

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12665 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
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 : YES
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?

GOHILVAD LEUA PATEL KELAVANI MANDAL

Versus

BEENABEN HARJIBHAI NAKARANI

Appearance:

1. Special Civil Application No. 12665 of 2001
Ms. Sejal Sutaria for MR VH DESAI for Petitioner No. 1
MR BIPIN P JASANI for Respondent No. 1
..... for Respondent No. 2
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 30/06/2003

ORAL JUDGEMENT

1. Heard learned advocate Ms.Sejal Sutariya for

Mr.V.H.Desai appearing on behalf of the petitioner and learned advocate Mr.B.P.Jasani for respondent.

Rule. Learned advocate Mr.B.P.Jasani waives service of rule on behalf of the respondent No.1.

In the present petition, the petitioner has challenged the order passed by the Gujarat Secondary Education Tribunal at Ahmedabad in Application No.360 of 1996 dated 16th July, 2001.

Learned advocate Ms.Sejal Sutariya submitted that the petitioner is a registered trust under the Bombay Public Trust Act. The respondent No.1 came to be appointed as Assistant Teacher on 19th September, 1992 without following any procedure under Section 35 of the Gujarat Secondary Education Act ["the Act" for short] till availability of the regular candidate after following the due procedure as laid down under Section 35 of the said Act. Thereafter, having obtained necessary permission from the respondent No.2, public advertisement was published and the interviews were held by the school management wherein also the respondent No.1 had appeared but the respondent No.2 was not selected before the Selection Committee for the post of Assistant Teacher and therefore, the school management had informed to the respondent No.1 that since she was not selected by the Selection Committee and under these circumstances, vide order dated 16th May, 1996, her services would stand terminated after three months from the date of receipt of the notice issued by the school management. Against this order passed by the school management, the respondent No.1 challenged the same before the Gujarat Secondary Education Tribunal ["the Tribunal" for short] by way of preferring Application No.360 of 1996. However, this application opposed by the petitioner by filing written statement and the tribunal having appreciated the documentary evidence led by the parties, concluded that the appointment of the respondent No.1 is not in accordance with law and therefore, negatived the prayer of reinstatement made by the respondent No.1. However, the tribunal has directed the school management of the petitioner to pay arrears of salary in the pay scale of Rs.1400-2000/- with other allowance and regular increment from the date of her appointment i.e. from 1st September, 1992 till the date of termination of service of the respondent No.1. Therefore, being aggrieved of the said order granting arrears of salaries as per the Government Rules and Regulations is challenged by the petitioner in this petition under Article 226 and 227 of

the Constitution of India.

Learned advocate Ms.Sejal Sutariya contended that the respondent No.1 was not recruited according to the Rules and Regulations and her appointment as the Assistant Teacher, amounts to a back-door entry in the school and therefore, she is not entitled to regular scale which has been fixed by the Government in respect of the Assistant Teacher. It is also vehemently contended that the tribunal has no jurisdiction to pass such orders granting difference of salary in favour of the respondent No.1. She also submitted that the tribunal cannot examine the legality and validity of the termination order because of the reason that it was not a regular appointment as per the provisions of the law and therefore, she submits that the tribunal has not decided the question of termination but only granted relief in favour of the respondent No.1 by way of direction to pay the difference of the salary to the respondents, which is not just and correct and thereby, the tribunal has committed gross error while passing the order impugned in this petition which requires to be interfered with by this Court in the interest of justice.

Learned advocate Mr.B.P.Jasani appearing on behalf of the respondent No.1, relying on the undisputed facts between the parties, has submitted that the order passed by the tribunal is just, proper and perfectly justified and as such, no interference of this Court requires in any manner while exercising the jurisdiction under Article 227 of the Constitution.

I have considered submissions made by the learned advocates for the parties. I have also perused the order passed by the Tribunal. From the record, it transpires that the respondent No.1 has filed application before the tribunal challenging Notice dated 16th May, 1996 issued by the petitioner school management that while working as the Assistant Teacher, the impugned notice issued by the school management is bad and illegal and therefore, prayed before the tribunal for declaring that her services may be regulated as Assistant Teachers and on that basis, further prayed to grant benefits of regular salary. The tribunal has examined the question raised in the application and after appreciation of the submissions and the documentary evidence led by the parties before the tribunal, the tribunal arrived at his conclusion and necessary discussion to the effect is in para-9 of the judgment. The tribunal came to the conclusion that considering the record which has been disclosed before the tribunal, the school was given recognition in June,

1992. Initially, for about five years as per the grant-in-aid code Rules, the schools are not given grant by the Government and salaries to the employees are required to be paid by the school from their own funds. Therefore, the tribunal has considered the modus operandi of several schools that initially for about a period of five years, they will continue the school by engaging teachers on fixed remuneration and in many cases, salaries are not paid in accordance with Rules. However, the tribunal has observed that in the instant case, the applicant respondent No.1 herein was not paid salaries in accordance with the rules but the remuneration towards the salaries which was paid by way of cheques and therefore, there is record of payment made to the applicant. The tribunal has further observed that as per Regulation 24 of the Gujarat Secondary Education Regulations, 1974 which stipulates that an employee of a private secondary school is entitled for the pay scale as prescribed by the State Government from time to time. Therefore, the tribunal, without any doubt in mind, held that the applicant - respondent No.1 is entitled for the pay scale as prescribed by the Government for the period which the applicant had worked in the school and if full amount is not paid then, she is entitled for the difference amount which she is entitled to receive from the school management. However, it was the contention raised by the petitioner before the tribunal that the applicant respondent No.1 was appointed as honorary teacher but while negating this contention, the tribunal has observed that there is no provision under any Rules and Regulations and even under the Act for appointment of honorary Teacher. The Tribunal, having regard to the fact that the school started secondary school from June, 1992 and the respondent No.1, having all requisite qualification of B.A., B.Ed. required under the Rules, has been teaching those subjects in the school, even on the principles of quantum meritis and equal pay for equal work, the applicant - respondent No.1 herein is entitled for the salaries as fixed by the Government. It may be appreciated that there is no evidence placed by the management to controvert the said factual aspect before the tribunal. Thus, considering all these aspects, the tribunal has directed the petitioner to pay difference of salaries within period of three months from the date of receipt of copy of the order and directed the D.E.O. to calculate the difference of salaries to the applicant and in the event of the non compliance by the school management, the D.E.O. shall withhold the maintenance grant of the school and pay the difference amount to the applicant from the said maintenance grant and it is only after the entire amount of difference is paid to the

applicant, the D.E.O. shall release the maintenance grant to the school. However, the tribunal has rejected the claim of the respondent No.2 for reinstatement and regularisation of service as Teacher on the ground that the applicant is not appointed in accordance with the provisions of Section 35 and therefore held that the applicant is not entitled for any protection under Section 236 of the Act and accordingly, liberty granted to the petitioner school management to terminate service of the respondent.

Having regards to the appreciations made by the tribunal and considering the undisputed facts that the respondent No.1 had worked for the period from 1992 upto the date of termination of her services and considering the Regulation 24 of the Gujarat Secondary Education Regulations, 1974, there is no doubt that the respondent No.1 is entitled to regular salary as per the pay scale fixed by the Government from time to time. Therefore, the tribunal has rightly directed the petitioner to pay the difference of salary for said period for which the respondent No.1 had actually worked and therefore, in my opinion, the tribunal has not committed any error while passing such order. On the contrary, it can be said that the exploitation of the respondent No.1 at the hands of the petitioner for aforesaid actual working period, has been rightly appreciated and dealt with properly while awarding the difference of salaries in accordance with regular scale for the period the applicant actually worked with the petitioner management. Therefore also on this count, no any error committed by the Tribunal and as such, no interference is required while exercising the jurisdiction under Articles 226 and 227 of the Constitution of India and hence, there is no substance in the present petition which requires to be rejected accordingly.

However, at this juncture at the time of rejecting this petition, learned advocate Ms.Sejal Sutariya for the petitioner has placed reliance of the Judgement dated 5/4/2002 rendered by the Single Bench of this Court in Special Civil Application No.7017 / 1989 and especially relied on the following observations made by the learned Single Judge of the aforesaid decision which reads as under :-

"It is not disputed that the appointment of the petitioner was never made in accordance with the procedure prescribed by the provisions of the Section 35 of the Act. The provisions of Section

36 of the Act, relied upon by the Tribunal, are applicable to a Teacher as defined in Clause [X] of Section 2 of the Act, according to which "teacher" means a teacher of a registered school. But, such teacher has to be a teacher appointed by following the procedure prescribed by the Act. No teacher who is appointed otherwise than in accordance with the procedure prescribed by the Act can be termed as teacher for the purpose of the Act. If the teacher is not appointed in accordance with the provisions of the Act, the provisions of Section 36 of the Act cannot be held to be attracted. Thus, reliance by the Tribunal upon the provisions of Section 36 is misplaced. Consequently, the declaration that the termination of the services of Mr. Nat Chandubhai Gulabbhai was illegal being contrary to the provisions of Section 36[1] of the Act cannot be upheld. There being no material on record supporting it, the finding that Mr. Nat Chandubhai Gulabbhai was duly appointed is held to be perverse, rendering the impugned judgment and order unsustainable."

I have also gone through the observations made by the learned Single Judge of this Court as relied by the learned advocate Ms. Sutaria. It is pertinent to note that this Court is in full agreement with the observations made by the learned Single Judge of this Court in aforesaid decision. However, it may be noted that the observations relied by the learned advocate Ms. Sutaria, is altogether different than the subject matter and controversy involved in the present petition. In the aforesaid decision rendered by the learned Single Judge of this Court, the Hon'ble Court has examined the question that the Tribunal has set aside the termination order in respect of one teacher who was not regularly appointed after following procedure under Section 35. Ultimately, the tribunal has set aside the termination order and that order of tribunal came to be challenged before this Court. This Court, in above facts and circumstances, come to the conclusion that once there is no regular appointment as per Section 35 of the Act, protection under Section 36 of the Act cannot be extended in favour of such person who was not appointed in accordance with Section 35 of the Act. Ultimately, this Court while deciding that matter, set aside the order of tribunal. But the facts of the case on hands are entirely different. In the instant case, the Tribunal has held that since the applicant is not appointed in accordance with the provisions of Section 35 of the Act,

for which, there is not dispute between the parties, she is not entitled for the cover of Section 36 and liberty granted to the petitioner school management to terminate her services. The facts are not disputed between the parties. Even there is no challenge by the respondent No.1, nor there is any contention raised by the respondent No.1 in respect of the fact that she was regularly appointed after following due procedure under Section 35 of the Act and it was not the case of the respondent No.1 before the Tribunal. Therefore, considering all these aspects, the tribunal has considered the second question which related to prayer made by the respondent No.1 for grant of regular salary for the period from 1992-96, for which, the respondent No.1 had actually worked with the school management but as such, no salary as per the regulation 24 of the Gujarat Secondary Education Regulations, 1974 was paid by the petitioner. According to the Regulation 24 of the said Regulations, the Assistant Teacher of the private secondary school is entitle to pay scale as fixed by the State Government from time to time. This only aspect has been examined by the Tribunal, while keeping in mind the principle of quantum merits and principle of equal pay for equal work. Ultimately the tribunal has considered the respondent No.1 is entitled to different of salary because she is qualified Assistant Teacher having requisite qualification of B.A., B.Ed. as required under the Rules and while on service, she taught all the subjects as was required to be taught by the qualified teacher. However, learned advocate Ms. Sutaria submitted that since the respondent No.1 was not appointed after following Section 35 of the Act, she is not entitled to salary as per the pay scale prescribed by the Government from time to time in accordance with Regulations 24 of the Gujarat Secondary Education Regulations, 1974. But this aspect has been examined by the tribunal on the ground that the respondent No.1 is entitled to regular pay scale prescribed by the State Government as qualified teacher having qualification of B.A., B.Ed. as required under the Rules and even on the principle of quantum merits and the principle of equal pay for equal work and thus, after considering all these aspects, the tribunal granted benefits of difference of salaries with effect from 1st September, 1992 upto the date of termination of service of the respondent No.1 with specific directions on the D.E.O. to calculate and pay difference of salaries from the maintenance grant which is available to the school management in the event of non compliance of the direction by the school management. But the tribunal has not granted any relief to the respondent No.1 for reinstatement and / or

regularisation of services on the ground that she was not regularly selected Assistant Teacher appointed after following due procedure under Section 35 and simultaneously, granted liberty to the petitioner school management to terminate the services of the respondent No.1. It is also not disputed that the services of the respondent No.2 came to be terminated by the petitioner school management on 23-7-2001.

Therefore, considering the totality of the facts and circumstances of the case on hands, the reliance placed by the learned advocate Ms.Sejal Sutariya by citing the decision of the learned Single Judge of this Court, is not helpful to the case of the petitioner and with respect, the decision so relied, is not applicable to the facts of the present case.

Therefore, the subsequent submissions made by the learned advocate Ms.Sejal Sutariya, in my opinion, the view taken by the tribunal is just and correct and as such, no error has been committed by the tribunal while coming to such conclusion while granting relief in favour of the respondent No.1 and therefore, no interference by this Court is warranted while exercising the powers under Article 227 of the Constitution of India and therefore, there is no substance in this petition and the same is rejected accordingly.

At this stage, learned advocate Mr. Jasani for the respondent No.1 submits that vide order dated 24th June, 2003, this Court has made it clear that upto 30th June, 2003, execution proceedings before the tribunal will remain as it is and not to adjudicate the execution proceedings. Therefore, learned advocate Mr. Jasani submits that some suitable directions may be issued for proceeding further with the execution application. In view of this request, it is open for the respondent No.1 to approach the tribunal to proceed further with the execution application filed by the respondent No.1 against the petitioner.

Rule stands discharged. Interim relief, if any, stands vacated.

Direct Service permitted to respondent No.1.

Date : 30-6-2003 [H.K.Rathod, J.]

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