

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5601 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE SHARAD D.DAVE

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

=====

BE-ROJGAR A.T.D UNION - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

=====

Appearance :

MR KB PUJARA for Petitioner(s) : 1,
Mr.A.J.Desai, AGP for Respondent(s) : 1 - 2.

=====

CORAM : HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 28/02/2006

CAV JUDGMENT

By filing this petition under Article 226 of the Constitution of India, the petitioners have prayed to hold and declare that the candidates

possessing C.P.Ed., qualification and the candidates possessing A.T.D., qualification are required to be treated at par by the respondents, their agents and servants, in so far as the recruitment of primary teachers in Panchayats, Municipalities and Municipal Corporations is concerned and also in so far as the recruitment of Balgurus on the posts of primary teachers is concerned. Further prayer is also made to quash and set aside the Government Resolution dated 11.7.1994 in so far as it leaves discretion to the District Education Committee to recruit special subject teachers in the subjects of Drawing and Music upto 7% of the posts of primary teachers only if the Education Committee so requires and only if the need/posts for such special subject teachers is established. Further prayer is also made to quash and set aside the impugned circular dated 12.6.1997 at Annexure-G in so far as it leaves discretion to the Education Committee to recommend recruitment of A.T.D., candidates upto 7% of the Posts of Balgurus only if the posts/need of Special Subject teachers - Balgurus is established.

2. It is submitted by Mr.K.B.Pujara, learned advocate appearing for the petitioners that by the impugned Government Resolution dated 11.7.1994, the State Government has modified the earlier Government Resolution dated 27.4.1994 by saying that the words "it is resolved that hereafter special subject

teachers shall be recruited to the extent of 7%" in the Government Resolution dated 27.4.1994 shall be substituted by the words "hereafter, Education Committees are recommended to recruit special subject teachers (for subjects of Drawing and Music) upto 7% of the posts newly arising as per their requirements only if the post / need for special subject teachers for teaching Drawing and Music is established.". It is submitted by Mr.Pujara that so far as special subject of Drawing is concerned, the State Government has left it to the discretion of the District Education Committee to make recruitment upto 7% (for Drawing and Music Subjects) only as per its requirements if the need is established. He further submitted that no guidelines have been laid down as to how the District Education Committee shall determine its need for special subject teachers in Drawing and Music and such unguided discretion to the District Education Committee leaves ample scope for arbitrariness and discrimination.

3. It is further submitted by Mr.Pujara that the candidates possessing C.P.Ed qualification and A.T.D., qualification are at par in so far as the special subject requirement in primary education is concerned inasmuch as the subject of Physical Education and the subject of Drawing are compulsory subjects in primary education. Mr.Pujara submitted that the State Government has specifically directed

that 5% posts of primary teachers shall be compulsorily filled up by the candidates possessing C.P.Ed qualifications.

4. It is further submitted that the circular dated 12.6.1997 is also irrational, arbitrary, discriminatory, and, therefore, it is requested to quash and set aside the Government Resolution dated 11.7.1994 as well as Circular dated 12.6.1997.

5. On behalf of the State Government, it is submitted by the learned AGP that since this being a Government Policy, this Court may not interfere with the resolutions under challenge. It is further submitted that the qualification of A.T.D., is not a qualification for appointing a candidate as a teacher at the primary level. In his submission, a teacher at a primary level is required to teach all subjects to the students and a person who is having only qualification of A.T.D., naturally cannot teach other subjects except drawing or music, as the case may be. It is, therefore, submitted that it is not mandatory that the State is required to provide reservation for the candidates of the aforesaid category for the purpose of recruitment to the post of teacher - Vidya Sahayak. It is, however, admitted that so far as drawing and music subjects are concerned, they are part and parcel of the curriculum prescribed for primary schools and the same subjects are required to

be taught compulsorily upto 7th standard.

6. Heard the learned counsel for the parties.

7. It is required to be noted that at a primary level, various subjects including various specialized subjects are also required to be taught such as Physical Training, Drawing as well as Music. The State Government has reserved certain percentage of posts for specialized category like Physical Education Teacher known as C.P.Ed., drawing teacher known as P.T.D., and Sangeet teacher. The grievance of the present petitioners is that certain percentage of posts are required to be kept reserved for the specialized subjects of A.T.D., and so far as recruitment of A.T.D., candidates on 7 posts of primary teachers is concerned, no guidelines or instructions are also issued to the Education Committee to determine the need or requirement of A.T.D., candidates for subject of drawing. At this stage, it is pertinent to note that C.P.Ed., and A.T.D., candidates are exactly similarly situated. The courses for both these categories are of two years duration and that the admission to both the courses are governed by the Centralized Admission System of the State Government. The perusal of the impugned circular dated 11.7.1994 as well as 12.6.1997 reveals that the discretion is left to the District Education Committee to recruit the special

subject teachers in the subjects of Drawing and Music upto 7% of the posts of the primary teachers only if the Education Committee so requires and only if need/posts for such subject teachers is established. It is, therefore, clear that discriminatory treatment is provided for in the aforesaid two circulars in the matter of recruitment of A.T.D., candidates. It is required to be noted at this stage that so far as Drawing or Music subjects are concerned, a specialized person is needed to teach the said subjects. It is also to be noticed that considering this aspect of the matter, the State Government has already prescribed reservation upto 7th standard as per the need established. In this view of the matter, when the qualified candidates are available who can teach the said subjects, there is no reason why the appointment cannot be made within the percentage prescribed for this category from the candidates who got the required standard as well as got specialized qualifications for teaching the said subjects. In this view of the matter, therefore, at least 7% of the vacant posts are required to be filled in from the aforesaid category to which the present petitioners belong. In my opinion, therefore, there is absolutely no justification for not giving preference to A.T.D., upto the prescribed limit of 7% in the matter of appointment.

8. In the result, this petition is allowed. The

impugned Government Resolution dated 11.7.1994 as well as the Circular 12.6.1997 so far as it gives discretion to the Education Committee to recommend the recruitment of A.T.D., candidates upto 7% of the posts of primary teachers / Balgurus only if the Education Committee so requires and only if the need / posts for special subject teachers is established are hereby quashed and set aside. The respondent - authorities are, therefore, directed to fill up the posts of primary teachers by recruiting the A.T.D., candidates to the extent of 7% of such posts. Rule is made absolute. No costs.

(Sharad D.Dave,J)

srilatha