

(2022) 12 GUJ CK 0086

In the Gujarat High Court

Case No : R/Special Civil Application No. 9539 Of 2022

Taraben Virabhai Dodia

APPELLANT

Vs

State Of Gujarat & 5 Other(S)

RESPONDENT

Date of Decision : 09-12-2022

Acts Referred:

Citation : (2022) 12 GUJ CK 0086

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

Bench : Single Bench

Advocate : Sandip M Patel, Ronak B. Raval, HS Munshaw

Final Decision : Dismissed

Judgement

A.S. Supehia, J

1. The present writ petition has been filed seeking the following prayer :-

"8. (A) Direct the respondent authorities to consider the seniority of the petitioner as per the policy which was in force on the date when the petitioner selected the present school where she is working i.e. policy dated 23.5.2012 and further be pleased to direct that the decision of the respondent authorities of treating the private respondents case as per the new policy dated 1.4.2022 is illegal, unjustified, erroneous and arbitrary and further be pleased to quash and set-aside the order dated 18.4.2022 passed by respondent No.3, which is at Annexure-A to this petition, in case of private respondent of repatriating them to their parents school in spite of no vacancy being available and further be pleased to direct that the petitioner and private respondents seniority would be counted as per their policy dated 23.5.2012"

2. Thus, the petitioner is seeking benefit of the old policy dated 23.05.2012, which has been rescinded by the subsequent Policy dated 01.04.2022. The petitioner was appointed as a primary teacher on 22.12.2021 in Ramgadh Primary School and thereafter, the petitioner had used the option of vice-versa

(Aras – Paras) for the Taluka transfer in the year 2004 and she was transferred at Amardad Primary School, Taluka Ranavav. Thereafter, she got option of upper primary section on 01.08.2012.

3. The petitioner got Taluka transfer from Ranavav to Porbandar, as couple case in Talpad Girls School, Taluka Porbandar on 06.10.2017. Thereafter, the respondent No.6 opted for being appointed as CRC / BRC / Coordinator and he was sent on deputation. The respondent No.6 repatriated to his original school. He was sent on deputation on 03.04.2017 and on being repatriated, he was placed on his original school.

4. Learned advocate Mr.Patel, appearing for the petitioner has submitted that due to repatriation of the respondent No.6, who was went on deputation as BRC / CRC / Coordinator and was thereafter repatriated in his parent school, the petitioner has been declared as surplus. It is submitted that at the relevant time, when the respondent No.6 was sent to deputation, the resolution dated 01.04.2022 was not in-existence and his case would be governed by the Resolution dated 23.05.2012. It is submitted that when the petitioner selected the present school, the vacancy was shown in his school and there was no policy of BRC/ CRC Coordinator in existence. Hence, it is submitted that the seniority of the petitioner was affected and on repatriation of the respondent No.6, the petitioner was declared as surplus.

4.1 Learned advocate Mr.Patel, has further submitted that the petitioner has got the benefit of couple transfer in the year 2017 in a clear vacancy and because of such action of the respondents in repatriating the respondent No.6, he will loose the benefit.

5. Per contra, learned AGP Mr.Raval, has submitted that as per the policy introduced by the State Government vide Resolution dated 01.04.2022, once the BRC /CRC Coordinators are repatriated, they have to be accommodated and posted on their parent or mother school. Learned Assistant Government Pleader has further submitted that the aforesaid Clause – 7 of Chapter-H of the Resolution dated 01.04.2022 was the subject matter of challenge before this Court in a group of matters and the Coordinate Bench of this Court has upheld the aforesaid Clause and hence, in view of the aforesaid judgment, the writ petition may not be entertained.

6. Learned advocate Mr.Munshaw, appearing for the respondent No.3 has submitted that the petitioner had attended the camp on 17.05.2022 for transfer of surplus teachers, however the transfer order was not issued, in view of the interim order passed by this Court. Learned advocate Mr.Munshaw, has further submitted that the respondent No.3 has rightly acted in accordance with the provisions of the Clause 7 of the Chapter-H of the Policy dated 01.04.2022 issued by the State authorities and hence, the writ petition may not be entertained.

7. I have heard the learned advocates for the respective parties. I have also perused the relevant documents.

8. The afore-noted facts are not in dispute. The petitioner is aggrieved by the action of the respondent authorities in repatriating the respondent No.6 to his original mother school, in view of the provisions of Clause-7 of the Chapter-H of the Resolution dated 01.04.2022.

9. In the group of petitions being Special Civil Application Nos.11696 of 2022 and allied matters, the aforesaid Clause – 7 of Chapter-H of the Policy dated 01.04.2022 was challenged on the very reason. The Coordinate Bench, after considering the various submissions as well as the Clause-7 of Chapter H in the judgment dated 18.07.2022, has upheld the validity of the Clause 7 of the Chapter H of the Resolution dated 01.04.2022 by holding thus :

“14.1 What is evident from reading the policy of 01.04.2022, is that the policy cannot be said to be hit by the doctrine of promissory estoppel and / or legitimate expectation. The principles of promissory estoppel and that of legitimate expectation cannot come in the way of larger public interest and when the State has the right to change the policy if it can be demonstrated that the factors existed which required it to change or modify the policy on account of it having become unworkable and not giving the desired results which may pass the test of reasonableness, such a policy cannot be struck down in the perceptions as held by the counsels for the petitioners. It is well settled that personal benefit must give way to public interest and therefore judicial review when is confined to the examination whether such a policy is arbitrary or unreasonable, what is evident from reading the policy is that in light of the deputation of the BRCs and the CRCs made for the purposes of effective implementation of the Right to Education Act, when the State found that such BRCs , CRCs on repatriation founded difficult to have an assurance from the State that they would come back to their mother school or parent school, such BRCs or CRCs were wanting to accept their terms of deputation which in turn resulted in sufferance of the education. It was in light of these considerations and in light of the observations made by the interim orders of the High Court in such cases that the State tweaked its policy bringing in the concept of assurance to such BRCs that on their repatriation they would be brought back to their parent school. Such a clause in the policy namely Clause-7 of Chapter-H in the resolution dated 01.04.2022 cannot be faulted and held unreasonable and arbitrary. ”

10. Thus, in view of the decision of the Coordinate Bench dated 18.07.2022, the present writ petition is rejected. Interim relief stands vacated.

11. The contention with regard to losing of option in the case of couple teacher, which the petitioner has already exercised, and the same does not merit acceptance since the transfer of the petitioner is governed by the policy of the State Government dated 01.04.2022, which was also questioned before this Court and it is upheld. The option exercised by him in the year 2017, was in view of the earlier policy. The petitioner cannot insist that her case is still governed by the Policy dated 23.05.2012, which is repealed.