

(2014) 01 GUJ CK 0064

In the Gujarat High Court

Case No : Letters Patent Appeal No. 333 of 2008 in Special Civil Application No. 11809 of 2007

Saraswati Education Trust and Another

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 22-01-2014

Acts Referred:

Citation : (2014) 01 GUJ CK 0064

Hon'ble Judges : K.S. Jhaveri, J;A.G. Uraizee, J

Bench : Division Bench

Advocate : Falguni Bhagat with Mr. N.V. Gandhi for the Appellants No. 1-2, for the Appellant; J.K. Shah, Asst Govt. Pleader for the Respondent(s) No. 1 and Mr. Hemang R. Rawal, Advocate for the Respondent(s) No. 3, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Jhaveri, J.—By way of filing this letters patent appeal under Clause 15 of the Letters Patent, the appellant-original petitioner challenges the judgment and order dated 26th September 2007 passed by the learned Single Judge in Special Civil Application No. 11809 of 2007 vide which he dismissed the said writ petition and confirmed order dated 12.10.2006 made by respondent No. 2-District Education Officer, Ahmedabad City. The short facts of the present case are that the appellant No. 1-Trust runs a secondary school in Gujarati medium and another Hindi medium school. Respondent No. 3 who was working as a Teacher and who was qualified to teach Hindi subject was declared as surplus teacher vide order dated NIL.08.2004 pursuant to hearing which took place on 27.07.2004 because there was reduction of one class each in Standards VIII and IX. However, vide the same order it was stated that as the school management had already terminated services of one lady teacher and it was possible for the School Management to absorb respondent No. 3 vice the said lady teacher whose services were terminated.

2. Therefore, the school management approached respondent No. 2 praying that

respondent No. 3 was a surplus teacher because there was need for a teacher in English considering the fact that there was 155 students in three classes of Standards VIII, IX and X. At the hearing on the application made by the school management the principal of the school stated that respondent No. 3 had not cleared Standards X and XII examinations with English language as one of the subjects and hence, being the junior most, was required to be declared surplus. That after creating such vacancy a teacher for English language should be permitted to be appointed. However, as the request of the appellants was rejected by the District Education Officer, Ahmedabad vide order dated 12th October 2006 the appellants challenged the same before the learned Single Judge by filing the writ petition being Special Civil Application No. 11809 of 2007. The appellants further prayed for a direction to provide a qualified English teacher from the list of surplus teachers available with respondent No. 2, and at the same time a consequential direction to absorb respondent No. 3 in another school or declare respondent No. 3 as a surplus teacher. The said writ petition came to be rejected by the learned Single Judge vide order dated 26th September 2007.

3. Ms Falguni Bhagat, learned counsel appearing for Mr. N.V. Gandhi, learned counsel for the appellants has contended that the order of the learned Single Judge is contrary to law and learned Single Judge has committed an error in holding that Respondent No. 3 is qualified to teach English subject though Respondent No. 3 was holding qualification of B.A., B.Ed. with Hindi subject.

4. As against that, Mr. Shah, learned Assistant Government Pleader as well as Mr. Hemang Rawal, learned counsel for respondent No. 3 have supported the order of the learned Single Judge and prayed that the appeal may be dismissed.

5. We have heard learned counsel for the parties and perused the record. It is apparent from the order of the learned Single Judge that respondent No. 3, who was present before the learned Single Judge at the time of hearing, has stated that considering the Rules she was not liable to be declared surplus and that if the school management asked her to conduct classes for English language she was ready and willing to do so. It was further stated that she had passed out at the 10th Standard with English as one of the subjects and the necessary mark-sheet shall be produced on the next day.

6. The learned Single Judge has, therefore, while non-suiting the petitioner, has observed as under in paragraphs 5, 6 and 7 of the order: 5. The authority has come to the conclusion that in absence of any reduction in the strength of students or the number of classes there would be no occasion for declaring a teacher to be surplus and, therefore, respondent No. 3 cannot be so declared. That once it was not possible to declare a teacher as surplus, no order can be made for absorbing the said teacher, namely respondent No. 3 at any other place nor can respondent No. 3 be declared surplus and kept on the waiting list. In so far as the qualification of respondent No. 3 is concerned, the authority has found that respondent No. 3 has tendered a copy of the mark-sheet which is available

on the records of respondent No. 2 authority. Thus respondent No. 2 has not accepted any of the contentions raised and rejected the application moved by the petitioner.

6. Mr. N.V. Gandhi, learned advocate appearing on behalf of the petitioners, has, after reiterating the facts, placed reliance on the decision of this Court in the case of Atladara Kelavani Mandal and Others Vs. State of Gujarat and Others, to submit that the authority is duty bound to consider while appointing a teacher from the surplus pool as to whether such teacher is qualified or not for the subject for which the vacancy has arisen. He has also placed reliance on observations made by this Court in Paragraph No. 12 in the case of Shree Vidhya Vikas Mandal and Others Vs. State of Gujarat and Others, to submit that the authority was duty bound to consider the earlier judgment of this Court in the case of Atladara Kelavani Mandal (supra) and respondent No. 3 not being qualified could not be thrust on the petitioner.

7. The petition does not merit acceptance. As already noticed hereinbefore, there is no situation which warrants declaration of either respondent No. 3 or any other teacher as surplus in absence of any reduction in the number of classes or the strength of students. As per norms, considering the strength of students and number of classes, requisite number of teachers, inclusive of principal, are already available. Therefore, the petitioners cannot claim any right to have a particular teacher declared as surplus. Once this be the position there is no question of seeking appointment of any other teacher. Even otherwise, on facts, the respondent No. 2 authority has found that respondent No. 3 has already undertaken to take classes of English subject and that she has produced the necessary certificate of marks in this regard. This Court has consistently held all throughout that the State Government is entitled to impose such conditions as are necessary for proper maintenance of high standards of education as the financial burden is shared by the State. That the State is also under an obligation to protect the interest of the teaching staff. Therefore, in light of this settled position in law also, no case is made out for interference in the impugned order made by respondent No. 2 authority. The petition is accordingly summarily rejected.

We are in complete agreement with the reasoning given by the learned Single Judge. There is no need to declare the services of Respondent No. 3 as surplus. The appeal has no merits and same deserves to be dismissed. Accordingly, the same is dismissed with no order as to costs.