
(1992) 11 GUJ CK 0001
In the Gujarat High Court

Swaminarayan Education Trust	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 12-11-1992

Acts Referred:

Bombay Primary Education Act, 1947 — Section 60 , 63
Constitution of India, 1950 — Article 14, 227

Citation : (1992) 11 GUJ CK 0001

Hon'ble Judges : Y.B. Bhatt, J;A.P. Ravani, J

Bench : Division Bench

Judgement

A.P. Ravani, J.—All these petitions can be divided in two groups - one consisting of Special Civil Applications No. 2549, 2550, 2551 and 2552 of 1992 wherein State Government Resolution dated September 25, 1987 alone is challenged. By the said resolution all the teachers of recognised private primary schools are directed to be paid revised salary as per the rate prescribed by the Central Pay Commission and which have been mentioned in the Government Resolution. In rest of the petitions, the resolution together with the judgment and order passed by the Primary Education Tribunal against each of the petitioner is also challenged.

2. At the request and with the consent of the learned Advocates appearing for the parties, all the petitions have been ordered to be heard together and are being disposed of by this common judgment and order.

3. By resolution dated September 25, 1987 the Government has directed all the recognised private primary schools in the State of Gujarat to pay salary to the teachers working in their schools as per the rate prescribed by the Central Pay Commission and as per the pay scales mentioned therein. The preamble to the resolution states that formerly the Director of Primary Education had given instructions to recognised private primary schools for paying the revised pay scales to the teachers as per the recommendations made by the Gujarat State Third Pay Commission, popularly known as Desai Pay Commission.

4. As per Notification dated June 24, issued by the Education Department, teachers of all the primary schools of District Education Board and Municipal Education Committee have been given new pay scales. For granting revised pay scales to teachers of all the recognised private primary schools, there were representations which were under consideration of the Government. Therefore the Government has resolved to apply the Gujarat Civil Services (Revised Pay) Rules, 1987 to teachers of recognised private primary schools and accordingly grant new pay scales as follows:

Old Pay Scales	New Pay Scales	Rs. 290-8-330-10-350-EB-10-380Rs.
1200-30-1560-EB-40-2040	-12-428-EB-12-500-15-560	(Trained teachers) (Trained teachers)
Rs. 260-6-308-EB-6-328-8-350Rs.	950-20-1150-EB-25-1400	(Untrained teachers) (Untrained teachers)

The aforesaid pay scales are ordered to be given with effect from January 1, 1986. Payment in cash as per the new pay scales is to be made from April 1, 1987 and for the period commencing from 1-1-1986 to March 31, 1987 it is to be applied notionally till further orders. Clause (4) of the resolution specifically states that the order contained in the resolution will be applicable to the teachers of recognised private primary schools in the State. Clause (7) provides that the Director of Primary Education is required to bring to the notice of the management of primary schools the orders contained in the resolution. Clause (9) provides that the dearness allowance, H.R.A. and other local compensatory allowances which are payable to the teachers of Primary Education Committees as may be declared by the Government from time to time will be payable to the teachers; and Clause (10) provides that the orders contained in the resolution were required to be strictly followed and the Director of Primary Education was required to take necessary action in that behalf. Clause (11) of the resolution indicates that concurrence of the Finance Department, while issuing the resolution, has been obtained.

5. Before considering the challenge to the resolution, reference may be made to the salient features of the Bombay Primary Education Act, 1947 and the Rules framed thereunder. The Bombay Primary Education Act, 1947 ("the Act" for short) came into force with effect from January 28, 1948 and it has been adopted and modified by the Gujarat Adaptation of Laws (States and Concurrent Subjects) Order, 1966. The object of the Act is to provide for compulsory primary education and to make better provision for management and control of the primary education in the State. The preamble to the Act recognises that it is the duty of the Government to secure the development and expansion of primary education and that it is the declared policy of the Government that universal, free and compulsory primary education should be reached by definite programme of progressive expansion and therefore it is found expedient "to make better provision for the development, expansion, management and control of primary

education in the State". Thus it is with a view to achieve the aforesaid objective that the Act has been enacted.

6. Broadly stated, there are four types of primary schools:

- (1) Schools managed by the Government;
- (2) Schools managed by Education Committee of District Panchayat and Municipalities;
- (3) Private aided schools; and
- (4) Private unaided schools.

For the purpose of convenience these four types of schools can be divided into two classes - public schools and private schools. Public schools comprise of those primary schools managed by the State Government or by District Panchayats and authorised municipality. On the other hand private schools are such which are managed by public trusts or societies registered under the appropriate provisions of relevant Acts. The Act defines "approved school" to mean a primary school managed by State Government or by school board or by authorised municipality and includes a private primary school recognised u/s 40A of the Act. The Act also defines "private primary school" to mean private school which is not managed by the State Government or by school board or by an authorised municipality. Thus, private schools are those which do not fall within the category of public schools referred to hereinabove. However, in order to maintain uniform standard and norms in imparting primary education, these private schools should be recognised as approved schools. If a school is not recognised, it cannot impart education in the State. Section 40A of the Act which has been introduced by Act No. 24 of 1986 provides that no person other than the State Government, School Board or authorised municipality shall impart primary education through a school unless such school is recognised under the provisions of this section. Once a private school is recognised as approved school, it shall comply with the provisions of the Rules framed under the appropriate provisions of the Act. The school so recognised shall be entitled to be placed on the register of approved schools. Approved school continues to enjoy recognition granted to it till it is withdrawn by the competent authority.

7. Section 60 of the Act provides for delegation of powers by the State Government to any officer or authority subordinate to it. The Director is also empowered with previous sanction of the State Government to delegate any of his powers or duties under the Act or the Rules to any officers subordinate to him. The section also provides that nothing contained in it shall derogate from the right of the State Government or the Director to exercise any or all of the powers or duties delegated by it or him to any subordinate officer or authority.

8. Section 63 of the Act confers power on the State Government to make rules "for carrying out the purposes of the Act". Sub-section (2) of Section 63 enumerates the matters in relation to which rules may be framed. However,

these matters have been enumerated "only for the purposes of illustration". This is clear because the section broadly states that it is without prejudice to the generality of the foregoing provisions, meaning thereby, there are general powers conferred upon the Government for making rules for carrying out the purposes of the Act.

9. Chapter VII of the Primary Education Rules, 1949 deals with "approved schools". Rule 103 provides that every approved school shall conform to the conditions prescribed in Rules 122 to 140 of the Rules. Rules 122 to 140 relate to accommodation, equipment, subjects, curricula, books, standard of teaching and such other aspects. Rule 105 provides for maintenance of register of recognised approved private primary schools, and Rule 106 provides for recognition. Rule 106 has been amended by notification dated September 7, 1988. The day on which the impugned resolution has been passed, i.e., September 25, 1987 the relevant part of Rule 106, i.e., Clause (e) as it was in force read as follows:

(e) The managing body of the Trust or the Society shall pay to the staff of the school conducted by it such salary on such pay scale as may be approved by the State Government from time to time.

On September 25, 1987, i.e., on the date of resolution, Clause 9 of Schedule F to the Act which was introduced by notification dated December 28, 1978 read as follows:

Scales of pay and allowances payable to the teaching and non-teaching staff shall be as may be approved by the State Government from time to time.

10. It is contended that the State Government has no powers to make rules regarding rates of pay, pay scales and allowance for teachers employed in recognised private primary schools. It is also contended that the State Governments has no power to issue Government Resolution providing for pay, pay scales and allowances for teachers employed by private primary schools. The contentions may be examined.

11. Section 63 of the Act confers powers on the State Government to make rules for carrying out the purposes of the Act. As indicated hereinabove, the purposes of the Act as mentioned in the preamble of the Act includes making better provision for management and control of the primary education and to secure development and expansion of primary education and make better provision for better expansion and management and control of primary education. Provisions regarding pay, pay scales, allowances, etc., contained in Rule 106, Rule 109 and Schedule F and other relevant rules are thus within the rule-making powers of the Government. Rule 106(e) and Clause (9) of Schedule F which have been reproduced hereinabove specifically confer power on the State Government to provide for pay, pay scales and allowances required to be paid by management to the teachers.

12. In the past similar questions arose before Division Bench of This Court in the

case of Shri Safal Kelvani Mandal and Others Vs. State of Gujarat and Others, By Resolution No. 102 dated October 2, 1972 it was directed that the teachers serving in all private schools should be paid minimum pay scales as prescribed therein, namely, Rs. 100 per month to untrained teachers and Rs. 120-210 to junior trained and senior trained teachers. Senior trained teachers were entitled to two increments while fixing their salary in the new scales, dearness and other allowances as admissible from time to time under the orders of the District Education Committee. The managements were directed to pay arrears of salary with effect from 1-4-1973 by another circular No. 5 dated 5-4-1973. Legality of these circulars were challenged by different school managements. It was inter alia contended that Schedule F regulations governing conditions of service of teachers including their pay and allowances had no nexus with the standard of promotion, development and expansion of primary education. Therefore, the constitutional validity of the same was challenged on the ground of violation of Article 19, contending that the restrictions placed by regulations in Schedule F were unreasonable and therefore not permissible under Article 19 of the Constitution.

13. It was also contended that the Director of Education being a delegate of the State Government had no jurisdictional authority or power to prescribe pay scales and allowances under Clause (1) of Schedule F. The submission was made on the principle that the State Government could not have sub-delegated its powers while enacting the subordinate legislation. Repelling the contention, in para 24 of the judgment the Division Bench held that the rules prescribing the conditions of employment of teachers including their appointment, scales of pay and discipline and conduct are not germane to efficiency and excellence in educational sources. Reliance was placed on the decision of the Supreme Court in the case of St. Xavier's College v. State of Gujarat reported in at page 1396. The Division Bench has further held that the provisions of Schedule F were made with a view to achieve uniformity in all primary schools, whether public or private. The object of inserting the provision was to require the State Government to approve the scale of pay and allowances payable to The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, eaching and non-teaching staff so as to bring uniformity. The Division Bench further observed as follows:

If the scales of pay and allowances is left to the collective bargaining of employer and employees, it would have resulted into distorted wage policy by which the teachers in private management would have been meted out in discriminatory treatment if they had been denied the same scales of pay granted to their counterparts working in approved public schools.

In view of the aforesaid decision of the Division Bench of This Court, the question as regards power of the State Government to fix the pay scales of teachers even in primary schools is concluded, against the petitioners.

14. It is contended that in the aforesaid Division Bench judgment, reliance has been placed on the decision of the Supreme Court in the case of St. Xavier's

College (supra). Decision of the Supreme Court in the case of St. Xavier's College (supra) was in respect of rights of minorities to run minority schools and it was not in respect of teaching standards and conditions of service of teachers. Therefore, it is argued that the decision requires reconsideration. The argument cannot be accepted. Even if one were not to take into consideration the observations made by the Supreme Court in the case of St. Xavier's College (supra). Scheme of the Act and the Rules framed thereunder clearly indicate that the Government is required to take care of the teaching standards and conditions of services of teachers. While considering the challenge to the constitutional validity of certain provisions of the Delhi School Education Act (18 of 1973) which inter alia provided that the scales of pay and allowances of employees of recognised private schools shall not be less than the employees of schools run by the appropriate authority, the Supreme Court in the case of Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others, , has observed that excellence of instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers. Therefore the Supreme Court held that the conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot be said to be violative of fundamental right guaranteed by Article 30(1) of the Constitution (para 16 of the judgment). Again, in para 17 of the judgment the Supreme Court has inter alia observed as under:

Section 10 of the Delhi Education Act which requires that the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of (he employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority and which further prescribes the procedure for enforcement of the requirement is a permissible regulation aimed at attracting competent staff and consequently at the excellence of the educational institution It is permissible regulation which in no way detracts from the fundamental right guaranteed by Article 30(1), to the minority institutions to administer their educational institutions.

In view of the aforesaid proposition of law laid down by the Supreme Court it is difficult Co agree with the submission made by the Learned Counsel for the petitioners that the judgment of Division Bench of This Court in the case of Safal Kelvani Mandal (supra) is required to be reconsidered.

15. The aforesaid decision of the Division Bench is sought to be distinguished by contending that therein the expression "as may be approved" has not been considered. The aforesaid expression occurs in Rule 106(e) and Clause (9) of Schedule F. The petitioners contend that the term "approved" presupposes some proposal from the management of the school, and consideration of the proposal

by the Government. After consideration of the proposal the Government may approve or reject the same. In this connection Learned Counsel for the petitioners has relied on Law Lexicon and the Trilingual Administrative Dictionary in support of his submission that the term "approved" would imply proposal from the school management. According to Trilingual Administrative Dictionary, meaning of the word "approval" is. However, this contention cannot be accepted for the simple reason that the expression "as may be approved" has to be read in the light of the scheme of the Act and the Rules prescribed thereunder. The expression is required to be given the contextual meaning. The term "approval" in the context does not mean or imply procedure, of inviting proposal from the management and considering the same by the Government for confirmation or rejection. If the literal meaning is adopted as contended by the petitioners, it would lead to absurd result not only in the context of fixation of standard of pay scales and allowances, but it would also lead to same result in other aspects, namely, curricula, detailed syllabi, etc. All these aspects also would be required to be proposed by the management and approved by the Government. This would be so because relevant provisions of the Rules regarding curricula and syllabi use the same expression "approved". It is obvious that the intention of the Government is not to permit different curricula and different syllabus for different schools. On the contrary the object is to achieve uniformity in the matters of curricula and syllabus and in the standard of education. Moreover, if the meaning sought to be attributed to the term "approval" is accepted, it would generate invidious discrimination because proposal of the management would vary from school to school and approval or rejection will have to be decided separately in respect of each individual school. Such approach would defeat the very purpose and the object of the Act.

16. In this connection reference may be made to a decision of the Supreme Court in the case of Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others, . In paras 16 and 17 of the judgment it is inter alia observed that while construing the provisions of a statute the Courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective. The Courts should attempt always to reconcile the relevant provisions as to advance the remedy intended by the statute. It is further observed that where the literal meaning of the words used in a statutory provision would manifestly defeat its object by making a part of it meaningless and ineffective, it is legitimate and even necessary to adopt the rule of liberal construction so as to give meaning to all parts of the provision and to make the whole of it effective and operative.

17. Applying the aforesaid principles, the meaning which may be given to the term "approved" should be "sanctioned" or "commended". Incidentally as per Oxford English Dictionary, the meaning of the term "approved" is (1) pronounced good, (2) justified; (3) sanctioned; (4) commended, (5) esteemed. In the context in which the term "approved" has been used in the Rules, the proper meaning to be adopted would be "sanctioned" or "commended". This would be in

tune with the principle laid down by the Supreme Court in the aforesaid decision in the case of Siraj-ul-Haq Khan (supra). Therefore, the contention that the decision of the Division Bench of This Court in the case of Shri Safal Kelvani Mandal (supra) is required to be reconsidered because the expression "as may be approved" has not been considered therein has no merit, and the same is hereby rejected.

18. It was contended that the impugned G.R., even if it is legal and valid, would not be applicable to unaided private schools, meaning thereby the private schools which are not receiving grant would not be covered by the provisions of the impugned G.R. As indicated in the earlier part of this judgment, the G.R. in terms applies to all the teachers of recognised private primary schools in the State of Gujarat. This is clear if one reads the preamble to the resolution which inter alia states that the matter of applying new pay scales to the teachers of all private recognised primary schools was under consideration of the Government. Clause (4) of the Resolution in terms states that, the orders contained in the Resolution would be applicable to all the teachers of recognised private primary schools of the State. Clause (7) enjoins duty upon the Director of Primary Education to issue orders accordingly. Clauses (9) and (10) also enjoin duty upon the Director of Primary Education and other officers to strictly apply the orders. Therefore, simple reading of the resolution makes it clear that it applies to all recognised private schools, whether aided or unaided. However, it is contended that there is reference in the resolution regarding sanction of the Finance Department. Therefore it is submitted that the resolution applies only to aided schools. The argument cannot be accepted for the simple reason that the concurrence of Finance Department was necessary because aided schools were also covered by the G.R. Therefore, so far as application of G.R. to aided schools is concerned, it creates financial liability on the part of the Government. In view of this circumstance, concurrence of Finance Department was necessary. Concurrence of Finance Department does not derogate from the proposition, that G.R. is applicable to unaided schools as well. There is no merit in this argument and the same is hereby rejected.

19. It was contended that while fixing the minimum wages in different industries, the Government follows the specified procedure, and capacity of the industry to pay a certain level of wages is ascertained. It is also considered whether the industry would be in position to bear the burden of the wages that may be prescribed. Views of the industry are also taken into consideration. In this light reference was made to the provisions of the Minimum Wages Act, 1948. It was submitted that there should be report of the Advisory Board as contemplated under the appropriate provisions of the Minimum Wages Act. After following this procedure only the new pay scales should have been fixed. The analogy is not appropriate. Unlike the industries covered by Minimum Wages Act, 1948, schools covered by G.R., whether aided or unaided get the privilege and benefits of statutory recognition granted by the statutory authorities under the Act. Some of the benefits are set out in Rule 108, which inter alia provides for fulfillment of

certain conditions. Schools recognised are eligible for grant-in-aid on application made in that behalf under Rule 110. It also provides that recognition as approved school shall entitle the management of the school to present its pupils at any public examination conducted by the Education Department of the Government. The management can also present its pupil as candidates for scholarship. The management can also claim such other benefits as may be declared from time to time by the Government in that behalf. It may be noted that the privilege of presenting the pupils by the recognised schools in any public examination would include S.S.C. examination also. It may also be noted that Regulation 12 (11) of the Secondary Education Regulations, 1974 provides that no admission can be given by a registered secondary school on the strength of a school leaving certificate from a non-recognised school. The management drawing such privileges from the Government cannot refuse to accept the concomitant obligation flowing from the relevant rules regarding conditions of recognition. The purpose of Bombay Primary Education Act, 1947 is different from the purpose and object of Minimum Wages Act, 1948. Both are uncomparable.

20. Recognised private primary schools are quite aware themselves of the grant-in-aid policy of the Government as provided in the Government Resolution dated 29th June, 1977. It provides for deficit grant upto 80 per cent in urban areas and 90 per cent in rural areas. This is subject to several conditions laid down in the G.R. which is amended from time to time. G.R. dated January 18, 1991 provides for direct payment of pay and allowances to primary teachers employed in the aided schools. If recognised schools do not choose to be aided they cannot in that case make grievance that imposition of the liability under the G.R. dated September 28, 1987 is not authorised or that it is otherwise unlawful. There is no substance in this contention either, and hence the same is rejected.

21. As per the scheme of the Act and the Rules and the relevant resolutions issued by the Government there is legal obligation of the management to pay salary and allowances as fixed by the Government. There is corresponding legal right of the teachers to claim and receive such salary and allowances from the management. Rule 106 and Schedule F to the Act have statutory force. G.R. dated September 25, 1987 has been issued by the Government under the statutory powers conferred upon it. It may be noted that the conditions mentioned in Rule 106 for recognition or continuation of recognition are not merely a matter between the Government and the management. They are not mere executive instructions. They are enforceable in the context of power to grant or withdraw recognition. The provisions of the Rules to pay salary and allowance is statutory obligation on the management which is enforceable at law. Teachers therefore have a right to get the said obligation enforced.

22. It may be noted that Sections 40E and 40F confer jurisdiction and power upon the Tribunal to adjudicate disputes connected with service of teachers employed in recognised primary schools. Where the dispute with regard to pay

scales and allowances is required to be adjudicated by the Tribunal, the Tribunal has jurisdiction and power to enforce the obligation of the management which flows from Rule 106 and other provisions of the Act and the Rules including Schedule F. In view of Section 40D of the Act, contracts taking away any light conferred upon the teachers by or under the Act are null and void. Therefore, such contracts are not enforceable. In view of this provision any contract set up by the management providing for pay scales and allowances, etc., at a rate less than what a private school management is required to pay as a condition for recognition cannot be enforced. Therefore the only rates of pay, pay scales, allowances etc., that may be enforceable by the Tribunal as provided u/s 40E and Section 40F of the Act will be those which have been fixed by the Government under the provisions of the Act and the Rules. However, one may conceive of an exception, namely, where a contract between management and teachers provides for higher rates of pay and allowances than those fixed by the Government. In such an eventuality the Tribunal will enforce the contract which provides for better conditions regarding pay and allowances. In view of the aforesaid position, the impugned resolution dated September 25, 1987 is enforceable at the instance of a teacher also, apart from the fact that the same is enforceable by the Government. It may be noted that G.R. is issued by the Government under statutory rules. Therefore it imposes, legal liability on the management and confers legal right upon the teachers also.

23. It is contended that the G.R. is issued on September 25, 1987, but it is sought to be enforced with effect from January 1, 1986. Therefore, so far as it operates with retrospective effect it should be held to be unenforceable or at any rate unlawful and invalid. On behalf of the respondent school teachers it is submitted that for the period commencing from January 1, 1986 to March 31, 1987 the obligation is merely notional and no actual payment is required to be made by the management for this period. The only period prior to the issuance of G.R. in respect of which revised pay is required to be given is April 1, 1987 to September 27, 1987. Therefore, this is the only period for which the question as regards legality and validity of the resolution is required to be considered. It is submitted that it is usual practice to give benefits of pay revision to the employees concerned from the past date. This is probably on account of the reason that some time is usually taken to formulate the revised pay scales and take a policy decision. In past, while applying the revision of pay, pursuant to recommendation of Sarela Pay Commission and Desai Pay Commission, retrospective operation was given. Therefore, it is submitted that retrospective period of five months and 24 days cannot be assailed as illegal. On this basis and on the basis that the management has accepted the condition for recognition that it shall be bound by the terms and conditions that may be imposed by the Government under the Act and the Rules, the management cannot escape the liability even for the past period.

24. As against the aforesaid submission it is contended that the G.R. has been issued by the Government in its executive powers. Executive instructions cannot

be given retrospective effect. In support of this contention reliance is placed on the decisions of the Supreme Court in the case of *Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others*, , and in the case of *Hukam Chand etc. Vs. Union of India (UOI) and Others*, . In the aforesaid decisions it is inter alia observed that the Court will not ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. However, it is also observed in the aforesaid decision that the rule-making authority has to act within the limits of the power conferred upon it. Where in conferring the power it does not permit the rule-making authority to give retrospective effect to the rule or any order, the person or authority exercising subordinate legislative function or delegated functions cannot make the rule, regulation or bye-law operate with retrospective effect. In the instant case it is evident that the impugned resolution seeks to impose obligation upon the private primary school managements for actual payment of salary on the basis of revised pay scales with effect from April 1, 1987. While the resolution is passed on September 25, 1987. Therefore, for the period commencing from April 1, 1987 to September 24, 1987 the resolution has to be considered as having retrospective effect. On behalf of the respondents no provision of the rules is pointed out which empowers the Government to issue such orders which may create financial liability with retrospective effect even with respect to unaided schools.

25. In this connection it may be realised that the managements of the private primary schools are required to meet with the financial liability even with regard to the past period commencing from April 1, 1987 to September 24, 1987. For this period, they would have recovered the tuition fees from the pupils on the basis that they would be required to pay salary to the teachers as per the old scales. For this period the school management would have managed their affairs on the basis of available funds with them. When the liability for the past period is sought to be fastened on them, they have no opportunity to get the amount recovered by raising tuition fees or by raising funds by adopting any other legitimate means. As far as the raising of tuition fees is concerned, it is subject to restrictions under the Act and the Rules. It is not pointed out that it was open to the school management to raise tuition fees to meet with the increased financial liability for the retrospective period. Even if it is assumed that such permission were granted, it would be impossible to recover increased amount of fees from the pupils, some of whom might have even left the school. At any rate when the school management is deprived of any opportunity to get the amount of difference in salary payable to the teachers obtained or recovered from any legitimate source, the direction contained in the resolution for actual payment of salary to the teachers at the revised pay scale with retrospective effect, i.e., for the period April 1, 1987 to September 24, 1987 is unreasonable and arbitrary and, therefore also it is required to be held to be violative of Article 14 of the Constitution of India. Therefore, to this extent the G.R. is beyond the scope of the powers conferred upon the Government under the appropriate provisions of

the Rules. To this extent the resolution is required to be held to be without authority of law and hence invalid.

26. However, in this connection it needs to be noted that as far as public primary schools, i.e., schools managed by the Government and the education committee of District Panchayats and Municipalities and schools which receive grants, the school management cannot make any grievance in respect of the difference in salary which may be required to be paid pursuant to the orders contained in the impugned resolution. Ultimately the Government will bear the burden. Therefore, the resolution, even if it is required to be held to be beyond the scope of the powers conferred upon the Government under the appropriate provisions of the rules, it is required to be limited only in relation to the private primary schools which are not receiving grants from the Government. As far as the aided primary schools are concerned, the management of such schools would have received grant for the difference in salary which they would have been required to pay on account of the orders contained in the impugned resolution. The G R. is required to be held to be illegal and invalid in so far as it covers the unaided schools also, even with respect to the period commencing from April 1, 1987 TO September 24, 1987.

27. As far as the legality and validity of the judgment and order passed by the Tribunal in all the petitions other than the four petitions (Special Civil Applications Nos. 2549, 2550, 2551 and 2552 of 1992) are concerned, no other contention is raised by any of the learned Advocates appearing for the parties. In all these petitions the respondent-Teachers had filed application praying for grant of difference in salary on the basis of the Government Resolution dated 25th September, 1987. Since the management did not concede the request made by the teachers concerned, they filed application before the Primary Education Tribunal under Sections 40E and 40F of the Act. After hearing the parties the Tribunal has granted the applications submitted by the respondent-Teachers. While granting the applications the Tribunal has also awarded difference in salary for the period commencing from April 1, 1987 to September 24, 1987. As indicated hereinabove, the impugned G.R. dated September 25, 1987 cannot be made operative in respect of the private unaided schools with effect from April 1, 1987. It can be given effect only prospectively from September 25, 1987, i.e., from the date of the resolution. It may be noted that as far as the legality and validity of the judgment and order passed by the Tribunal is concerned no other submission has been made by any of the Advocates appearing for the parties. No other infirmity or error in the judgment and order passed by the Tribunal is pointed out so as to call for interference in exercise of powers under Article 227 of the Constitution of India. However, in view of the fact that the resolution cannot be given retrospective effect from April 1, 1987 as far as teachers employed in unaided private primary schools are concerned, the judgment and order passed by the Tribunal will be required to be modified accordingly. It is not disputed on behalf of the respondent-Teachers that the school management in all these petitions is not receiving grant and all the teachers concerned are

employed by schools which are unaided private primary schools. Therefore, to the extent that the Tribunal has awarded difference in salary for the period commencing from April 1, 1987 to September 24, 1987 is concerned, the judgment and order passed by the Tribunal is required to be quashed and set aside to that extent only, and the same is hereby quashed and set aside to that extent and the judgment and order passed by the Tribunal shall stand modified accordingly.

28. In the result the petitions are partly allowed. The prayer that the impugned resolution dated September 25, 1987 issued by the Education Department, Government of Gujarat, Sachivalaya, Gandhinagar, be quashed and set aside is rejected. However the impugned resolution is held to be illegal and ineffective in so far as it directs that the teachers of unaided private primary schools be also paid actual salary at the revised pay scale mentioned in the resolution for the period commencing from April 1, 1987 to September 24, 1987. The judgment and order passed by the Primary Education Tribunal in petitions other than Special Civil Applications No. 2549, 2550, 2551 and 2552 of 1992 is ordered to be modified. The direction given by the Tribunal that the respondent-Teachers should be paid revised pay scale mentioned in the resolution for the period commencing from April 1, 1987 to September 24, 1987 is quashed and set aside. Except this modification the judgment and order passed by the Tribunal is confirmed. Rule made absolute to the aforesaid extent in all the petitions. There shall be no order as to costs.

29. When this judgment is pronounced it is pointed out by the learned h Advocates appearing for the parties that in the judgment and order passed by the Tribunal which is challenged in Special Civil Applications No. 6119 of 1990, 8839 of 1990 and 4373 of 1990 the Tribunal has held that it has no jurisdiction to decide the dispute relating to payment of difference in salary pertaining to the period prior to May 22, 1986 inasmuch as the provisions of Section 40E of the Act have come into force on May 22, 1986 under which the Tribunal is constituted. In this group of petitions it may be noted that the respondent - Teachers (original applicants) have not challenged the legality and validity of the aforesaid finding of the Tribunal. It is stated at the Bar that in a separate petition being Special Civil Application No. 3194 of 1991 one of the teachers has challenged this finding of the Tribunal which is not included in this group. Therefore, it is clarified that by this judgment the question decided by the Tribunal as regards its jurisdiction to deal with the disputes pertaining to payment of salary for the period prior to May 22, 1986 is not decided and the question is left open.