
(2019) 07 GUJ CK 0042

In the Gujarat High Court

Case No : R/Letters Patent Appeal No. 1412 Of 2019 In R/Special Civil Application No. 13534 Of 2009, Civil Application (For Condonation Of Delay) No. 1 Of 2018 In R/Letters Patent Appeal No. 1412 Of 2019, Civil Application (For Stay) No. 2 Of 2018 In R/Letters Pate

State Of Gujarat & 2 Others

APPELLANT

Vs

Mahendrabhai Mohanlal Parmar & 3 Others

RESPONDENT

Date of Decision : 18-07-2019

Acts Referred:

Mumbai Primary Education Rules, 1949 — Rule 1(K)

Citation : (2019) 07 GUJ CK 0042

Hon'ble Judges : Anant S. Dave, J;Biren Vaishnav, J

Bench : Division Bench

Advocate : Chintan Dave, Kb Pujara

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1. Civil Application No. 01 of 2018 is filed by the State of Gujarat seeking condonation of delay of 370 days in filing the Letters Patent Appeal.

2. The Letters Patent Appeal sought to be filed was against the order dated 10.02.2017 passed by the learned Single Judge in Special Civil Application No. 13534 of 2009.

3. Mr. Pujara, learned advocate for the respondent has filed an affidavit-in-reply opposing the condonation of delay. Drawing our attention to the fact

that the learned Single Judge passed the order on 10.02.2017 which was received by the District Education Officer, Patan on 02.03.2017, it was

contended by Mr. Pujara that no action was taken even to apply for a certified copy and the same was applied beyond the period of time. Relying on a

decision of the Apex Court in the case of Postmaster General and Others vs. Living Media India Limited and Another reported in (2012) 3 SCC 563,

Mr. Pujara contended that no sufficient cause is made out and therefore the delay ought not to be condoned.

4. Mr. Chintan Dave, learned Assistant Government Pleader for the appellants relied on a decision dated 01.07.2019 rendered by this Court in Civil

Application No. 1160 of 2019 wherein this Court by a detailed order had condoned the delay of 320 days in an appeal filed by the State of Gujarat.

5. Having considered the submissions made by the learned advocates appearing for the respective parties, we condone the delay of 370 days occurred

in filing the Letters Patent Appeal. Accordingly, the application is allowed. Rule is made absolute.

ORDER IN LETTERS PATENT APPEAL WITH CIVIL APPLICATION FOR STAY

1. The present Letters Patent Appeal arises out of a common oral judgement dated 10.02.2017 passed by the learned Single Judge. As far as the

present appeal is concerned, it arises out of Special Civil Application No. 13534 of 2009 which was a part of the group decided by the learned Single

Judge.

2. The respondent " original petitioner approached the learned Single Judge on being aggrieved by the judgement passed by the Gujarat Primary

Education Tribunal (for short "the Tribunal") dated 25.09.2009 and the consequential order of the District Education Officer, Patan dated

23.11.2009.

3. The background of facts in this appeal are as under:

3.1 The respondent was appointed as a Teacher in a primary school on 03.12.1973. At the time when he was appointed he was holding the degree of

Intermediate Drawing Examination of the Gujarat State Examination Board, which he had passed in 1968. He was also holding a degree of

Rashtrabhasha Pravesh Examination which he had passed in the year 1969. He had also completed a Diploma in Tailoring from the Ideal Tailoring

and Cutting Institute, Ahmedabad in the year 1970.

3.2 On being appointed as a Teacher, he also improved his qualifications by passing B.A (External) Examination in the year 1981 and Garment

Making (New). A certificate was issued by the Technical Examination Board, State of Gujarat in June 1997.

3.3 On being so appointed, the respondent from time to time earned the higher grade scales and pay fixations in the cadre as if he was a trained primary teacher. It appears that pursuant to some objections issued by Local Fund Authority, by an order 26.07.1996, the respondent's pay scale was ordered to be reduced from that of Rs.1200-2040 to that of Rs.950-1400. It is on being aggrieved by this order of the reduction in pay scale and consequential recovery, the respondent approached the Tribunal where he failed. Hence the petition was filed before the learned Single Judge where he succeeded. The State, therefore, is in appeal before us.

4. Mr. Chintan Dave, learned Assistant Government Pleader contended that the learned Single Judge committed an error in law in allowing the petition and directing that the present respondent is original petitioner was entitled to the pay scale of a trained teacher. According to Mr. Dave, the respondent did not possess the requisite qualification equivalent to PTC and therefore was not entitled to the fixation of pay in the trained teacher category but however the fixation that was done in the year 1996 as an untrained teacher was correct. He submitted therefore the Tribunal committed no error in dismissing the application filed by the respondent is original petitioner. He further submitted that at the time of the appointment, since the respondent possessed only degree of SSC and a Diploma in Tailoring from Ideal Institute, Ahmedabad, it was not a recognised qualification and therefore the pay scale of an untrained teacher was rightly granted to the respondent and the learned Single Judge committed an error in quashing and setting aside the order of the Tribunal.

5. Mr. K.B. Pujara, learned advocate for the respondent on the other hand contended that the appellants failed to appreciate that the original petitioner had been appointed as a Primary Teacher in the subject. On his appointment, he had a Diploma in Tailoring from Ideal Tailoring and Cutting Institute. In addition thereto, he had a qualification which he had acquired in the year 1968 in Intermediate Drawing Examination. Further, he had the qualification and certificate of the Rashtrabhasha Pravesh Examination and therefore it was improper for the appellant to contend that the respondent did not hold the qualification equivalent to PTC.

6. Having considered the submissions made by learned advocates appearing for the respective parties, it will be in the fitness of things for us to

reproduce the reasonings assigned by the learned Single Judge in allowing the petition. The reasonings and facts which have been considered by the learned Single Judge read as under:

11. In above background, if we now peruse the merits of disputes between the parties, it becomes clear that all the petitioners are serving as

teacher with respondent No.1, the concerned institution. All the petitioners are having qualification of graduation or post graduation with B. Ed. except

Mahendrakumar Mohanlal Parmar, being petitioner in SCA No.13534 of 2009 who was holding diploma in Tailoring. It is undisputed fact that though

all were appointed in accordance with law and rules at the relevant time and there was no complaint regarding their appointment and service as such.

It is also clear that if, at all there is any lacuna or irregularity so far as their pay scales are concerned, the respondent authority had vide their letter

dated 28.06.1996 conveyed the respondent education institution, where petitioners were serving, that irregularity, if any, found during examination of

establishment of such institution during the year 1991/92 has been let gone and thereafter there remains no issue so far as service of the petitioners

are concerned. However, it seems that even after such clarity when some authority of the respondents have refused to extend benefit of pay scale of

Trained Teachers to the petitioners, petitioners have filed respective applications before the Tribunal, details of which is disclosed here-in-above and

hence not reproduced. However it becomes clear that even after letter dated 28.06.1996, let going the irregularities if at all there is any without

pointing out any specific irregularity and after extending such benefit by the respondent to the petitioners, on 01.12.1997, the Government has itself

issued one G.R., copy of which is at Annexure-F. Whereby now it is the decision of the Government itself that for primary schools, though initially

there was disclosure of eligibility as PTC only, after careful consideration of the issue and considering previous orders, the Government has decided to

approve different educational qualification as eligibility criteria for the post of Primary Teachers pursuant to rule 1(K) of the Mumbai Primary

Education Rules, 1949. Thereby now eligible qualification for the primary teacher would be amongst any of the following degree namely (1) SSC or

PTC as per the decision of the Government at the relevant time, (2) SSC and B.Ed., however with a rider that 5% post shall be filled up of such

category. (3) Graduation, B.Ed. and (4) SSC or ATD however with a rider that amongst which 7% is to be filled for the subject of Drawing and

Music as per recommendation of Education Committee. Therefore amongst above eligible qualifications for the post of Primary Teachers now when

PTC is not the only eligibility criteria, but there are different educational criteria and more particularly adding the educational qualification of Graduate,

Post Graduate and B.Ed. as one of the criteria for selecting such primary teacher, it becomes clear that the stand of the respondents before the

Tribunal as discussed here-in-above was correct at the relevant time that pursuant to such G.R., when petitioners who are graduates, Post Graduates

and B. Ed. are eligible for pay scale as of Trained Teachers and therefore, issue raised by the respondent at such stage is unwarranted. It is also

relevant to recollect here that because of such G.R., when there would be additional cost for paying salary etc. Government had sanctioned a

considerable amount of Rs. 99.27 lacs at the relevant time.

14. In addition to above G.R. and impugned order, petitioners have produced relevant documentary evidence to prove that otherwise they are been

extended the benefit at the relevant time without any difficulty and complaint, however it seems that at least in the case of Mahendrakumar Mohanlal

Parmar, petitioner of SCA No. 13534 of 2009 when he was to retire in the month of July 2009, on attaining the age of superannuation, the respondents

have issued one letter dated 23.11.2009 conveying the employer-institution of such petitioner to consider the recovery of difference of amount of

salary paid to him while forwarding pension papers and probably that has given the cause for such petitions.â??

7. What is evident from the reasonings that the learned Single Judge has considered is that when the respondent was appointed as a Primary Teacher,

he was so appointed in the year 1973. The recovery of the lacuna which was sought to be cleared by the appellants herein was after a period of more

than 20 years. Recovery was sought to be made on the purported ground that the respondent herein did not possess the qualification equivalent to that

of â??PTCâ?? and therefore was not entitled to the scale of a trained teacher. The learned Single Judge has extensively relied on the Government

Resolution dated 01.12.1997, which according to the learned Single Judge, was clear that as per the Government Resolution, the respondent herein

was entitled to pay scale of a trained teacher. Moreover, what was evident was that the recovery was sought to be made after the respondent herein had retired in July 2009.

8. Perusal of the petition and the judgement of the Tribunal leads us to believe that the Tribunal committed an error in holding that the respondent herein was not holding the qualification so as to claim entitlement to the pay scale of a trained teacher. Looking to the qualifications, though at the time of appointment, the petitioner possessed degree of SSC and Diploma in Tailoring, it was incorrect to say that the qualification was not commensurate with the one equivalent to PTC. During the tenure of service, the respondent improved the qualification and passed his B.A (External) examination. Moreover, the respondent also acquired the qualification of Garment Making (New) from the Technical Examination Board in June 1997. It was on this basis that the respondent herein earned the scale of the trained primary teacher and from time to time was granted the benefits of the higher grade scales and such fixation continued for a period of more than 20 years till the appellants decided to reduce the respondent's pay scale on the ground that he was not entitled to the scale of a trained teacher.

9. Having considered the submissions made by learned advocates appearing for the respective parties and having perused the judgment of the learned Single Judge, we find that the learned Single Judge committed no error in holding that the action of appellants in reducing the pay scale was contrary to law in view of the fact that the respondent " original petitioner had the qualification commensurate to that of B.Ed and/or PTC inasmuch as he had Diploma in Tailoring and added to that had the qualification of B.A. and also a certificate from the Technical Examination Board in Garment Making (New), the appellants herein were not justified in reducing the pay scale of the respondent to that of untrained teacher.

10. We therefore see no reason to interfere with the order of the learned Single Judge and the appeal is accordingly dismissed with no order as to costs. Civil Application stands disposed of in view of the dismissal of the main appeal.