options were sought from Vidhya Sahayaks to accept deputation as Cluster Co-ordinators in such blocks or clusters. Norms were made for creating and appointing of such Block Resource Co-ordinator and Cluster Resource Co-ordinators and it was clearly provided that their appointment would be on deputation. What was found based on the implementation of the Policy dated 23.05.2012 was that Vidhya Sahayaks were not showing their willingness to go on deputation for a period of five years and leave their schools / parent schools in absence of a guarantee that once their period of deputation would end they would be repatriated to the parent school.

10.1 The Clause of the Government Resolution dated 23.05.2012 provided that only if there was a vacancy in the parent school, would such repatriatee be posted otherwise he would then be placed depending on a vacancy either in the local pay centre or in the same taluka or in a taluka nearby.

10.2 The Court, in the year 2017 recognized this dichotomy in the policy where as a result of the provisions of Clause 10(v) and Clause 25 of the Government Resolution an observation was made that whenever any CRC/BRC is repatriated

to its parent department, he must be considered for posting in the same school from which he was sent on deputation.

11 If the preamble of the Resolution dated 01.04.2022 is read, it suggests an effort of the State to co-ordinate and merge all policies which were invoked at the point prior thereto and frame one collective coordinated policy resolution governing transfers in case of teachers.

12 Understanding the concept of BRC/CRC appointee would indicate that as and when a BRC/CRC is selected for appointment, he is sent on deputation to another school. Once having sent on deputation and not by way of a substantive appointment or transfer, in light of the very spirit and meaning of the term "Deputation", such an incumbent would hold a right to be placed back on the post on his term of deputation ending. The concept of deputation has well been explained by Ms.Shah, learned Government Pleader, by placing reliance on the decision in the case of K Phani Ramesh & Kunal Nanda (supra). Paras 3 and 6 of the respective decisions read as under:

"3. The grievance of the appellant is that the appellant had been deputed and that he had lien over the post with the 3rd respondent which was available for a period of two years from the date of deputation and that period not having elapsed when he went back, his parent employer's refusal to take him back on employment is bad. The facts cannot be disputed. If that is so, he should have been employed in St.Ann's High School on repatriation. The approach of the 3rd respondent is too technical and when this appellant's repatriation came to an end, he should have been accommodated in the parent department. The lien in the post is commensurate with his deputation which came to an end on 11-11-1993. Though the appellant had been sent on deputation by the 3rd respondent on 7-10-1991, that term actually came to an end on 11-11-1993. In the result, we direct the 3rd respondent to take back the appellant in its employment in its institution. However he will not be entitled to any back wages. The order made by the High Court is set aside and the appeal is allowed accordingly."

"6. On the legal submissions also made there are no merits whatsoever. It is well settled that unless the claim of the deputationist for a permanent absorption in the department where he works on deputation is based upon any statutory rule, regulation or order having the force of law, a deputationist cannot assert and succeed in any such claim for absorption. The basic principle underlying deputation itself is that the person concerned can always and at any time be repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation. The reference to the decision reported in Rameshwar Prasad v. M.D., U.P. Rajkiya Nirman Nigam Ltd is inappropriate since the consideration therein was in the light of the statutory Rules for absorption and the scope of those Rules. The claim that he need not be a graduate for

absorption and being a service candidate, on completing service of 10 years he is exempt from the requirement of possessing a degree needs mention, only to be rejected. The stand of the respondent Department that the absorption of a deputationist being one against the direct quota, the possession of basic educational qualification prescribed for direct recruitment i.e. a degree is a must and essential and that there could be no comparison of the claim of such a person with one to be dealt with on promotion of a candidate who is already in service in that Department is well merited and deserves to be sustained and we see no infirmity whatsoever in the said claim."

13 Even when the appointment orders of such teachers are read who are now before this Court raising the grievance as to the operation of the policy being made retrospective, the sample order which has been produced by the learned Government Pleader with written submissions would indicate that their appointment was governed by not only the policies invoked but the policies which may be framed from time to time. It was in light of such policy and condition in the appointment order of having accepted their appointments for being governed by the policies that the State may frame from time to time it is not open for the petitioners to contend that the resolution would apply to the hardship of the petitioners retrospectively. The event of deputation did occur which resulted in vacancies and then subsequent posting of the petitioners at the place where they are working prior to the impugned orders of transfer. That by itself, by virtue of the incident of repatriation occurring now would not make the policy retrospective. Even otherwise, it is settled that transfer is an exigency of service coupled with the condition in their appointment orders having accepted to be bound by policies framed from time to time, it is not open for the petitioners to contend that such a policy decision fails the test of legitimate expectation and promissory estoppel. Policy decisions are framed from time to time and as held by the Hon'ble Supreme Court in the case of Union of India vs. V.V.F Limited., which has considered the twin aspects of promissory estoppel and legitimate expectation and clearly observed that normally the doctrine of promissory estoppel is not accepted when it is based on executive necessity. Where public interest warrants, the principles of promissory estoppel cannot be invoked.

14 It will be in the fitness of things to reproduce para 21 of the decision in the case of VVF (supra) , which has considered the question of retrospectivity and the applicability of promissory estoppel in light of policy decisions. Para 21 of the decision reads as under:

"21. While considering the aforesaid questions and before considering the nature of the subsequent notification of 2008, few decisions of this Court on retrospectivity /clarificatory /applicability of promissory estoppel in the fiscal statute are required to be referred to, which are as under:

"21.1 In the case of Kasinka Trading (supra), in paragraphs 12, 20 and 23, it is observed and held as follows:

"12. It has been settled by this Court that the doctrine of promissory estoppel is applicable against the Government also particularly where it is necessary to prevent fraud or manifest injustice. The doctrine, however, cannot be pressed into aid to compel the Government or the public authority "to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make". There is preponderance of judicial opinion that to invoke the doctrine of promissory estoppel clear, sound and positive foundation must be laid in the petition itself by the party invoking the doctrine and that bald expressions, without any supporting material, to the effect that the doctrine is attracted because the party invoking the doctrine has altered its position relying on the assurance of the Government would not be sufficient to press into aid the doctrine. In our opinion, the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the results sought to be achieved and the public good at large, because while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must for ever be present to the mind of the court, while considering the applicability of the doctrine. The doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation.

20. The facts of the appeals before us are not analogous to the facts in *Indo-Afghan Agencies* [(1968) 2 SCR 366 : AIR 1968 SC 718] or *M.P. Sugar Mills* [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641] . In the first case the petitioner therein had acted upon the unequivocal promises held out to it and exported goods on the specific assurance given to it and it was in that fact situation that it was held that Textile Commissioner who had enunciated the scheme was bound by the assurance thereof and obliged to carry out the promise made thereunder. As already noticed, in the present batch of cases neither the notification is of an executive character nor does it represent a scheme designed to achieve a particular purpose. It was a notification issued in public interest and again withdrawn in public interest. So far as the second case (*M.P. Sugar Mills case* [(1979) 2 SCC 409 : 1979 SCC (Tax) 144 : (1979) 2 SCR 641]) is concerned the facts were totally different. In the correspondence exchanged between the State and the petitioners therein it was held out to the petitioners that the industry would be exempted from sales tax for a particular number of initial years but when the State sought to levy the sales tax it was held by this Court that it was precluded from doing so because of the categorical representation made by it to the petitioners through letters in writing, who had relied upon the same and set up the industry.

23. The appellants appear to be under the impression that even if, in the altered market conditions the continuance of the exemption may not have been justified, yet, Government was bound to continue it to give extra profit to them. That certainly was not the object with which the notification had been issued. The

withdrawal of exemption "in public interest" is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the "public interest". The courts, do not interfere with the fiscal policy where the Government acts in "public interest" and neither any fraud or lack of bona fides is alleged much less established. The Government has to be left free to determine the priorities in the matter of utilisation of finances and to act in the public interest while issuing or modifying or withdrawing an exemption notification under Section 25(1) of the Act."

Thus, it can be seen that this Court has specifically and clearly held that the doctrine of promissory estoppel cannot be invoked in the abstract and the courts are bound to consider all aspects including the objective to be achieved and the public good at large. It has been held that while considering the applicability of the doctrine, the courts have to do equity and the fundamental principles of equity must forever be present to the mind of the court, while considering the applicability of the doctrine. It is further held that the doctrine must yield when the equity so demands if it can be shown having regard to the facts and circumstances of the case that it would be inequitable to hold the Government or the public authority to its promise, assurance or representation. It is further held that an exemption notification does not make items which are subject to levy of customs duty etc. as items not leviable to such duty. It only suspends the levy and collection of customs duty, etc., wholly or partially and subject to such conditions as may be laid down in the notification by the Government in "public interest". Such an exemption by its very nature is susceptible of being revoked or modified or subjected to other conditions. The supersession or revocation of an exemption notification in the "public interest" is an exercise of the statutory power of the State under the law itself. It has been further held that under the General Clauses Act an authority which has the power to issue a notification has the undoubted power to rescind or modify the notification in a like manner. It has been observed that the withdrawal of exemption "in public interest" is a matter of policy and the courts would not bind the Government to its policy decisions for all times to come, irrespective of the satisfaction of the Government that a change in the policy was necessary in the "public interest". It has been held that where the Government acts in "public interest" and neither any fraud or lack of bonafides is alleged, much less established, it would not be appropriate for the court to interfere with the same.

21.2 In the case of Shrijee Sales Corporation (supra), it is observed and held that the principle of promissory estoppel may be applicable against the Government. But the determination of applicability of promissory estoppel against public authority/Government hinges upon balance of equity or "public interest". In case there is a supervening public interest, the Government would be allowed to change its stand; it would then be able to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such

withdrawal. Once public interest is accepted as the superior equity which can override individual equity, the aforesaid principle should be applicable even in cases where a period has been indicated for operation of the promise.

21.3 In the case of Shree Durga Oil Mills (supra), it has been held that when the withdrawal of exemption is in public interest, the public interest must override any consideration of private loss or gain. In the said case, the change in policy and withdrawal of the exemption on the ground of severe resource crunch have been found to be a valid ground and to be in public interest.

21.4 In the case of Mahaveer Oil Industries (supra), after considering the decision of this Court in the case of Kasinka Trading (supra), a similar view has been taken and it has been observed that public interest requires that the State be held bound by the promise held out by it in such a situation. But this does not preclude the State from withdrawing the benefit prospectively even during the period of the Scheme, if public interest so requires. Even in a case where a party has acted on the promise, if there is any supervening public interest which requires that the benefit be withdrawn or the scheme be modified, that supervening public interest would prevail over any promissory estoppel.

21.5 In the case of Shree Sidhballi Steels Ltd. (supra), in paragraphs 32 and 33, it has been observed and held as follows:

"32. The doctrine of promissory estoppel is by now well recognised and well defined by a catena of decisions of this Court. Where the Government makes a promise knowing or intending that it would be acted on by the promisee and, in fact, the promisee, acting in reliance on it, alters his position, the Government would be held bound by the promise and the promise would be enforceable against the Government at the instance of the promisee notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract as required by Article 229 of the Constitution. The rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not a hard-and-fast rule but an elastic one, the objective of which is to do justice between the parties and to extend an equitable treatment to them. This doctrine is a principle evolved by equity, to avoid injustice and though commonly named promissory estoppel, it is neither in the realm of contract nor in the realm of estoppel. For application of the doctrine of promissory estoppel the promisee must establish that he suffered in detriment or altered his position by reliance on the promise.

33. Normally, the doctrine of promissory estoppel is being applied against the Government and defence based on executive necessity would not be accepted by the court. However, if it can be shown by the Government that having regard to the facts as they have subsequently transpired, it would be inequitable to hold the Government to the promise made by it, the court would not raise an equity in favour of the promisee and enforce the promise against the Government. Where public interest warrants, the principles of promissory estoppel cannot be

invoked. The Government can change the policy in public interest. However, it is well settled that taking cue from this doctrine, the authority cannot be compelled to do something which is not allowed by law or prohibited by law. There is no promissory estoppel against the settled proposition of law. Doctrine of promissory estoppel cannot be invoked for enforcement of a promise made contrary to law, because none can be compelled to act against the statute. Thus, the Government or public authority cannot be compelled to make a provision which is contrary to law."

Thus, as held by this Court, when the public interest warrants, the principles of promissory estoppel cannot be invoked. It is further held that the rule of promissory estoppel being an equitable doctrine has to be moulded to suit the particular situation. It is not a hard-and-fast rule but an elastic one, the objective of which is to do Justice between the parties and to extend an equitable treatment to them."

14.1 What is evident from reading the policy of 01.04.2022, is that the policy cannot be said to be hit by the doctrine of promissory estoppel and / or legitimate expectation. The principles of promissory estoppel and that of legitimate expectation cannot come in the way of larger public interest and when the State has the right to change the policy if it can be demonstrated that the factors existed which required it to change or modify the policy on account of it having become unworkable and not giving the desired results which may pass the test of reasonableness, such a policy cannot be struck down in the perceptions as held by the counsels for the petitioners. It is well settled that personal benefit must give way to public interest and therefore judicial review when is confined to the examination whether such a policy is arbitrary or unreasonable, what is evident from reading the policy is that in light of the deputation of the BRCs and the CRCs made for the purposes of effective implementation of the Right to Education Act, when the State found that such BRCs , CRCs on repatriation founded difficult to have an assurance from the State that they would come back to their mother school or parent school, such BRCs or CRCs were wanting to accept their terms of deputation which in turn resulted in sufferance of the education. It was in light of these considerations and in light of the observations made by the interim orders of the High Court in such cases that the State tweaked its policy bringing in the concept of assurance to such BRCs that on their repatriation they would be brought back to their parent school. Such a clause in the policy namely Clause-7 of Chapter-H in the resolution dated 01.04.2022 cannot be faulted and held unreasonable and arbitrary.

15 For all the aforesaid reasons, all these petitions are therefore dismissed. Interim relief stands vacated forthwith.

(BIREN VAISHNAV, J)

FURTHER ORDER

After pronouncement of the judgment, request is made for extension by the learned advocates, which is vehemently objected to by the learned Assistant Government Pleader. The request for extension is rejected.