

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3804, 3806, 3808,  
3935, 3936 and 3937 of 2002  
(six matters)

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
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 concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?
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USHABEN LALLUBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 3804 of 2002  
MR DM THAKKAR for Petitioner No. 1  
MR RV DESAI, AGP for Respondent No. 1-3  
MR RR VAKIL for Respondent No. 4
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 30/08/2002

COMMON ORAL JUDGEMENT

Rule. Mr RV Desai, learned AGP waives service of  
Rule for respondent Nos. 1 to 3 and Mr RR Vakil, learned  
counsel waives service for respondent No. 4.

2. The petitioners are teachers in the higher secondary schools who are appointed as such after 1.7.1979. The petitioners were appointed as teachers in the higher secondary schools in the pay-scale of Rs.550-900 with effect from the date of appointment. The controversy in the present group of petitions is that the Commissioner of Higher Education has sought to reduce the petitioners' present salary on the ground that the petitioners were not entitled to get salary in the pay-scale of Rs.550-900 with effect from the date of their appointment, but they were entitled to salary in the lower scale of Rs.440-750 because the petitioners did not possess the requisite qualifications for appointment as higher secondary teachers.

3. As per the Government stand, the Government Resolution dated 28.10.1975 prescribing new pattern of education of 10 + 2 also laid down the minimum qualifications for teachers in the higher secondary schools in the following terms :-

"Trained teachers having Second Class Master's Degree in respective subject or Trained graduate teachers who have experience of teaching concerned subject for about 7 years in stds. x & XI shall be eligible to teach in the Higher Secondary Classes."

Since the petitioners did not possess the aforesaid prescribed qualifications at the time of their respective appointments, the petitioners were not entitled to get salary in the scale of Rs.550-900. There is no dispute about the fact that the petitioner did subsequently acquire qualifications after being appointed as higher secondary teachers after 1.7.1979. The Commissioner of Higher Education is of the view that the petitioners are entitled to get salary in the scale of Rs.550-900 only from the date of acquiring the higher qualification or the experience as provided by the Government resolution dated 20.10.1975.

4. On the other hand, the petitioners have heavily relied on the Government Resolution dated 8.12.1989 read with the Government Resolution dated 18.1.1989 which are annexed to the petition at Annexures "C" and "B" respectively. The aforesaid resolutions have narrated in their preamble that when 10 + 2 pattern was introduced in the State with effect from June, 1976, the requisite qualification for appointment of secondary teachers was only trained graduates whereas for higher secondary

teachers, the qualification prescribed was second class Master's degree plus trained graduate (i.e. B.Ed.) or trained graduates with seven years teaching experience in the subject. However, the pay-scale for higher secondary teachers as well as secondary teachers was common i.e. Rs. 440-750. Subsequently, the secondary teachers who had completed 15 years service as on 1.7.1979 were granted the pay-scale of Rs.500-900 in lieu of selection grade subject to certain conditions, one of the conditions being that the salary in the higher pay-scale was to be only notionally fixed for the period from 1.7.1979 to 31.3.1985 and no actual payment was to be made. As far as the higher secondary teachers are concerned, they were to be paid salary in the scale of Rs.550-900 with effect from the date of their appointment on notional basis and thereafter their salary was to be fixed in the corresponding revised pay-scale of Rs.1640-2900 with effect from 1.10.1986. The Government had accordingly resolved in the aforesaid resolution dated 18.1.1989 that the higher secondary teachers who were appointed after 1.7.1979 were to get their pay fixed in the scale of Rs.550-900 on notional basis and those who were appointed earlier were to get their pay notionally fixed in the scale of Rs.500-900 for the period from 1.7.1979 to 31.3.1985 and on that basis the pay in the corresponding revised pay-scale of Rs.1640-2900 was to be fixed from 1.1.1986. That resolution, however, created some dissatisfaction amongst the higher secondary teachers as the auditors raised objection to the higher secondary teachers having their pay fixed in the scale of Rs.550-900, if the qualification possessed by the teachers was less than the prescribed qualification. It was in that context that the Government issued Resolution dated 8.12.1989 (Annexure "C") that the teachers with less than the prescribed qualification (laghu laykatwala) in the higher secondary classes were to get their pay fixed in the scale of Rs.550-900 for the period from 1.7.1979 to 31.12.1985 if their appointment was prior to 1.7.1979 and with effect from the date of appointment if their appointment was after 1.7.1979 and on that basis the pay in the revised pay-scale of Rs.1640-2900 was to be fixed with effect from 1.1.1986. It may also be added at this stage that the Government had issued various resolutions between 1975 and 1989 fixing time limit for the higher secondary teachers possessing qualification of trained graduates (for instance B.A., B.Ed.) for acquiring the higher qualification or the additional experience of seven years and the Commissioner of Higher Education also does not dispute this fact that the higher secondary teachers were granted such time to acquire higher

qualification or additional experience. There is no dispute about the fact that all the petitioners acquired the higher qualification or the additional experience within the prescribed time limit. The respondents, however, are not in a position to point out any resolution or circular prescribing that the pay of the higher secondary teachers will not be fixed in the scale of Rs.550-900 with effect from the date of appointment (i.e. after 1.7.1979), but their pay will be fixed in the scale of Rs.550-900 only upon acquiring the higher qualification or the additional experience. The running theme throughout various Government resolutions issued after 1975 is that in view of the fact that the teachers possessing the qualification prescribed in the resolution of 1975 were not available, the teachers possessing the qualification for the post of teacher in the secondary schools but not possessing the qualification of higher secondary teacher may be granted time to acquire the higher qualification or the additional experience.

5. In fact, the petitioners had earlier approached this Court when they were required to file representations before the Commissioner of Higher Education and in those representations also the petitioners had declared that there were 123 other teachers who were granted similar benefit of fixation in the pay-scale of Rs.550-900 from the date of their appointment till 31.12.1985 even though they did not possess the requisite qualification at the time of their appointment. That contention has been dealt with in the impugned decision dated 9.1.2002 at Annexure "G" by observing that the appointment of the other teachers with less qualification was approved by the Commissioner of Higher Education and that in case of the petitioners such approval or sanction was not obtained.

6. Mr DM Thakkar, learned counsel for the petitioners has submitted that when many other teachers who have not obtained the requisite qualification even by now have been granted the scale of higher secondary teachers and there is no dispute about the fact that the petitioners have already obtained the requisite qualification within the prescribed time limit, the petitioners should not be penalized merely because the procedural formality of obtaining approval of the Commissioner of Higher Education was not done by the concerned school managements.

7. On the other hand, Mr RV Desai, learned AGP has submitted that since the appointment of the petitioners possessing less qualification was not approved by the

Commissioner of Higher Education at the relevant time, the petitioners are not entitled to have their pay fixed in the scale of Rs.550-900. It is further submitted that the Government Resolution dated 8.12.1989, on which the petitioners are strongly relying, also provided for option being exercised within three months from the issuance of the Government Resolution and that the petitioners had not exercised such an option.

8. Apart from the fact that the Commissioner of Higher Education has not taken any such stand in the impugned order dated 9.1.2002, the fact remains that the petitioners were appointed after 1.7.1979 and there is nothing in the Government Resolution dated 8.12.1989 prescribing that the teachers appointed after 1.7.1979 were required to exercise any option. Be that as it may, when the 123 other higher secondary teachers have been granted the benefit of pay fixation in the scale of Rs.550-900 without possessing the qualification prescribed by the Government Resolution of 1975 at the time of their appointment and some of them have not acquired the prescribed qualification even till date and the petitioners have already acquired the prescribed qualification, merely because the concerned managements (where the petitioners were appointed) did not seek approval of the Commissioner for Higher Education for making the petitioners' appointment, the petitioners are not required to be penalized when the appointment was made through a selection committee where the Government representatives were present and the appointment was approved by the District Education Officer. Furthermore, when the Commissioner of Higher Education was the authority who was supposed to consider the question of approval, the Commissioner could as well have considered this question at the hearing afforded to the petitioners pursuant to this Court's order - whether there was any infirmity in the petitioners' appointment. No such infirmity has been pointed out either in the impugned order or at the hearing of the petitions.

9. For the aforesaid reasons, the petitions succeed and the impugned order dated 9.1.2002 at Annexure "G" to the petition is hereby quashed and set aside. The respondents are directed to grant the petitioners the benefit of pay fixation in the scale of Rs.550-900 with effect from the date of their appointment (which is admittedly after 1.7.1979 in all cases covered by this judgment) till 31.12.1985 and thereafter in the corresponding revised pay-scale of Rs.1640-2900 as on 1.1.1986.

10. Rule is made absolute to the aforesaid extent  
with no order as to costs.

(M.S. Shah, J.)

sundar/-