
(1999) 05 GUJ CK 0029
In the Gujarat High Court
Case No : S.C.A. No. 2848 of 1999

Zarinaben N. Mansuri

APPELLANT

Vs

Manager, Murkhan P. Mutva and Others

RESPONDENT

Date of Decision : 04-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Gujarat Education Cess Act, 1962 — Section 40

Citation : (1999) 82 FLR 923 : (1999) 2 LLJ 289

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Judgement

1. Heard learned counsel for the parties.
2. The petitioner an untrained teacher, who was working in a school - Ashram Shala run by the respondents, filed this petition under Articles 226 & 227 of the Constitution challenging thereby the order of the Gujarat Primary Education Tribunal, Ahmedabad dated February 26, 1999 passed in application No. 4/1994 under which her application has been rejected.
3. It is not in dispute that the petitioner was not possessing the requisite qualifications prescribed for appointment to the post of Assistant Teacher in the primary school. She is not possessing the requisite qualification as laid down for the said post, her initial appointment itself was not legal. However, she continued as an untrained teacher. An inquiry has been conducted u/s 40-B of the Gujarat Education Act wherein it is found that the petitioner was not possessing the requisite eligibility as provided for appointment as Assistant Teacher in the primary section of the respondent school. Ultimately her services came to be terminated on the ground that she is untrained. That order of the termination was challenged before the Gujarat Secondary Education Tribunal at Ahmedabad and her application came to be rejected under the impugned order and hence this special civil application.
4. The petitioner admittedly was not qualified to be appointed as Assistant

Teacher and the respondent Nos. 1, 2 & 3 have not committed any illegality in terminating her services and the Education Tribunal has also not committed any illegality in confirming that order. The learned counsel for the petitioner is not disputing this position but raised contention that she worked about 12 years and her services could not have been terminated.

5. A sympathetic or compassionate approach in such matters cannot be taken as what it will amount to have to encourage the illegal appointments on the post for which minimum eligibility has been prescribed under statute. Secondly, this Court sitting under the Articles 226 or 227 of the Constitution cannot perpetuate the illegality. In view of this admitted position, no interference with the order of the Tribunal can be made by this Court under Articles 226 and 227 of the Constitution.

6. Another point has been raised by the learned counsel for the petitioner that in the school presently there is only one teacher. In his submission the qualified teachers are not available despite the fact that an exercise of making selection on this point has been undertaken by the respondent. The qualified teachers were appointed after selection but later on they left the services. The Government Resolution Provides that where qualified teachers are not available on temporary basis, the untrained teacher can be appointed in the schools so that the teaching work may not suffer. The learned counsel for the petitioner submits that since the qualified teachers are not available, the petitioner may be allowed to continue to work as a teacher.

7. Though on first flash these contentions appear to be attractive but legally the same cannot be granted by this Court. This Court is not the appointing authority. This Court cannot give direction to the respondent to appoint an untrained teacher. It is for the school management as well as the other respondents to see that the teaching work in the school is not suffered. They are masters of their own job for which no direction of this court is required. The petitioner has come up before this Court against the order of the Tribunal. But admittedly she is not possessing the requisite qualification for the post of regular teacher, no exception can be taken by this Court to the impugned order. Otherwise also in case the interference made by this Court with this judgment and the impugned order is set aside then what this Court will do to restore an illegal order. It is no more res integra that this Court may refuse to issue a writ of mandamus or certiorari where the effect of quashing the impugned order would be to restore any illegal order. The reference in this respect may have to the following decisions of the Apex Court and other High Courts :

1) In the case of Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, .

2) The decision of the Rajasthan High Court in the case of Jagan Singh v. State Transport Appellate Tribunal, Rajasthan & Anr. reported in AIR 1980 Rajasthan page 1.

- 3) The decision of the Kerala High Court in the case of A. M. Mani v. State Electricity Board reported in AIR 1968 Ker 76.
- 4) The decision of the Patna High Court in the case of Devendra Prasad and Others Vs. State of Bihar and Another, .
- 5) Another decision of Rajasthan High Court in the case of Himmat Jain v. The State of Rajasthan & Ors. reported in AIR 1994 Rajasthan Page 53.
- 6) Another decision of Patna High Court in the case of Chintamani Sharan Nath Sahadeo Vs. State of Bihar and Others, .
8. In the result, this Special Civil Application falls and the same is dismissed.