
(1983) 09 GUJ CK 0027
In the Gujarat High Court

Ramaben Amrutlal Bhavsar and Others	APPELLANT
Vs	
State and Others	RESPONDENT

Date of Decision : 08-09-1983

Acts Referred:

Bombay Primary Education Act, 1947 — Section 10(A), 10(A)(1), 10(A)(1), 10A
Gujarat Panchayats Act, 1961 — Section 326

Citation : (1984) GLH 180 : (1984) 2 GLR 1050

Hon'ble Judges : S.A. Shah, J

Bench : Single Bench

Judgement

S.A. Shah, J.—Petitioner Nos. 1 to 6 are all female primary teachers and were working in the Primary Schools in the districts of Mehsana, Baroda, Sabarkantha, Kheda or Amreli as shown in Annexure B to the petition. Since the petitioners' husbands were Government servants who were working at Gandhinagar petitioners applied for transfer of their services in the Primary Schools situated at Gandhinagar township. Gandhinagar being a township had no School Board but under the provisions of Section 10(A) of the Bombay Primary Education Act, 1947 (hereinafter referred to as "the Act") the State Government, by a notification dated May 1st, 1976, in exercise of its power u/s 10(A) of the Act read with Clause (1) of Section 326 of the Gujarat Panchayats Act, appointed the District Development Officer, Gandhinagar, in relation to the area within the limits of the township of Gandhinagar for the purpose of said Sub-section (1) of Section 10(A).

2. By virtue of the aforesaid notification the District Development Officer, Gandhinagar, hereinafter referred to as the D.D.O. for brevity, became the competent officer to exercise all the powers vested with the District Education Board under the Act.

3. It appears that the applications of the petitioners-teachers have been accepted and the petitioners-teachers were informed by the Administrative Officer of the District Education Committee by his order dated August 10, 1977,

that the applications of the petitioners had been accepted and they were appointed in various primary schools as Assistant Teachers in Gandhinagar, and were directed to report themselves at the respective schools and to send their joining report through the principals to the respective authority. The inter-district transfers were on their own request and they were not entitled to travelling allowance and joining time. Copies of the said orders were sent to the District Education Committees with the direction that the concerned teachers may be relieved.

4. According to the averments made by the petitioners in para 4 of the petition, their requests were accepted by the D.D.O., Gandhinagar and arrangements for relieving the petitioners from the primary schools in the districts in which they were working and transferring them to primary schools in Gandhinagar township were made, accepted, adopted and carried out by the Administrative Officers of the respective districts. It is further alleged that the said arrangement was made with the approval of the Secretary, Education Department, even though it was not strictly necessary. It is further alleged that the petitioners were ultimately transferred in August 1977 and all the petitioners have been working in Gandhinagar Township since then as primary teachers.

5. Unfortunately, no affidavit has been filed by the respondents and even the petitioners have not produced the original order of the competent authority, namely, the District Development Officer, Gandhinagar. In absence of the affidavit we have no material to know whether the order has been passed by the District Development Officer and whether the same has been approved by the Secretary, Education Department. In absence of the affidavit it is not possible for the Court to discourage the petition on such technical grounds. It has now been settled position of law that if the averments of the petitioners are not denied specifically they are deemed to be admitted. I do not propose to say that these averments are admitted by the Government in this matter, but a situation may arise in a case where the court has to go to that extent for non-filing of the affidavit. Non-filing of affidavit after five years might create trouble, with the result that the court is not in a position to decide the rights of the parties finally strictly according to law.

6. However, the contention of Mr. Mehta, the learned Advocate appearing for the petitioners that in any view of the matter the petitioners have changed their position to their detriment relying upon the order of the Administrative Officer who is the administrative authority under the provisions of the Act and have left their services at the respective districts and have joined services at Gandhinagar Township, and started working as Assistant Teachers in the respective primary schools. In this way the impugned order dated 2-9-1977 which cancels the previous order at Annexure-E prejudicially affects the rights of the petitioners to their detriment. Therefore, the competent authority was enjoined to hear the petitioners before passing the impugned order which is a bare minimum of the principles of natural justice. I think Mr. Mehta is right in this respect. Before

passing the impugned order which greatly affected rights of the petitioners the D.D.O. ought to have heard the petitioners and allowed the petitioners to show that they have been legally and validly transferred and also that there was no valid reason for the authority to cancel the order even though there might be some irregularity in granting the request of the petitioners.

7. Mr. Mehta further submits that now nearly six years have passed and the petitioners are working as Assistant Teachers and it might be possible that by the lapse of time they might be entitled, in their turn, to transfer to Gandhinagar, and, therefore, no useful purpose will be served in enforcing the order of the D.D.O. dated 21-9-1977.

8. Since I have struck down the order of the D.D.O. dated 21-9-77 on the ground that the same has been passed without hearing the petitioners, the petitioners can make the above submissions before the D.D.O. when the notice of hearing is served upon them and if the petitioners are entitled to the transfer in their turn there is no legal hitch in continuing them on the same post.

9. Mr. M.C. Patel, learned Advocate appearing on behalf of the State has submitted that under the provisions of Section 10(A) of the Act the D.D.O. is the only authority which can grant permission prayed for by the petitioners and the Administrative Officer has no such power. Mr. Patel invited my attention to Section 10(A)(1) of the Act which is reproduced below:

10-A. (1) Notwithstanding anything contained in this Act and save as otherwise provided in Section 18A, in any district for which a District Local Board has not been established, the powers and duties of the District School Board under this Act shall be exercised and performed by such authority as the (State) Government may appoint. The exercise of such powers and the performance of such duties shall be in accordance with such directions as the (State) Government may from time to time give.

10. It is true that bare look at the above provision shows that the D.D.O. is the authority so far as Gandhinagar is concerned for exercising the powers and the duties of the District School Board under the Act. Mr. Patel also invited my attention to Section 24 by which the powers have been given to the Administrative Officer over the School Board staff. Mr. Patel argues that this power of transfer which has been vested with the Administrative Officer is the power of transfer within the district in which the District Board exercised its jurisdiction, but the Administrative Officer has no power to transfer or absorb the teachers who are serving in other districts. The Administrative Officer has no power under the provisions of Section 24 to effect inter-district transfer. In this regard Mr. Patel invited my attention to Rule 40 of the Bombay Primary Education Rules, 1949 which is reproduced below:

40. Loan or transfer of services of staff : Subject to the provision of the Act, a District School Board on the recommendation of the Administrative Officer and an authorised Municipality on the recommendation of the School Board may

sanction the loan or transfer of the services of any member of staff maintained by it u/s 20 of the Act to another District School Board or authorised Municipality or Government or private institution on such terms and conditions as may be mutually agreed upon between it and such other Board or Municipality or Government or private institution.

On conjoined reading of Section 10-A with Sections 20, 24 and Rule 40 the scheme appears to be that in a case where an application is made for transfer of the services of any member of the staff maintained by the School Board u/s 20 of the Act to another District School Board or authorised Municipality or Government or private institution it is the District School Board, now Committee, who can exercise power on the recommendation of the Administrative Officer. In the aforesaid view of the matter the orders passed by the Administrative Officer at Annexure-C cannot be made by the Administrative Officer unless it is shown that the D. D. O., Gandhinagar district who had such power u/s 10-A has authorised the Administrative Officer to pass such orders.

11. However, before this Court accepts the contention of Mr. Patel that the said order at Annexure-C of the Administrative Officer was ultra vires his power, the Government must controvert the averments of the petitioners which are made on oath that their requests were accepted by the District Development Officer, Gandhinagar.

In absence of proper affidavit filed by the respondents it is unsafe to arrive at a conclusion that the order has not been passed under the instructions of the D. D. O.

12. I am constrained to say that had there been proper affidavit showing that the order was passed by the administrative officer on 10-8-1977 which is at Annexure-C, without the consent, direction or order of the D.D.O. who is the only competent authority to accept transfer from other districts to Gandhinagar, final decision could have been taken to sustain the impugned order of the D.D.O. dated 21-9-1977. Since I am quashing the order of the D.D.O. dated 21-9-77 on another ground all these legal issues can be raised by the Government as well as the petitioners and it is, therefore, not necessary to decide whether the order of the Administrative Officer is bad on the ground that it is ultra vires his power.

13. It appears that the petitioners have been absorbed as Assistant Primary Teachers in the schools at Gandhinagar township where their husbands are working. Unless there are strong reasons the competent authority will consider their hardship if they are repatriated to their original posts.

14. In the result, the impugned order of the D.D.O. dated 21-9-77-at Annexure-E, cancelling the order of the Administrative Officer dated 10-8-77 is quashed and set aside, and the petitioners can continue in service as primary teachers in primary schools in Gandhinagar township till the legal and proper order is passed by the competent authority. The petition is allowed to this extent and rule is made absolute with costs.