

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1295 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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KF BHATTI

Versus

STATE OF GUJARAT

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Appearance:

MR HS MUNSHAW for Petitioner

MS. HARSHA DEVNANI, AGP, for Respondent No. 1

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 31/07/98

ORAL JUDGEMENT

Rule. By way of this Special Civil Application the petitioner seeks direction to quash and set aside the order dated 15.10.1996 passed by the respondent State Government and further to transfer the services of the petitioner to the office of Nagar Shikshan Samiti, Palanpur, respondent No. 2 from the office of the Palanpur Municipality.

The petitioner was appointed in the Palanpur Municipality in the year 1979. He was taken in the regular cadre in the year 1988. The service of the petitioner is sought to be transferred to the office of Nagar Shikshan Samiti, Palanpur, which is also one of the department of Palanpur Municipality but since there is a sanction strength provided for each of the department, it was necessary to obtain sanction from the State Government. It is not in dispute that if the petitioner is transferred to Nagar Shikshan Samiti there is no objection by either Shikshan Samiti, Palanpur or the Palanpur Municipality. However, the approval has not been granted by the State Government by the impugned order dated 15.10.1996 on the ground that the petitioner has not been appointed by a Committee as provided under sub-Section (4) of Section 23 of the Bombay Primary Education Act.

I have heard learned counsel for the parties. Section 23(1) of the Act provides for Staff Selection Committee for every authorised municipality and for every district within the jurisdiction of a district panchayat. Sub-section (4) says that the Committee shall select candidates for appointments as Assistant Administrative Officers, Supervisors, Attendance Officers and teachers. It is evident so far as the municipality is concerned, the post of clerk does not fall in the category of post provided under sub-Section (4). In view of this, the respondent State has committed error in rejecting the approval.

Consequently, this Special Civil Application is allowed. The impugned order of the State Government is hereby quashed and set aside. The respondent State of Gujarat will pass fresh order keeping in view the position of law indicated above. The respondent shall take a decision within a period of six weeks from the date of receipt of the writ. If no communication is received by the State Government within the aforesaid period, the approval deemed to have been granted. Rule made absolute.

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