

(2016) 02 GUJ CK 0070

In the Gujarat High Court

Case No : Special Civil Application No. 5171 of 2015

Rekhaben

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Bombay Primary Education Act, 1947 — Section 2(2)
Constitution of India, 1950 — Article 14, Article 16, Article 21, Article 226
Right of Children to Free and Compulsory Education Act, 2009 — Section 18, Section 2(18A), Section 2(2)

Citation : (2016) 02 GUJ CK 0070

Hon'ble Judges : J.B. Pardiwala, J.

Bench : Single Bench

Advocate : M.A. Parekh, Advocate, for the Appellant;

Final Decision : Allowed

Judgement

J.B. Pardiwala, J.—1. Rule returnable forthwith. Mr. Rindani, the learned AGP, waives service of notice of rule for and on behalf of the respondents Nos. 1 to 5. Mr. Divyeshvar, the learned advocate waives service of notice of rule for and on behalf of the respondent No. 6-Ashramshala.

2. By this writ-application under Article 226 of the Constitution of India, the petitioner, a widow has prayed for the following reliefs:-

"(A) Your Lordship/s be pleased to admit/allow the present writ-petition, in the interest of justice;

(B) Be quashed and set aside the impugned order passed by the Respondent Tribal Development DTD. 19.02.2015, forthwith, in the interest of justice;

(C) Be pleased to issue a writ of mandamus or a writ of certiorari or any appropriate writ, order or direction and directing to the respondent No. 1 to 3 to implement the Govt. Resolution Dated 5.07.2011, forthwith in case of the petitioner's deceased Husband in view of Oral Judgment Passed in LPAs at Ann.

G, forthwith, in the interest of justice;

(D) Pending, admission and final disposal of the present petition this Hon'ble Court may be pleased to grant prayer in terms of paragraph 8(B), in the interest of justice;

(E) Any other and further relief/s may kindly be granted in the interest of justice."

3. The facts of this case may be summarized as under:-

4. The husband of the petitioner was appointed as a Cook in Class-IV by the respondent No. 6-Ashramshala. It appears that he was appointed on temporary basis vide order dated 12th June, 1997. The appointment was approved by the authorities concerned. He continued to serve as a Cook in the Ashramshala till the date of his demise i.e. 3rd July, 2011. The sudden demise of the husband of the petitioner put the family members in lot of hardship. The wife preferred an application praying for the benefit of the Policy of the State Government of providing lump-sum compensation in lieu of compassionate appointment. The application praying for lump-sum compensation in terms of the Policy of the State Government is dated 23rd December, 2012, Annexure "F" to this petition.

5. It appears that the said application came to be rejected. It appears that since no decision was taken by the authority concerned on the said application, one writ-application being Special Civil Application No. 12644 of 2013 was filed for appropriate directions. The said petition came to be disposed of by a learned Single Judge vide order dated 7th November, 2014, the order reads thus:-

"1. Present petition is filed by the petitioner under Article 14, 16, 21 and 226 of the Constitution of India for the prayer for compassionate payment in view of Government Resolution dated 05/07/2011 which is produced on record.

2. Learned advocate Mr. M.A. Parekh for the petitioner has referred to the papers and submitted that the deceased has been appointed and service book is also produced and therefore, the petitioner would be covered by the said Government Resolution.

3. However, affidavit-in-reply filed on behalf of respondent No. 4 as well as respondent No. 6 clearly raised the contention about eligibility for getting such benefit. Reliance is placed on the affidavit-in-reply filed on behalf of respondent No. 4, Commissioner, Triable Development and the resolution dated 14/02/2005 referring to the order dated 04/02/2006 passed in Special Civil Application No. 11651 of 2004 and allied matters.

4. Both the sides have made the submissions and it has been specifically contended that the petitioner is not entitle to get any such benefit as the appointment is made by the private trust and the appointment of the deceased, husband of the petitioner was not made in accordance with the law and as per procedure under Schedule-F.

5. However, learned advocate Shri M.A. Parekh referred to the papers and also

referred to the order passed in Letters Patent Appeal No. 332 of 2014 dated 23/06/2014.

6. Learned advocate Mr. M.A. Parekh has stated that he does not press this petition with a view to avail alternative remedy and the petition itself may be treated as representation to be considered by respondent No. 3, Deputy Secretary of the Triable Development Department.

7. Therefore, it is directed that the Deputy Secretary of Triable Development Department shall decide this petition itself as a representation in accordance with law. The Deputy Secretary, Triable Development Department may take decision within a period of six weeks from the date of receipt of such representation (petition).

8. With the aforesaid observation, present petition stands disposed of. Mr. Ronak Raval, learned AGP is directed to convey to the Deputy Secretary of the Triable Development Department, Respondent No. 3 and shall also communicate the order as well as the copy of the petition for further steps in the matter. Direct service is permitted. "

6. It appears that pursuant to the direction issued by this Court referred to above, a decision was taken by the State Government and was communicated to the petitioner vide letter dated 19th February, 2015 wherein it has been stated that the Resolution dated 5th July, 2011 would not be applicable to the case in hand.

7. Being dissatisfied with the decision taken by the State Government, the petitioner has come up with this writ-application.

8. Mr. Parekh, the learned advocate appearing for the petitioner submitted that the petitioner was appointed on regular basis way back in the year 1997 and he continued to serve as a Cook with the Ashramshala up to 2011. According to Mr. Parekh, the widow is entitled to claim the lump-sum compensation in terms of the Government Resolution dated 5th July, 2011.

9. In such circumstances referred to above, he prays that there being merit in this writ-application, the same be allowed and appropriate direction be issued.

10. On the other hand, this writ-application has been vehemently opposed by Mr. Rindani, the learned AGP appearing for the State. Mr. Rindani submitted that it is not in dispute that the husband of the petitioner was appointed in the Ashramshala on the post of a Cook but the said appointment was temporary. His principal argument is that the deceased being an employee of the Ashramshala could not have been termed as a Government servant and therefore, the Policy of the State Government reflected in the Resolution dated 5th July, 2011 would not be applicable.

11. Mr. Rindani invited my attention to the following averments made in the affidavit-in-reply, duly affirmed by Shrimati Jyotiben K. Pate, Joint Secretary,

Tribal Development Department, State of Gujarat, Gandhinagar:-

"5. It is respectfully submitted that bay way of the present petition, the petitioner has prayed for directing the respondent authorities to consider the case of the petitioner for lump sum compensation as contemplated as per the Government Resolution dated 05.07.2011 which as such is the existing policy for compassionate appointment for the employee of the State Government. The petitioner is the widow of the deceased who was appointed as kitchen servant with the respondent No. 6 Ashramshala. The case of the petitioner is that the proposal was forwarded by the Ashramshala to the concerned department for granting compassionate appointment to the petitioner, however, as per the petitioner, the same has remained unasnwered.

6. It is respectfully submitted that a conscious decision was taken by the State Government that the employee who are rendering the services with Ashramshala shall not be entitled to the benefit of pension/gratuity, group insurance and various other allowances.

7. It is respectfully submitted that considering the judgment rendered in Special Civil Application and other existing policies of the State Government vide order dated 14.02.2005 passed an order to the said effect. A copy of the order dated 14.02.2005 is annexed herewith and marked as "Annexure R I".

8. It is respectfully submitted that it would be pertinent to note herein that the State Government is liable to pay grant to Ashramshala for only those employees whose appointment have been approved by the State Government. The State Government is not liable for extending benefit of any kind to the employees who are working in the Ashramshala without any approval from the State Government. The present petitioner has failed to produce anything on record to indicate that appointment of the petitioner was after getting approval from the State Government. It is thus respectfully submitted that the entire responsibility if any is of the Ashramshala and not of the State Government.

9. It is respectfully submitted that, the order dated 19.02.2015 passed by the respondent No. 3 was impugned. I humbly submit that a petitioner considering the letter dated 19.02.2015 as respondent No. 3 order but on 19.02.2015 it was only an intimation letter to call present petitioner to represent herself before the authorities it is not at all an order. I further submit that a respondent No. 3 has passed a final order with regard to letter dated 19.02.2015 and after given a proper chance of representation and hearing to the present petitioner on 23.12.2014, the respondent No. 3 has passed an order dated 30.3.2015. A copy of order dated 30.3.2015 is annexed herewith and marked as "Annexure R II". In the aforesaid order a respondent No. 3 clearly submits that the recruitment of petitioners husband was purely irregular appointment because no such permission was taken from the respondent No. 3 and the respondent No. 3 also clarified that as per the Government Resolution of Tribal Development Department dated 14.02.2005, the employees who are rendering the services

with Ashramshala shall not be entitled to the benefit of pension/gratuity, group insurance and various other allowances.

10. It is respectfully submitted that even the policy of 05.07.2011 would not be applicable to the present petitioner, more particularly, considering clause-III of the said resolution which mentions that this benefit shall be entitled only to those employees, who are entitled for family pension. In the present case, neither the petitioner is entitled to family pension nor is the petitioner appointed after approval of the State Government. Considering above facts and circumstances, more particularly, when the petitioner has failed to produce anything on record indicating his appointment as a regular appointee. This Hon"ble Court may not grant any relief prayed by the petitioner."

12. In such circumstances referred to above, Mr. Rindani prays that there being no merit in this writ-application the same be rejected.

13. Having heard the learned counsel appearing for the parties and having considered the materials on record the only question that falls for my consideration is whether the case in hand is covered by the Resolution of the State Government dated 5th July, 2011.

14. Let me first deal with the principal argument of Mr. Rindani that an employee of the Ashramshala would not fall within the ambit of "Government Servant" and therefore, the Policy of the State Government to provide the lump-sum compensation in view of the Resolution referred to above, would not apply.

15. I am afraid, I am not in a position to accept the argument canvassed on behalf of the State, as this issue is no longer res integra. I had an occasion to consider this issue in the case of Jivanbhai Joitaram Parmar v. State of Gujarat, Special Civil Application No. 2873 of 2013, decided on 29th July, 2015 wherein this Court observed as under:-

"10. It is not in dispute that the petitioner was appointed as a Teacher in a Grant-in-Aid Ashramashala in the year 1976. The concept of the Ashramshala was introduced by the State Government with a definite object. The object of the same was to see that the children hailing in remote areas of the State are imparted education alongwith the facilities of lodging and boarding. That is the reason why the same was termed as an Ashramshala. The State Government came out with the Government Resolution, dated 23.08.1973 which provided as under:-

Such of the teachers employed in the Ashram Schools run by the voluntary agencies who fulfill the prescribed qualification and experience for primary teachers of the District Education Committee under the Panchayats and who were within the age prescribed for primary teachers on the day of their recruitment in the service of the Ashram Schools should be allowed to have their lien in the services of respective District Education Committee under the Panchayat and service of such teachers should count fully in the service of the

District Education Committee from date of selection by the Staff Selection Committee of the respective district panchayat.

11. It appears from the reasonings assigned by the State Government that a teacher of an aided Ashramshala would not be covered or governed by the provisions of the Bombay Primary Education Act, 1947 and Rules of 1949 framed thereunder. It appears from the stance of the State Government that the Government Resolution, dated 06.04.2002 would be applicable to only those teachers of the Aided Private Primary Schools falling within the ambit of the Bombay Primary Education Act, 1947.

12. Although it is not made clear from the affidavit-in-reply filed by the State Government yet it appears that the reasonings adopted by the State Government are in tune with a Judgment rendered by a learned Single Judge in Special Civil Application No. 11651 of 2004. It appears that a learned Single Judge of this Court took the view that the teachers of the Ashramshala cannot be put at par with the teachers of a Primary Aided Schools.

13. It appears that this issue is now no longer res-integra in view of a Division Bench decision of this Court rendered in the case of "Gujarat Rajya Ashramshala Karmchari Sangh Vs. State of Gujarat & Ors." Letters Patent Appeal No. 332 of 2007, decided on 22.04.2014. I may quote the observations made by the Division Bench as under:-

1. All these matters arise out of the common judgment and order passed by the learned single Judge dated 04.02.2006 in Special Civil Applications No. 11651/2004 and 13746/2005 and hence, they are decided by this common judgment.

1.1 LPA No. 332/2007 has been preferred by the original petitioner of SCA No. 11651/2004 against the non-grant of retiral benefits like pension, etc. to the members of the appellant-union, original petitioner.

1.2 LPA No. 516/2007 & 636/2007 have been preferred by the State against the impugned judgment for partly allowing the writ petitions.

1.3 SCA No. 2599/2009 has been preferred by Bhil Seva Mandal, which is a Grant-in-aid Educational Institution registered under the Bombay Public Trusts Act, 1950 seeking financial assistance from the State Government for the payment of Gratuity and similar benefits to its employees.

2. The learned single Judge has elaborately discussed the facts giving rise to the present proceedings in the impugned judgment and hence, they are not repeated for the sake of brevity. However, briefly stating, the grievance of the original petitioners was that the staff of primary schools run by the District Panchayat Education Committees are being paid various benefits, including that of Government Pension, Gratuity, Group Insurance, Medical allowance, etc., whereas, the members of the petitioner-union, who are the staff of Ashram Shalas, are being denied the said benefits.

3. Mr. Kaushik Pujara learned counsel appearing with Mr. M.K. Patel for the appellant-Union drew our attention to the Government Resolution dated 21.01.1986 wherein it is resolved to confer all benefits to the staff of Ashram Shalas, as are being available to staff of primary schools run by District Panchayat Education Committees. He also drew our attention to the Government Resolution dated 25.11.1988 which provides for the pay-scales of the staff of Ashram Shalas. He took us through the Government Resolution dated 22.12.1953 issued by the erstwhile Government of Bombay whereby the scheme of Ashram Shalas was formulated. He also took us through the scheme of The Bombay Primary Education Act, 1947, the definition of approved school provided in Section 2(2), definition of private primary school provided in Section 2(18A) and also Section 40A regarding recognition of private primary schools. He also took us through the provisions of Section 18 of The Right of Children to Free and Compulsory Education Act, 2009.

3.1 It was submitted by learned counsel Mr. Pujara that the scheme of Ashram Shalas is recognized by the State Government and is also recognized under The Bombay Primary Education Act. Therefore, the staff of Ashram Shalas are entitled for all benefits, as are made available to the staff of primary schools run by the District Panchayat Education Committees. He submitted that in pursuance of the litigation filed before this Court, the State Government agreed to grant all benefits to the staff of District Panchayat Education Committees vide Resolution dated 06.04.2002. They have also been granted benefits of different Pay Commissions. Therefore, the learned single Judge erred in not recognizing the staff of Ashram Shalas as Government Employees and in refusing to grant them all benefits.

4. Mr. Roshan Yagnik learned AGP submitted that the learned single Judge erred in granting the benefit of pay-scales to the members of appellant-Union. He submitted that the impugned order has huge financial implications upon the State Exchequer and that the learned single Judge ought not to have issued such directions since it is a policy matter of the Government. He, therefore, submitted that the impugned judgment deserves to be quashed and set aside.

5. Mr. Yogi Gadhia learned counsel appearing on behalf of the petitioner-Mandal in SCA No. 2599/2009 adopted the arguments advanced by learned counsel Mr. KB Pujara and submitted that the petitioner-Mandal is a 100% Grant-in-aid institution recognized by the State Government under The Bombay Primary Education Act and is imparting education, which is now compulsory under The Right of Children to Free and Compulsory Education Act, 2009.

6. We have heard learned counsel for the respective parties and have perused the documents on record. We have also gone through the impugned judgment rendered by the learned single Judge. It appears from the record that the idea of starting Ashram Shalas was conceptualized way back in the year 1953 by the erstwhile Government of Bombay. The then Government recognized the problem of lack of education amongst the inhabitants of the poor and weaker sections of

the society and decided to set up schools with free lodging and boarding facilities with the object to impart intensive basic training under the constant supervision and guidance of able teachers. The activities carried out by the Ashram Shalas are at grass-root levels and that to in tribal areas. It is also granted recognition by the State Government under the provisions of Section 40A of The Bombay Primary Education Act, 1947. Further, free education is also a legal right under The Right of Children to Free and Compulsory Education Act, 2009.

7. In the present day scheme of education, several private institutions, which are not getting Grants from the State Government, flourish in the urban areas. However, one cannot see such private educational institutions operating in the tribal or rural areas. Ashram Shalas are such exceptions, which also provide lodging and boarding facilities to students, who basically belong to backward strata of the society and are living in tribal areas. When the Ashram Shalas are recognized under The Bombay Primary Education Act and education has now become a legal right under The Right of Children to Free and Compulsory Education Act, 2009, to deprive the staff of Ashram Shalas of the benefits, as are being given to the staff of schools run by District Panchayat Education Committees, would be discriminatory and thereby, unconstitutional.

8. In our considered opinion, once the State Government granted recognition to the Ashram Shalas as approved school u/s.2(2) of The Bombay Primary Education Act and released necessary financial aid, it is not proper on the part of the State Government to back out from the promise made in the Government Resolution dated 21.01.1986. Having said that, the staff of Ashram Shalas cannot also be placed in the category of Government Employees. Nevertheless, to deprive them the status of approved schools under The Bombay Primary Education Act would be unconstitutional. Hence, we are of the opinion that the learned single Judge erred in holding that Ashram Shalas are not covered under private institutions. The Ashram Shalas are covered under The Bombay Primary Education Act, otherwise, they could not have carried out educational activities in view of Section 40A r/w. Section 18 of The Right of Children to Free and Compulsory Education Act, 2009.

9. In view of the above, we hold that the staff of Ashram Shalas will be entitled for all benefits of the Government Resolution dated 21.01.1986, as are being given to the staff of primary schools run by District Panchayat Education Committees since they are carrying out educational activities under The Bombay Primary Education Act just like any other private institution. Such benefit shall be extended from the date when it was given to the staff of primary schools run by District Panchayat Education Committees. It is clarified that the above benefits will also be extended even to the Non-teaching Staff of the Ashram Shalas. The impugned judgment and order of the learned single Judge, accordingly, stands modified to the aforesaid extent. Consequently, LPA No. 332/2007 and SCA No. 2599/2009 are partly allowed whereas, LPA No. 516/2007 and 636/2007 are dismissed.

14. Thus, the plain reading of the afore noted Judgment indicates that the Ashramshalas are covered under The Bombay Primary Education Act, otherwise, in absence of the same, they could not have imparted the education in view of Section-40(A) r/w. Section 18 of The Right of Children to Free and Compulsory Education Act, 2009.

15. If that be so, then there is no reason for the Government to exclude the teachers like the petitioner herein from the applicability of its Government Resolution, dated 06.04.2002. The petitioner would be entitled to draw the pension for the period between 16.01.1976 and 11.08.1994 i.e. the period during which he was serving as a Teacher in a Grant-in-Aid Ashramshala. My line of reasoning is also in accordance with the Government's own resolution of the year 1973 which has been quoted and relied upon in the impugned order. The word "Lien" in the Government Resolution, dated 23.08.1973 should be read as "absorption". To put it in other words, the service put in by the teacher in the Ashramshalas should be allowed to be considered while being absorbed in the service of the respective District Education Committee under the Panchayat.

16. My attention is also drawn to a Division Bench decision in the case of "State of Gujarat Vs. Kusumben E. Borasada" reported in , 2001 (3) GLH 659. The issue before the Division Bench was regarding the pensionary benefits to the teachers of the Non-Government (Private and Recognized) Grant-in-Aid Primary Schools. I may quote the observations made by the Division Bench in Paragraphs-4, 5, 6, and 7, as under:-

4. Having heard learned counsel for both the sides and having given our thoughtful consideration, we find that once it is established and which emerges as an admitted position that the teachers of Non-Government recognised grant-in-aided private colleges, higher-secondary and secondary schools are being given the pensionary benefits, what can be the justification for denying the same benefits for the teachers of the similar institutions imparting primary education. We do not find any basis to discriminate them and the reasons of financial constraints or that there was no policy decision are not at all germane to the controversy raised in this matter, and we fully agree with the reasons given by the learned Single Judge in support of his order. No discrimination can be permitted by making a class within a class. For the purpose of pension, whether the teachers are working in primary schools or in secondary, higher-secondary schools or colleges, all have to be treated at par and no discrimination can be meted out to the persons belonging to the same class. It is a clear case in which the equals have been treated in an unequal manner which strikes at the very principle of equality enshrined in Article 14 of the Constitution of India as well as Article 16 of the Constitution of India with regard to the equality of opportunity in the matters relating to employment. We, therefore, find that the grounds, on which the judgment of the learned Single Judge has been assailed, are not tenable and we have no hesitation in holding that the teachers in the Non-Government-private but recognised and aided institutions imparting primary

education are also entitled to the same pensionary benefits as are admissible to the teachers of identical institutions working in the colleges, higher-secondary schools and secondary schools. The State, being a welfare State, is not supposed to make any distinction or give a differential treatment by creating a class within a class and the teachers of the private institutions imparting primary education which are recognised and aided by the Government are also entitled to pension.

5. Therefore, while upholding the order as has been passed by the learned Single Judge, we direct the State Government to frame an appropriate scheme for the purpose of giving pensionary benefits to the teachers of the primary schools of above nature. Modalities with regard to the date of commencement of the pension scheme as also the date from which the actual payment of pension is to be made in case of teachers who were already retired may be worked out.

6. In this regard, certain aspects have been brought to our notice by the learned Senior Counsel, Mr. H.M. Mehta, and we find that such factors are relevant and quite germane for the purpose of evolving such a scheme for payment of pension to the teachers of Non-Government (Private) but Government recognised and Government Aided Primary Schools and we accordingly direct that while framing the scheme and determining the date of commencement of the scheme the State Government shall keep in view the following aspects and treat the teachers of such primary schools at par with the teachers of similarly situated Colleges/ Higher Secondary Schools/Secondary Schools for the purpose of pension by issuing appropriate Government Resolution:-

(i) That The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 [14th March 1952] was an Act to provide for the initiation of the Provident Funds (Pension Fund) and Deposit Linked Insurance Fund for employees in factories and other establishments;

(ii) That this Act was applied to the employees working in educational establishments on 19th of February 1982;

(iii) That as has been pointed out by Mr. H.M. Mehta, in case of educational institutions, the Supreme Court while admitting a batch of writ petitions filed by number of educational institutions had stayed the operation of the Government of India's Notification S.O. No. 986 dated 19th February 1982, applying the Act to Educational Institutions and the general stay continued till January, 1988, and while deciding and dismissing these petitions finally in January 1988, the Supreme Court, in the cases of M/s. D.A.V. College and anr. Vs. Regional Provident Fund Commissioner and Ors., reported in , 1988 (2) S.L.R. Page 170 decided on 29.1.1988 and Welham Girls High School Society, Dehradun Vs. Union of India and Others reported in 1988 (2) S.L.R. Page 172 decided on 28.1.1988 ordered as under:-

"We do not find any substance in the contention of the petitioners in these cases that the Employees Provident Fund And Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") has no application to the educational

institutions who are petitioners in these cases. We, therefore, dismiss these cases.

2. We direct that the petitioners shall comply with the Act and the schemes framed thereunder regularly with effect from 1.2.1988. Whatever arrears they have to pay under the Act and the schemes in respect of the period between 1.3.1982 and 1.2.1988 shall be paid in each of the petitioners within such time as may be granted by the Regional Provident Fund Commissioner. If the petitioners pay at all the arrears payable from 1st March, 1982 upto 1 February, 1988 in accordance with the directions of the Regional Provident Fund Commissioner he shall not levy any damages for the delay in payment of the arrears. Having regard to the special facts of these cases the subscribers (the employees) shall not be entitled to any interest on the arrears. The Writ Petitions are disposed of accordingly. No costs."

(iv) In the light of the Supreme Court's judgment as aforesaid, it may be considered that as a consequence of general stay granted by the Supreme Court of the operation of the Government of India's notification S.O. No. 986 Dt. 19 Feb. 1982 the educational institutions had not recovered the employees' share of contributions from their wages during the period (March 1982 to January 1988) when the stay order was in force and therefore in such cases insistence of the payment of the employees' share of contributions by the institutions themselves will not be in order. Therefore, it was decided by the Central Board of Trustees in consultation with the Ministry of Labour, Government of India, that in cases where the educational institutions had not actually recovered the employees' share of contributions from their wages for the period from 1.3.1982 to 31.1.1988, payment of the same need not be insisted upon and the same may be waived except in cases where the employer or the employees volunteer to pay the same in lump-sum or in installments and in cases where the employees' share of contribution for the above-said period has already been deposited by any of the educational institutions and has been credited to the respective accounts of the employees, the question of its refund does not arise and such cases should not be reopened.

(v) The date of judgment of the learned Single Judge is 18th January 1997.

7. All these factors may be taken into consideration for the purpose of fixing the date of commencement of the scheme with regard to the teachers of the private institutions imparting primary education which are recognised and aided, and in case of retired teachers, the amount of pension be fixed on notional basis from the date of the commencement of the scheme. Such scheme shall be framed by the Government within a period of three months from the date of receipt of the certified copy of this Order, as may be served by either of the parties or through the Court, and the same shall be appropriately notified, acted upon and given effect to and the due benefits shall be given to the retired teachers also who are found to be entitled for the pension. The Appeal is hereby dismissed with no order as to costs with the directions as above"

16. Thus, in view of the above, the principal argument is rejected.

17. So far as the second argument of Mr. Rindani is concerned, I do not find any merit in the same. Although in the service book of the deceased husband, it has been stated that the appointment is temporary, yet at no point of time the Government raised any objection as regards the legality and validity of the appointment, and it appears that, being a 100% Grant-in-Aid institution, the salary was also being paid to the deceased husband. Therefore, after putting in almost 14 years of service, it would be too much to say that the appointment was not in accordance with the Rules and Regulations. I may hurriedly quote the relevant clause of the Policy of the Government, as reflected in the Government Resolution dated 5th July, 2011. The Government Resolution reads as under:-

"Payment of Lump- Sum Financial assistance to the dependent family of Class III and Class IV employees who die while in service - regarding.

Government of Gujarat, General Administration Department, Resolution No. Raham/102009/1651/K Sachivalaya, Gandhinagar

Dated 5/7/2011

Read:-

(1) Govt. Resolution, General Administration Deptt. No. Bharat/2197/K, dated 10/03/2000.

(2) Govt. Resolution, General Administration Deptt. No. Bharat/1201/910(2)/K, dated 7/9/2002.

(3) Govt. Resolution, General Administration Deptt. No. Bharat/1201/910(3)/K, dated 7/9/2002.

(4) Govt. Resolution, G.A.D. No. Bharat/102004/385/K, dated 15/06/2004.

(5) Govt. Resolution, G.A.D. No. Bharat/102004/385/K, dated 30/09/2004.

RESOLUTION

Vide Government Resolution, General Administration Department dated 10.03.2000 referred to at Sr. No. (1) above, the revised scheme of giving compassionate appointment to a member of the dependent family of those Class-III and Class-IV employees who die in harness, has been pronounced. Thereafter certain amendments have been made in the scheme vide other Government Resolution referred to above.

2. Taking into consideration the provisions of the existing scheme of giving compassionate appointment to the dependent of the deceased employees who die while in service, the difficulties being experienced while implementing these provisions, the court cases filed in the wake of rejection of compassionate appointment, the report for introducing a scheme of paying lump-sum financial package in lieu of compassionate appointment to the dependent of the deceased

employees, submitted earlier by the committee chaired by Smt. Nethra Shenoy, the then Principal Secretary (Planning), General Administration Department, constituted for reviewing the existing scheme of compassionate appointment and also the representation now submitted by "The Gujarat State Employees" Co-ordination Committee" and "The Gujarat Sachivalaya Federation" to provide lump-sum financial assistance in lieu of giving compassionate appointment to the dependent of the deceased employees, the matter of introducing a scheme of paying lump-sum financial assistance to the dependent family of such deceased employees in lieu of compassionate appointment, was under consideration of the Government for quite some time.

3. After careful consideration of this entire matter, in super session of the existing scheme of giving compassionate appointments to the members of dependent families of those Class III and Class IV employees, who die while in service, a scheme for payment of lump-sum financial assistance to such families, is hereby introduced as under:-

(1) Dependent family of Class III and Class IV employees who die while in service, shall be paid lump-sum financial assistance as follows:-

(2) Lump-sum financial assistance as mentioned above shall be admissible to the dependent families of the deceased Class-III and Class-IV employees who are appointed on regular basis through the prescribed recruitment process and who have put in at least five years of service as well as to the deceased class III and Class IV employees who are on work-charge establishment.

This scheme shall not apply to daily wage workers, casual workers, apprentices and those who are appointed on ad-hoc basis, contract or re-employment basis.

(3) The lump-sum financial assistance shall be paid only to the legitimate wife or husband or son or un-married daughter including legally adopted child under "the Hindu Adoption Act, 1956" in case of childless employee during his/her existence), who is fully dependent on the concerned employee at the time of his/her death and in whose name the family pension is admissible/has been granted.

(4) If husband and wife are both Government employees and one of them dies while in service, in that case, this assistance shall not be admissible to the family of such deceased employee.

(5) If husband/wife of the Government employee who died while in service, is serving in Government of India, Government of Gujarat or other State Government, semi-Government Institutions, Board/Corporation undertaking by the State/Central Government, Grant-in-aid Institutions, Local Self-Governing Institutions, Taluka/District Panchayat, Nationalized Banks, Co-operative Institutions (e.g. Nagrik Cooperative Banks, District Milk Producing Federations, GUJCOMASOL, Agricultural produce Marketing Committee of the State, District Central Banks etc.) and any Institutions formed under the Act of the State Government or Central Government, this assistance shall not be admissible to

the family of such deceased employees.

4. Sanction to pay such lump-sum financial assistance to the dependent families of the deceased Class-III and Class-IV employees shall be granted by the concerned Heads of Department. If such cases fall under Sachivalaya Department, the concerned Sachivalaya Department shall grant sanction for paying such lump-sum financial assistance.

It should be ensured that the amount of such lump-sum financial assistance is paid within three months from the date of the demise of the employee, to the person in the family pension as mentioned in para 3(3) above, by completing the procedure of sanctioning such amount at the earliest, after verifying the death certificate and other necessary documents.

5. All the pending applications of giving compassionate appointments to the members of the dependent families of such deceased Class-III and Class-IV employees shall be disposed of as per this new scheme.

6. Cases of giving compassionate appointments to the members of the dependent families of the deceased Class-III and Class-IV employees which have already been rejected, shall not be reconsidered under this scheme.

7. This scheme shall apply uniformly in the cases of the dependent families of those deceased Class III and Class IV employees serving under State services, Panchayat services and Grant-in-aid Institutions, who die while in service.

8. This issues with the concurrence of Finance Department vide the note on this department file of even number, dated 18/4/2011."

18. In my view, the case is covered by Clause-7 referred to above.

19. For the foregoing reasons, this petition succeeds and is hereby allowed. The impugned order dated 19th February, 2015 (Annexure "A" to this petition) is hereby quashed. The State Government is directed to pass fresh order of providing lump-sum compensation in terms of the Government Resolution dated 5th July, 2011, considering the observations made by this Court in this judgment.

20. I expect the authorities to pass appropriate order in accordance with law, within a period of two months from today, having regard to the fact that the only earning male member had passed away. Rule is made absolute to the aforesaid extent.