

(2013) 07 GUJ CK 0014
In the Gujarat High Court

Case No : Special Civil Application No. 9859 of 2013

Patel Chintan Rameshbhai and Others	APPELLANT
Vs	
State of Gujarat and Others	RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Citation : (2013) LabIC 3506

Hon'ble Judges : Bhaskar Bhattacharya, C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : D.P. Joshi, for the Appellant;

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, C.J.—By this Special Civil Application, 22 Primary Teachers of the State of Gujarat have challenged the new transfer policy dated May 23, 2012 adopted by the respondent as illegal, unjust, vague and against the provisions of Articles 14, 16 and 21 of the Constitution of India. The case made out by the writ-petitioners may be summed up thus:

1.1 The petitioners are working under the Respondent No. 1 as primary teachers and have already completed the first five years" stagnation period. The spouses of the petitioners are also working as Primary Teachers and they have also completed the stagnation period of the first five years.

1.2 According to the present system of appointment, at the time of initial appointment, there is a fixed salary for five years as Vidhya Sahayak and thereafter, the designation of primary teacher has been conferred upon them and all the petitioners are now acting as primary teachers.

1.3 The Government policy adopted in the year 2004 prescribes that when both the spouses are employed under the same master, (in this case, Respondent No. 2), they should be given preference for inter district transfer. The petitioners have applied for their inter district transfer according to the Government policy,

but till date, they have not been given any such transfer order. The 2004 Policy clearly gives a mandate that an opportunity of getting inter district transfer should be given according to the seniority of the teachers who are opting for such inter-district transfers, whereas, by virtue of the present Policy adopted in the year 2012, the said criterion of basic seniority has been ignored, as a result, those who are junior to the petitioners are getting edge over the seniors because of the new transfer policy. The aforesaid new policy, according to the writ-petitioners, is violative of Articles 14 and 16 of the Constitution of India as the guidelines introduced in 2012 Policy are arbitrary.

1.4 The main grievance of the petitioners is that after the introduction of the Right to Education Act by the Central Government, the Gujarat Government has introduced the concept of two sets of teachers; one is the lower primary teachers and the other is the upper primary teachers. A section of teachers who were working as the general primary teachers is now categorized as upper primary teachers on the basis of their option for teaching in the upper primary section, i.e., standard-5 to standard-8, while the other section of the teachers, who have opted for teaching in standard 1 to standard 4, are described as junior primary teachers. As there is huge number of vacancies of teachers in the upper standards, i.e. standard-5 to standard-8, the teachers who have opted for the upper primary section, are having more chances of getting inter district transfer in view of occurring of more number of vacancies, whereas, those teachers who have opted for the lower primary section, i.e., standard-1 to standard-4, in spite of their seniority, are unable to get inter district transfer order in view of less number of vacancies in the lower primary section.

1.5 According to the petitioners, both the lower primary teachers and upper primary teachers have the same qualifications, the same scale of pay and are appointed by virtue of the same process of selection, but when the turn of getting opportunity of inter district transfer arises, the seniority in the original cadre is given a go-bye and simply on the basis of the option in the upper primary section, those teachers are getting more opportunities for transfer because of huge number of vacancies in the upper primary section.

1.6 The petitioners further claim that though they have opted for the lower primary section, in view of the insufficient number of teachers in the upper primary section, they are even temporarily teaching the students of upper primary section, yet they are not getting the benefit of inter district transfer for the less number of vacancies occurring in the lower primary section.

1.7 This factor, according to the petitioners, is causing injustice and the Policy so adopted by virtue of 2012 resolution is, thus, violative of Articles 14 and 16 of the Constitution of India.

2. In order to appreciate the aforesaid contentions, it will be profitable to refer to sub-items 4, 5, 6 and 7 of the earlier transfer policy as well as the Clauses 1 and 2 of the present transfer policy.

Sub-clauses 4, 5, 6 and 7 of 2004 policy:--

4. After preparing the seniority list of the applications received from the primary teacher as per the aforesaid facts on the basis of the date of entry in the service in the original District by the concerned District Primary Education Officer, all the applications shall be registered in the Register of the Inter District transfer and the receipt [year wise] showing the registration number mentioned in the inter district transfer register shall be immediately sent to the concerned teacher.

5. As regards the Inter District transfer, by preparing the year wise separate seniority list, the District Primary Education Officer shall register it serial-wise in the inter district transfer register.

6. The posts which are to be filled up by way of inter district transfer as allotted by the Director shall be filled up from the aforesaid year-wise seniority list on the basis of seniority of the teachers.

7. After completing the seniority list of the concerned year, the appointments in connection with the inter district transfer shall be given from the seniority list of the next year.

Clauses 1 & 2 of the existing policy of 2012:--

1. Out of the posts, which become vacant as on 1st June in the district, 40% of the posts shall be filled up by way of inter district transfer. Out of the posts which are to be filled by way of inter district, 50% posts shall be filled up through widow, handicapped, higher primary/primary teacher couple and the member of the Valmiki Society and the remaining posts shall be filled up on the basis of seniority by way of Inter District Transfer. If the teachers are not available for coming by way of Inter District then such posts shall be filled up by way of direct recruitment of the Vidhya Sahayak.

2. The pending applications out of the applications of the inter district transfer, which may have been registered in the transfer register of the concerned district, shall be divided into four divisions as mentioned in Chapter A[4]. The teacher who may have given an option for the division of higher primary education and which may have been accepted, shall be included in the same division and the date of original application in this regard shall be kept as it is.

3. After hearing the learned counsel for the parties and after going through the materials on record, it appears that after the introduction of the Right to Education Act enacted by the Parliament, the State Government has, consequently, remodeled the existing system of primary education by introducing two different sections; one, the upper primary section and the other, the lower primary section. As indicated earlier, the lower primary section includes standard-1 to standard-4, whereas the upper primary section includes standard-5 to standard-8. The selfsame primary teachers, who so long used to teach the students of the entire primary section, however, have been given the choice to opt for either the lower primary section or the upper primary section.

The teachers who have given the option for upper primary section are now required to teach the students of standard-5 to standard-8. As indicated earlier, in view of the introduction of the aforesaid system and the option given by the teachers, it appears that there are more vacancies in the upper primary section because of more number of option in favour of the lower primary section than that in favour of the upper primary section, as a result, the teachers who have opted for upper primary section are getting more opportunities of consideration of their cases of inter district transfer whereas in the absence of sufficient vacancy and existence of more number of teachers in the lower primary section, the teachers who opted for the lower primary section are not getting the opportunity to inter district transfer although they may be senior to the teachers who opted for upper primary section.

4. We do not find any substance in the contention of Mr. D.P. Joshi, the learned advocate appearing on behalf of the petitioners, that the above Policy, for the aforesaid reason, can be described as violative of Article 14 or 16 of the Constitution of India. It appears from the newly introduced Policy that out of the posts which become vacant as on 1st June in the district, 40% of the posts should be filled up by way of inter district transfer and out of the posts which are to be filled up by way of inter district transfer, 50% posts should be filled up by giving benefits to the widow, handicapped, higher primary/lower primary teacher couple and the member of Valmiki Society and the remaining posts should be filled up on the basis of the seniority by way of inter district transfer. According to the said Policy, if the teachers are not available for inter district transfer, then, such posts should be filled up by way of direct recruitment of Vidhya Sahayaks. It further appears that out of the applications of the inter district transfer which are registered in the register of the concerned district, the pending applications should be divided into four divisions as mentioned in Chapter A(4). The teacher who may have given an option for inter district transfer for a division and if the same is accepted, then, he shall be posted in the said division and in this regard, the date of seniority of the original application shall be kept as it is.

5. It appears that in the above Policy, there is nothing which can be said to be arbitrary or violative of Article 14 of the Constitution of India simply because on introduction of the Right to Education Act, in view of the trend of option given by the existing teachers, there will be more vacancies in the upper primary section as maximum option has been given for the lower primary section.

6. There was no compulsion in the matter of option and these petitioners, if opted for the upper primary section, could avail of the same benefit; but if they have decided to restrict their option to the lower primary section, they cannot complain that their chance of opportunity of transfer is less and consequently, they are discriminated, which is not due to any arbitrary policy adopted by the Government but because of the fact that less number of options was given by the teachers for the upper primary section.

7. We also do not find any substance in the contention of Mr. Joshi that since the

petitioners are temporarily taking classes of the upper primary section for want of sufficient number of teachers, the Policy adopted by the Respondent No. 2 is in any way violative of Article 14 or 16 of the Constitution of India. It is needless to mention that after the existing vacancies would be filled up, the petitioners will not be required to teach the students of the upper primary section as the present arrangement is temporary.

8. We also do not find substance in the contention of Mr. Joshi that both the cadres are equal and there is no split of cadre. Once the option has been given to all the teachers for their choice, the moment the option is exercised, in view of their own option, they become a separate class of teachers from the other group, though the salary may be the same.

9. Be that as it may, this guideline cannot, at any rate, be described as discriminatory on the face of it and merely because by virtue of less number of options for the upper primary sections there are more vacancies, such fact cannot be a ground for striking down the Policy as ultra vires, as the basis of consideration of the applications for transfer is the seniority among the respective group. The petitioners by giving option for the upper primary section could easily get the opportunity of transfer for huge vacancy. We, thus, find that this application is devoid of any substance and is consequently dismissed.