
(2024) 12 GUJ CK 0049

In the Gujarat High Court

Case No : Letters Patent Appeal No. 1774, 1775, 1776, 1777, 1778, 1779, 1780, 1781 of 2024, Special Civil Application No. 25077, 25532, 25642, 25743, 25746 of 2022, 2214, 14657 of 2023, 575 of 2024, Civil Application (For Stay) No. 1, 1, 1, 1, 1, 1, 1, 1 of 2024

Patel Umeshkumar Gokalbhai & Ors. Versus

APPELLANT

Vs

State of Gujarat & Ors.

RESPONDENT

Date of Decision : 19-12-2024

Acts Referred:

Citation : (2024) 12 GUJ CK 0049

Hon'ble Judges : A.S. Supehia, J;Gita Gopi, J

Bench : Division Bench

Advocate : B M Mangukiya, Bela A Prajapati, Sahil B. Trivedi, Vidhi J Bhatt, U M Shastri

Final Decision : Dismissed

Judgement

A.S. Supehia, J

1. Since extreme urgency is cited before us by the learned advocates appearing on behalf of the appellants, the present group of matters is taken up for final hearing today and after hearing the learned advocates appearing for all the respective parties at length, we are passing the following judgment and order.

2. ADMIT. Learned advocates appear and waive service of notice of admission on behalf of the respective respondents.

3. The present group of appeals filed under Clause 15 of the Letters Patent, 1865, are directed against the common judgment and order dated 04.12.2024 passed by the learned Single Judge in the group of petitions. The learned Single Judge has been pleased to dismiss all the writ petitions. With consent, the Letters Patent Appeal No.1779 of 2024 is taken up as a lead matter.

4. The appellants are serving as Teachers at Panchmahals District. Their entire

case hinges on the Government Resolution / Policy of the State Government, dated 01.04.2022, more particularly Chapter-Q of such policy, which deals with the transfer of the teachers after bifurcation of the Districts. All the appellants are working in Panchmahals District and prior to their dates of transfer, which were affected between the year 2004 to 2015, they were all working in other Districts. Some of the appellants have been transferred in Panchmahals District in view of the policy of the State Government introduced for the benefits of the couples on their request. In the writ petitions, the appellants -petitioners had prayed for quashing and setting aside the communication dated 1/3.11.2022 issued by the respondent No.2 i.e. Director of Primary Education cancelling the district bifurcation camp in district Panchmahals and Kheda to district Mahisagar. They have also prayed for a direction to organize the district bifurcation camp as per Chapter Q of the Policy / Government Resolution dated 1.4.2022 issued by the Education Department of the State of Gujarat before organizing Inter / Intra District Transfer Camp.

5. Learned advocate Mr.Mangukiya, appearing for the appellants has invited attention of this Court to the Chapter-Q of the Policy dated 01.04.2022 and has submitted that the respondent-State authorities have discriminated the present appellants, who are serving at Panchmahals District by passing the order dated 01/03.11.2022, by which the camps seeking transfer on the formation of the new district Mahisagar were cancelled. He has submitted that the Chapter-Q of the said policy has been misread by the learned Single Judge as well as the authorities and the same does not in any manner stipulates that the teachers, who are working in those talukas, who are not affected by formation of the district, cannot be transferred or the option cannot be offered to them seeking benefit of such transfer. He has referred to the other clauses of the said policy. While referring to the said policy, more particularly paragraph No.10, which pertains for giving an option of inter-district transfer as well as paragraph Nos.5 and 6, which extend the benefit to the couple-teachers, who wish to be transferred at the places of their talukas, it is submitted by him that by impugned decision, they would lose such benefit permanently for getting themselves transferred in the other district. It is also submitted by learned advocate Mr.Mangukiya that the State Government cannot contend contrary to its policy. It is also submitted that in fact, the policy does not in any manner envisages that in cases of bifurcation or formation of district, the seniority of respective teachers are required to be considered, since no criterion has been specified in the policy. He has also referred to the communication dated 01.11.2022 issued by the Joint Director of Gujarat State, Gandhinagar and has submitted that the communication specifically refers to the option of transfer to be extended to the teachers like the present appellants in view of the bifurcation of Panchmahals and Kheda districts and formation of new District i.e. Mahisagar. It is submitted that the said communication specifically refers that transfers are to be made as per the provisions of Chapter-Q, which specifically refers to those teachers who want to be transferred to Mahisagar District. He has also referred

to the representation dated 07.11.2022 filed by the present appellants to the Director of Education, Gandhinagar. It is submitted that the order dated 03.11.2022 has been passed in view of some meeting, which was held by the State authority and the teachers, who had vested interest to see that the appellants are discriminated and are not allowed to be participated in the transfer camps.

6. Learned advocate Mr.Mangukiya, while referring to the judgment and orders passed by the learned Single Judge, dated 23.07.2019 passed in Special Civil Application No.9482 of 2019, dated 07.07.2022 passed in Special Civil Application No.2640 of 2019 and the judgment dated 05.05.2022 passed in Special Civil Application No.7668 of 2019, has submitted that in similar cases, in fact, the learned Single Judges have set aside the action of the State authorities upon the instructions received from the Office of the Director of Education. It is submitted that when such judgment and orders were pointed out before the learned Single Judge, the learned Single Judge has cursorily dealt with it. It is contended that in case, the learned Single Judge was not inclined to follow such orders, the matter could have been referred to the Division Bench.

7. Learned advocate Mr.Mangukiya, appearing for the appellants has further urged that in fact, the learned Single Judge has misread the entire policy issued by the State Government and once the new policy has been declared, the whole policy would get merged with the new policy. He has referred to the policy decision dated 04.06.2016 written by the Director of Primary Education, Gandhinagar issuing instructions to all the District Primary Education Officer of the State and has submitted that in fact, the said policy is in favour of the appellants and the State authorities should have acted upon such policy and the appellants could not have been barred from attending the camps. It is urged that the camps of inter-district transfers are being held today, and hence, the learned Single Judge has erred in dismissing the writ petition, which has resulted into non-participation of the appellants in the camp. Thus, it is urged that the judgment and order passed by the learned Single Judge may be set aside.

8. Opposing the aforesaid submissions, learned Assistant Government Pleader Mr.Sahil Trivedi, appearing for the State authorities has submitted that the judgment and order passed by the learned Single Judge may not be interfered with as the same is precisely passed after examining all the policies of the State Government. It is submitted that in fact on 26.01.2013, when the new District Mahisagar was formed from Talukas of Panchmahals and Kheda Districts, all the appellants have remained in the same district and they were not affected in any manner. Reiterating the submissions, learned AGP has specifically referred to the policies, as narrated hereinabove, and has submitted that the same is precisely considered by the learned Single Judge. It is submitted that the intention of the State Government would never be that all the teachers, who are serving in the entire district, are also given same treatment, which has been extended to the those teachers, who are really affected by the bifurcation and on formation of

new District. It is submitted that the State Government in its wisdom and in line of the policy, has offered the chance of getting transferred to Mahisagar District exclusively to those teachers who are serving in the talukas, which are forming part of Mahisagar District and not those talukas, which are belonging to Panchmahals and Kheda Districts, which are not at all affected. He also referred to the Policy decision dated 04.06.2016 in support of his submission and also the communication dated 18.10.2002 governing the inter-district transfer of such teachers, who are affected either by bifurcation of the district or newly formed district. With regard to the contention raised about loosing the benefit of couple transfer, it is submitted that no such contention is raised by the appellants before the learned Single Judge. Thus, it is urged that the policy decision has been correctly interpreted and implemented and the present appellants do not have any right to claim the benefit de hors the policy of the State Government.

9. Learned advocate Ms.Vidhi Bhatt, appearing for the private respondents, at the outset, has submitted that initially, after the formation of District Mahisagar, the options were invited from all the teachers from the respective districts of Panchmahals and Kheda, however, thereafter a conscious decision was taken on 14.07.2016, by the District Primary Education Officer on the instructions of Director of Primary Education to cancel the options, since the teachers like the present appellants, were not at all affected by the bifurcation and formation of new district, as they remained in the same talukas, even after newly formation of District Mahisagar. The said decision was not challenged by them at the relevant time. She has submitted that even as per the policies of the State Government, the teachers who avail the benefit of either of inter-district transfer or intra-district transfer, the seniority list of the respective teachers, is mandatorily prepared, and the appellants have failed to point out the basic requirement of the policies, establishing that their names figure in any seniority list. It is submitted that no list in this regard has been produced on record. Hence, it is urged that the present appeal may not be entertained and the order passed by the learned Single Judge requires to be sustained.

10. Learned advocate Mr.Devnani, who also appears on behalf of the private respondent, while adopting the submissions advanced by the learned AGP as well as learned advocate Ms.Vidhi Bhatt, has submitted that the appellants are not in any manner affected by the formation of newly district Mahisagar. He has also submitted that in fact the learned Single Judge has been gracious enough to give liberty to the appellants to file appropriate representation before the State authorities to take a policy decision, if the State deems it appropriate in cases of the appellants. Thus, it is urged that the present appeal may not be entertained.

11. We have heard the learned advocates appearing for the respective parties at length. The policies pointed out by them are also perused by us.

12. The issue, which fell for consideration before the learned Single Judge and before us is that whether the appellants, who are serving in Panchmahals district and are not at all affected on the creation of new district, i.e. Mahisagar have any

vested right to get themselves transferred at the places of their choices in Mahisagar district or not. Mahisagar district was formed on 26.01.2013 by inducting four talukas from Panchmahals district and two talukas from Kheda district. Indubitably, the appellants, who are serving in talukas of Panchmahals are not at all disturbed or affected on the formation of Mahisagar district since, the talukas in which they are serving are not merged in Mahisagar district and they have remained at their respective places. The learned Single Judge, after threadbare analyses of the policies and administrative instructions, has held thus : -

"16.4 That in none of these petitions, the petitioners have questioned the policy for transfer framed by the State Government vide Administrative Instructions dated 4.6.2016, Government Resolutions dated 1.4.2022 and 11.5.2023. On the contrary, the petitioners have prayed for a direction against the State to hold the transfer camps as per Clause Q of the Government Resolution dated 1.4.2022 issued by the Education Department. In absence of any challenge to any of the Clauses or rational of the transfer policy, the transfer policy is required to be seen as it is. Therefore, before issuance of direction, the Court may consider the objection of the State Government that the petitioners are not even entitled to seek transfer on account of district bifurcation in view of the policy of the State Government. When the petitioners have not questioned the policy of the State Government, at this juncture, now the petitioners cannot pray for a relief which runs contrary to the policy of the State Government. Therefore, the eligibility and entitlement to seek the benefit flowing from the Administrative Instructions dated 4.6.2016, Government Resolutions dated 1.4.2022 and 11.5.2023 could not be established by the petitioners unless it is held by the Court that despite the objections by the State Government about the petitioners' eligibility and entitlement, the petitioners are eligible to claim transfer on the basis of this policy, direction to hold the transfer camp by district bifurcation may not be granted.

X x x x x

16.6 That the intention of the State Government behind the policy of the transfer is also equally important and the Court is required to look into that intention as well. Merely because the G.R.s or administrative instructions are issued for the purpose of transfer on account of district bifurcation, would not make any person serving in that district eligible to claim benefit of the said policy, more particularly, when the district bifurcation takes place in two different modes i.e. by division of a district and by merger of a few Talukas of more than one district. The G.R. or the instructions is a composite GR in respect of both the modes and, therefore, it prescribed that whenever the district bifurcation takes place on account of division of a district, a person serving in both the district is entitled to seek transfer on account of district bifurcation. But that bifurcation takes place on account of merger of a few Talukas of more than one district. By way of Clause Nos.9 and 10 of Administrative Instructions dated 4.6.2016 and Clause

No.1 of Chapter Q of Government Resolutions dated 1.4.2022 and 11.5.2023, only a person who is affected on account of district bifurcation who is serving in Taluka or village which has become part of new district, would be eligible and entitled to claim the benefit on the basis of aforesaid policy.”

13. After the aforesaid policies dated 01.04.2022 and 11.05.2023, further clarification have also been issued by the State Government, more particularly, the administrative instructions dated 04.06.2016, Clause Nos.1, 9 and 10. The same has been incorporated by the learned Single Judge in the judgment and we are reiterating the same.

“18.4 Therefore, now first this Court is required to look into the Administrative Instructions dated 4.6.2016 which is the basis behind all these petitions. Clause 1 of the said Administrative Instructions dated 4.6.2016, which according to the petitioners would benefit them, read as under :-

"1. In the cases where new districts have come into existence by way of division of district, in that case, before division of district, if a person was appointed as head teacher (HTAT/Primary Teacher/ Higher Primary Teacher/Vidyasahayak), in that case, those teachers can give an option to seek transfer from and to original district to newly created district and newly created district to original district."

Clause 9 of the said Administrative Instructions dated 4.6.2016 read as under :-

"9. In the process of district division and creation of new district, the State Government has merged some certain Talukas from one district to another district, like from Surendranagar district Halvad Taluka is merged into Morbi district, in similar cases, the Talukas which are merged in other district in those cases, teachers who are working in the Taluka which is merged in new district, if wants to go to the original district, or they want to continue in the newly created district, they can exercise the option and accordingly, their actions are required to be considered."

14. The learned Single Judge has, while interpreting the aforesaid clauses in paragraph No.18.6, has held as under : -

“18.6 What is important which the Court has found while perusing the Administrative Instruction dated 4.6.2016 is the fact that there are two words used in the entire G.R., more particularly, in Clause Nos.8, 9 and 10 that "Jilla Vibhajan (Division of District)" and "Jilla Navrachna (Creation of new district)". The entire confusion is probably has caused on account of the word "district bifurcation". In fact, the G.R. or instructions is not in respect of district bifurcation only, as can be seen from the subject of the instructions dated 4.6.2016, the same includes both district division and newly created district. The subject reads as for giving options to the primary teachers on account of creation of new district due to district division. Clause No.1 specifically talks about creation of new district on account of division of original district whereas clause Nos.8, 9 and 10 speaks about the districts which are newly created on account of

merger of some Talukas or Villages from two districts. Similarly, G.R. dated 1.4.2022 and 11.5.2023 Clause 1 of Chapter Q specifically distinguishes that under what circumstances, a person can give option for transfer on account of district bifurcation and if the same has taken place on account of division of district, then in that case, a person who is serving in original district can opt for a transfer to a newly created district and vice a versa. It also provides that if entire Taluka is merged into some other district, in that case, only the person serving in the said Taluka which is affected on account of district bifurcation can give option to either to stay in newly created district or go back to original district and similar is the case in respect of village. Meaning thereby that the draftsman of the policy were absolutely clear in their mind at the time when the policy was framed for the first time on 4.6.2016 and the same has been followed even in the subsequent G. R. dated 1.4.2022 and 11.5.2023. In view of this Court, there is no ambiguity about the eligibility of a person in either of these policies and, therefore, it is the policy clearly indicates that the benefit of transfer on account of district bifurcation can be claimed only by the affected person whose particular Taluka is affected in case if it is a case of creation of a new district on account of merger of certain Talukas. It is not the case of the present petitioners that the new district was created on account of division of one district. ”

15. The appellants have primarily premised on the Chapter No.Q of the policy dated 01.04.2022, the same is translated and incorporated as under : -

“Chapter-Q - Transfers to be made as per district division :-

(1) In cases of formation of new district, the Vidhyashayak/teacher/head teachers, who were appointed in the original district may give an option either to move from the original district to the newly formed district or to stay in their original district in accordance with his/ her department/subject and also in case if whole taluka is included in another district, then Vidhyasahayaks/Teacher/ Head Teachers serving in such taluka can only give the option for staying in same District or newly formed district, and similarly if any village which is integrated from one district to another district, the Vidhyasahayaks/ Teachers/Head Teachers can exercise their option to either stay in the new district or to move to the original district.”

16. On a close scrutiny of the observations recorded by the learned Single Judge in light of the Administrative Instructions dated 04.06.2016 and 11.05.2023, and Chapter-Q of the policy dated 01.04.2022, it is apparent that upon bifurcation of a district, if a teacher, who is serving in the talukas or Villages, which is affected on account of district bifurcation, then only such teacher is entitled to seek transfer. It cannot be the intention of the State government to also allow the Vidhyasahayaks/ teachers/head teachers of the entire district, who are not affected at all by bifurcation or on the newly formed district to exercise their option. If such approach is adopted the same will be an anathema to the entire policy of transfer. The administration will be required to undertake a huge exercise by calling upon all the teachers though they are not affected at all. In

the present case, none of the appellants fall under such category as their respective talukas remains untouched, and the talukas, in which they are serving, remain in district Panchmahals only, and they continue to remain in the same talukas. Thus, their position remains unaltered on the formation of new district, hence they have no vested right to demand the transfers as per their choice.

17. We do not find any infirmity or illegality in the view expressed by the learned Single Judge, however an additional ground, which has been raised before us is that because of formation of new District Mahisagar, the benefit of couple transfer, which they have availed, will get lost for all times. This submission does not merit acceptance in view of the Clause 6 of Chapter-G of the Policy dated 01.04.2022. The same is translated and incorporated as under : -

"6. Widow / widower, Disabled, all types of couple cases, benefit of Valmiki priority will be available once in internal transfer and once in district transfer during entire service. Benefit for special case like medical reasons, under National / State Security Act or in non- transferrable cases can be availed once during the entire service. Those who have availed this benefit before the date of this resolution will not be eligible for this benefit. If the benefit of place selection has been availed during the recruitment, then in case of transfer no priority will be available. But in case of division of the district, though the aforesaid priority benefit has been availed, the same can be availed for one more time."

18. Thus, in cases of even the bifurcation of district, still an option is available for the couple and priority is given to them as per the said policy.

19. There is yet another reason for rejecting the case of the appellants. It is also not disputed by the appellants that after formation of the District Mahisagar in the year 2015, the State authorities, more particularly District Primary Education, Mahisagar had invited the option of all the teachers, including the present appellants for getting them transferred however, the same was cancelled vide communication dated 14.07.2016. Such decision was never assailed by the appellants at the relevant time.

20. The assertion made by the learned advocate appearing for the appellants that no seniority list is required to be prepared in the cases of affecting transfers on district bifurcation is fallacious. The entire policy of the State Government right from the inception is premised on the seniority of the teachers and only after considering the seniority and date of appointment, they become eligible either for inter-district or intra-district transfer. The appellants, as a matter of right, cannot claim transfer as per their own convenience by interpreting the clauses of policy in the manner which suits them. The sole intention of the State Government to introduce the clauses in the policy relating to the bifurcation or formation of new district is to remove the hardships of only those teachers who are affected by the bifurcation or formation of the districts. Thus, in fact the State Government has been gracious enough to offer a chance to those teachers

to opt for places of choices/talukas in case their places get altered on bifurcation of district. The appellants cannot equate their cases to such affected teachers.

21. This Court cannot compel the authorities to act de hors the policy. The State Government in its wisdom has framed the policy and has issued administrative instructions regulating the transfer of teachers as per the administrative convenience. The Courts cannot act as an administrative head and step into the shoes of the State, when it comes to formation and implementation of the policy, unless there is gross illegality, and the action is tainted with mala fide intention.

22. As far as the orders, on which the reliance is placed before the learned Single Judge and before us, we find that in none of the orders such issue has been raised and decided by the learned Single Judges. The order dated 23.07.2019 passed in Special Civil Application No.9482 of 2016, in fact is a consensual order. In the Orders dated 05.05.2022 and 07.07.2022 passed in Special Civil Application Nos.7668 of 2019 and 2640 of 2019, neither such issue has been raised nor dealt with by the learned Single Judge.

23. On an overall appreciation of the policies and the facts of the present case, we are not inclined to interfere with the order passed by the learned Single Judge. As a consequence, the present appeals fail. The same are dismissed.

24. All the connected civil applications also stand disposed of accordingly.

Registry to place a copy of this order in each of the connected matters.