

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8501 of 2002

with

SPECIAL CIVIL APPLICATION No. 8505 of 2002

with

SPECIAL CIVIL APPLICATION No. 8516 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : YES
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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MINAXI VIJAYKUMAR PARMAR

Versus

PRINCIPAL, BRIGHT LAND ENGLISH SCHOOL, GUJ.MEDIUM PRATHMIK SH

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Appearance:

1. Special Civil Application No. 8501 of 2002  
MR DIPAK R DAVE for Petitioner No. 1-3  
NOTICE SERVED BY DS for Respondent No. 1  
Ms SEJAL SUTARIA for MR VH DESAI for Respondent No. 2  
Ms MANISHA LAVKUMAR, AGP for Respondent No. 3-5

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 29/11/2002

COMMON ORAL JUDGEMENT

All these petitions are filed by the teachers of

three different schools which have been permitted to close down certain classes and thereupon the petitioners have been served with the show cause notices for termination of their services on the ground that the school managements have been permitted to close down the classes. The petitioners have already filed applications before the Gujarat State Primary Education Tribunal for challenging the aforesaid show causes notices. The challenge in the present petitions is confined to the orders of the State Government passed under clause 5 of Schedule "F" to the Bombay Primary Education Rules, 1949 on the ground that the petitioners were not afforded an opportunity of hearing and also on the merits of the decision of the managements to close down the classes.

2. In response to the notice issued by this Court, affidavits in reply are filed on behalf of the respective managements stating to the effect that for closure of classes the school management has to send proposal to the District Education Officer who has to carry out inspection and thereafter submit his report to the Director of Primary Education. Thereafter, the Director submits his report to the State Government and thereupon the State Government passes appropriate orders with regard to granting permission for closure of classes. The Director of Primary Education issues a notice of hearing to the school management and the school management has to communicate the date of hearing to the affected teachers. The affidavits further state as under:-

"In the present case, the school management has communicated to all the teachers including the present petitioners with regard to the hearing which is fixed by the Director of Primary Education Office. However, I say that none of the teachers have remained present before the Director of Primary Education Office to ventilate their case before the authority. Therefore, I say that the school management has given opportunity of hearing to the present petitioners, but the petitioners have not availed the said opportunity and, therefore, now they cannot make any grievance that the order of closure of classes is passed without hearing the present petitioners."

It is further submitted by Ms Sejal Sutaria, learned counsel for the school managements that the

challenge to the orders of closure can be levelled before the Tribunal where the petitioners have already filed applications for challenging the show cause notices.

3. Ms Manisha Lavkumar, learned AGP for the respondent authorities submits that as per Clause 5 of Schedule F, the authorities are required to give a hearing only to the management and no hearing is contemplated for the teachers. It is further submitted that in any case the question of closure can also be examined by the Tribunal when the petitioners challenge the orders of termination, if any, passed pursuant to the orders of closure. Reference is also made to the decision of a Division Bench of this Court in Dabhi Veenaben vs. Deputy Secretary, Education Department, 1998 (1) GLH (UJ) 3.

4. In rejoinder, Mr Dipak Dave, learned counsel for the petitioners submits that earlier the school managements contended that the Tribunal had no jurisdiction to entertain any challenge to the orders of closure as the orders granting permission are passed by the authorities and not by the school managements. Mr Dave has also relied on the rejoinder affidavits filed by the petitioners that the petitioners were not served with any intimation about the hearing before the Director of Primary Education and that the action of the respondents in granting any such permission without the petitioners getting any opportunity of being heard is in contravention of the direction dated 6.11.2001 given by this Court in Special Civil Application No. 3672 of 2001 and connected matters.

5. Having heard the learned counsel for the parties, it appears to the Court that it is not necessary to examine the challenge to the merits of the decision of the school managements to close down the classes or to the order passed by the Government under Clause 5 of Schedule F permitting the school managements to close down the classes for the simple reason that the entire question can be examined by the Primary Education Tribunal while examining the challenge to the orders of termination, if any. Chapter VII-B of the Bombay Primary Education Act, 1986 (hereinafter referred to as "the Act") contains the provisions regarding resolution of disputes between the teachers in a recognized private primary school and the manager of such school with regard to the conditions of service of such teachers. Section 40E reads as under :-

"40E. Dispute to be decided by Tribunal.- where there is any dispute between the manager of a recognized private primary school and teacher in service of such school, which is connected with the conditions of service of such teacher, the manager or, as the case may be, the teacher may make an application to the Tribunal constituted under section 40\$ for the decision of the dispute."

Section 40B reads as under :-

"40B. (1)(a) Dismissal, removal or reduction in rant of teachers.- No teacher of a recognized private primary school shall be dismissed or removed or reduced in rant nor his service be otherwise terminated until -

(i) he has been given by the manager an opportunity of showing cause against action proposed to be taken in regard to him; and

(ii) the action proposed to be taken in regard to him has been approved in writing by the administrative officer of the school board in the jurisdiction of which the private primary school is situate :

Provided that nothing in this clause shall apply to a teacher who is appointed temporarily for a period less than a year or a teacher appointed temporarily on a leave vacancy for a period of less than a year."

Sub-clause (b) of Section 40B requires the administrative officer to communicate to the manager of the school in writing his approval or disapproval of the action proposed, within a period of forty five days from the date of receipt of the proposal, failing which the proposed action shall be deemed to have been approved on the date of expiry of the said period.

Sub-section (5) provides that any teacher aggrieved by the order of the administrative officer under sub-clause (1)(a)(ii) may make an appeal to the Tribunal within a period of thirty days from the date on which the administrative officer has approved or deemed to have approved the action.

Section 40F provides for constitution of the Tribunal. A district Judge or a person who has been or

is qualified to be Judge of a High Court or to be a District Judge is appointed as the Tribunal and sub-section (6) thereof provides that the Tribunal shall have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908 in regard to enforcing the attendance of witnesses, compelling production of documents and material objects and such other matters and every enquiry or investigation by the Tribunal shall be deemed to be a judicial proceeding. The Tribunal has also been conferred express powers of reinstatement and the school manager has to forthwith comply with such direction. The civil Courts are barred from entertaining any dispute for which the jurisdiction has been conferred on the Tribunal.

Section 36 of the Gujarat Secondary Education Act which is pari-materia with the aforesaid provisions came up for consideration of this Court in Chhaganbhai P Oza vs. Ahmedabad Jesuit Schools Society, (1978) 19 GLR 347 and this Court has taken the view that the expression "nor shall his services be otherwise terminated" are words of very import and, therefore, the said provisions, analogous to the provisions of Section 40(b)(1)(a) of the Bombay Primary Education Act, confer wide protection on the teachers with the result that even "termination simpliciter" would fall within the scope of Section 40B(1)(a) of the Act. It is, therefore, clear that even when the services of a teacher are terminated on account of closure of classes, the school management has to give the teacher concerned an opportunity of showing cause against the proposed termination and the proposed termination has to be approved by the District Primary Education Officer.

6. Mr Dave for the petitioners, however, submits that the District Primary Education Officer may grant approval to the proposed termination because he may not be able to go behind the order granting permission for closures of classes under Clause 5 of Schedule F. It is further submitted that no jurisdiction has been conferred on the Tribunal to entertain the disputes between the teachers and the Government and, therefore, the petitioners will be in difficulty if they are not permitted to challenge the order of the Government granting permission for closure in a petition under Article 226 of the Constitution.

It is further submitted that the decision in Dabhi Veenaben vs. Deputy Secretary, Education Department (Supra), was rendered by a Division Bench of this Court where the learned Single Judge had gone into

the merits of the closure and found the order granting permission to be legal and valid. Hence, the said decision is of no avail to the respondents in contending that the Tribunal will have jurisdiction to entertain such dispute.

7. It is true that prima facie it may appear that there is no express provision conferring jurisdiction on the Tribunal to entertain a dispute between a teacher and the Government authorities but once the nature of the dispute is analyzed, it becomes obvious that it is the school management which had proposed for closure of classes and what it was required to do was merely to obtain permission of the Government under Clause 5 of Schedule F because there is a statutory safeguard in order to ensure that the question of closure of classes is examined by an independent statutory authority and the school managements do not take any arbitrary decision on their own, but the fact remains that it is not the decision of the Government to close down the classes. It is not the direction given by the Government to close down the classes. It is merely a permission granted by the Government to close down the classes. Therefore, when the services of a teacher are terminated consequent upon the closure of classes as permitted by the Government under Clause 5 of Schedule F and the teacher challenges such termination, it is open to the teacher to raise a collateral challenge to the closure of classes as well and in such circumstances, what the teacher challenges is in effect and substance the decision of the school management to close down the classes as permitted by the Government. Hence, the Tribunal would be called upon to decide not a dispute between the teacher and the Government, but a dispute between the teacher and the management.

8. In view of the aforesaid analysis of the nature of the dispute between the teacher and the management, whenever an order of termination consequent upon the closure of classes is challenged before the Tribunal, the Tribunal will have the jurisdiction to examine not only the procedure for termination after the order of closure, but also the merits of the decision of the school management to close down the classes albeit with the permission of the Government.

9. In view of the above discussion, this Court is not required to go into the merits of the challenge raised by the petitioners to the orders passed by the Government permitting the school managements to close down the classes nor into the merits of the challenge to

the decision of the school managements to close down the classes. It is clarified that disposal of this petition only on the ground that the grievance raised by the petitioners in the present petitions can be raised before the Tribunal does not amount to expression of any opinion on the merits of the controversy between the parties nor does it amount to an expression of opinion that once the closure of classes is held to be valid, no further challenge can be raised to the order of termination.

It is also clarified that this Court has not gone into the merits of any of the contentions and the discussion is merely confined to the legal position regarding the remedies available to the teachers whose services are terminated consequent upon an order of closure.

10. Subject to the aforesaid observations and clarifications, the petitions are dismissed only on the ground that the petitioners herein have the alternative remedy of challenging the impugned orders.

Notice is discharged with no order as to costs.

(M.S. Shah, J.)

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