

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATIONS No 7202 of 2003

to

SPECIAL CIVIL APPLICATIONS No 7456 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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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?

GOSWAMI B. MOTIBHARTHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7202 of 2003
MR ANANT S DAVE for Petitioner No. 1
MR MANOJ S JOSHI for Petitioner No. 1
..... for Respondent No. 1-4
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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 28/05/2003

ORAL JUDGEMENT

1. The petitioner has filed this petition with a prayer that to quash and set aside the notice dated 19.5.2003 issued by the Taluka Development Officer, Idar, and further prayed that the respondents be directed not to take any coercive measures or penal action against the petitioner and further be restrained from recovering the amount of penalty from the petitioner.

2. Heard Mr. Anant S. Dave, learned advocate for the petitioner and learned advocate for the respondents.

3. Rule. Mr. D. A. Desai & Ms. Mita Panchal, learned AGP waives service of rule on behalf of Government on instruction on behalf of Mr. A. A. Nagori, Additional Secretary, Primary Education Department, Gandhinagar, appearing on behalf of respondents No. 1, 2 and 4. With the consent of the parties, the matters are taking up for final hearing in this behalf. Since all these petitions are arising from the common facts and issue involved is also common, they are being dealt with together by this judgment.

4. The brief facts of the case are as under:

4.1 It has been stated in the petition (so far as SCA No. 7202/2003 is concerned) that petitioner is serving as a primary teacher in the school of respondent No. 3 and he is entitled to receive LTC amount for a block year for a period of four years. The petitioner states that so far as earlier block i.e. 1992-95 is concerned, the respondents have paid the amount of LTC in cash to all the teachers irrespective of the fact that whether they have actually travelled or not, but so far as for the block year 1996 to 1999 is concerned, it was decided by the respondents to pay the amount of LTC only if the employee has travelled actually and through recognised travel agent by Gujarat Tourism Corporation.

4.2 It has been contended in the petition that respondent No. 3 has issued a notice dated 19.5.2003 on the basis of the circular issued by Government dated 3.10.1988 and decided to recover the amount of penalty at three times the actual amount of LTC including the actual amount of LTC and number of teachers believed that they are entitled to LTC for a block year and followed the trend prevailing in the District and committed irregularities by claiming LTC, since earlier for a block year irrespective of actual traveling or not, such teacher was entitled to receive the amount of LTC. The

notice has been produced at Annexure 'A' and Circular has been produced at Annexure 'B' to this petition in this behalf.

4.3 It has been stated in the petition that the impugned notice has been issued with the pre-conceived notion that the petitioner has obtained the amount of LTC by producing the false certificate. The notice has been based upon the presumptions and surmises without any foundation of fact. The petitioner also submitted that by issuing the impugned notice by the respondent No.3 for recovery of the amount of penalty at three times the actual amount of LTC is arbitrary, unjustified and also violative of principles of natural justice and therefore the same deserves to be quashed and set aside.

4.4 In support of the aforesaid contention, the petitioner has relied upon the judgment dated 28.3.2003 passed by this Court [Coram : Jayant Patel,J.] in Special Civil Application No.1577 of 2003 and other allied group matters.

4.5 In view of the fact that all petitions raises identical question of fact and law, I have narrated the facts of Special Civil Application No.7202 of 2003 and I have not narrated the facts of other petitions in this behalf.

5. I have also heard Ms.Panchal, learned AGP on behalf of the respondent No.3, who has obtained instructions on behalf of Mr.Nagori, Addl.Secretary, Primary Education Department, Gandhinagar, who are respondents No.1 and 2. In my view, no elaborate reasons are required to be recorded since the matter is covered by the aforesaid decision, and so far as the case of the Government is concerned, in view of the aforesaid discussion, I am of the view that the following directions shall meet with the ends of justice.

[a] All the petitioners shall file separate undertaking to this Court that they shall not raise any objection in future regarding the recovery of the amount of penalty directed by appropriating 33% of the salary and other perquisites i.e. actual pay until they are in service and they shall also not raise any objection to the balance recovery to be made in case the concerned petitioners are retiring in normal course and they shall not raise any objection for recovery of such amount from the retiral benefits. The said undertaking shall

also include that the concerned petitioner shall deposit the principle amount of LTC on or before 21.6.2003 and such undertaking shall be filed within a period of three weeks from 15.6.2003 before this court by each of the petitioners separately and the copy of the said undertaking shall be produced by the petitioners before the concerned authorities.

[b] The concerned petitioner shall also file undertaking as per circular dated 03.10.1988 before authority on or before 30.06.2003.

[c] If the principle amount of LTC is deposited on or before 30.06.2003 and if such undertaking as per above para [a] is filed before this court and the copy of the same is produced before the authorities, and if further undertaking is filed before concerned authority as per above para [b], then in that case, the authorities shall recover twice the amount of LTC as penalty by directly appropriating 33% of the actual pay of the concerned employees and only 67% of the actual pay shall be actually paid to be concerned petitioners. Such recovery shall continue until the amount of penalty is fully recovered and if any of the concerned petitioners is retiring before the amount is fully recovered, the concerned authorities shall recover the said balance amount from the retiral benefits including the provident fund, gratuity, etc. by directly appropriating towards the balance amount of penalty.

[d] Until the principles amount of LTC and the penalty, as observed earlier, is fully recovered, the authorities shall not take any action for criminal prosecution or departmental inquiry against the employees concerned as per circular dated 03.10.1988. It is made clear that upon depositing the principle amount of LTC and upon raising dispute regarding recovery of penalty inspite of the aforesaid undertaking to this Court and to the concerned authority the aforesaid directions shall automatically stand vacated in case of concerned petitioner and the authorities shall be at liberty to lodge criminal prosecution against the concerned petitioners in accordance with law and the authorities shall also be at liberty to take departmental proceedings including that of suspension of the

employees concerned. The aforesaid liberty to the employer/authorities shall be in addition to the liability of the concerned petitioners, as the case may be, for breach of the undertaking and for the proceedings under the Contempt of Court Act.

6. All these petitions are disposed of in terms of the aforesaid directions. Rule made absolute to the aforesaid extent only. There shall be no order as to costs. Office shall forward copy of the judgement dated 28.5.2003 passed in Special Civil Application No.7202 of 2003 with the writ of these petitions. Direct service is permitted.

[K.M.Mehta,J.]

syed/