

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**LETTERS PATENT APPEAL No. 119 of 2007
In
SPECIAL CIVIL APPLICATION No. 5601 of 1997**

For Approval and Signature:

**HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MS.JUSTICE H.N.DEVANI**

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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
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STATE OF GUJARAT - Appellant(s)

Versus

BE-ROJGAR A.T.D UNION & 1 - Respondent(s)

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Appearance :

MR SUNIT SHAH, GOVERNMENT PLEADER for Appellant(s) : 1 - 2.

RULE SERVED BY DS for Respondent(s) : 1,

MR KB PUJARA for Respondent(s) : 2 - 121.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 28/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Being aggrieved by the judgement delivered in Special Civil Application No. 3601/1997 dated 28th February, 2006, this Letters Patent Appeal has been filed by the original respondents.

2. Civil Applications Nos. 2728/2007 and 1787/2007 have been filed in this appeal by the applicants praying for being joined as respondents as the applicants of the said applications also claim to be interested parties in the litigation. So as to see that the appeal is finally disposed of at an early date, instead of granting the applications, we have permitted the learned advocates representing the applicants to make their submissions on the subject matter of the appeal and accordingly the said applicants have also been heard by this Court.

3. For sake of convenience, the parties to the litigation are described as they had been arrayed in the petition.

4. The facts giving rise to the present litigation in a nut-shell are as under;

4.1 The petitioner Union was aggrieved because the respondent- government had made some changes in the policy with regard to recruitment of Balgurus. According to the petitioner Union, the State of Gujarat had formerly framed a policy to the effect that at least 7% of Balgurus to be appointed should be special subject teachers who can teach subjects of arts like drawing and music and those teachers should have qualification of Art Teachers Diploma(ATD) or 'Sangit Visharad'. Subsequently, the said policy had been changed to the effect that the District Education Committee of each district was to ascertain actual requirement of such special subject teachers or Balgurus and upon determination of actual requirement of such teachers, not more than 7% of the total Balgurus were to be appointed with ATD or 'Sangit Visharad' qualification.

4.2 The petitioner Union, which consisted of members having qualification of Art Teachers Diploma, was aggrieved by the changed policy because on account of the aforestated change in the policy, less than 7% of such Balgurus or trained teachers were likely to be appointed resulting into lesser job opportunities for members of the petitioner-Union.

4.3 It is pertinent to note that at the time when the petition was filed, the respondent government wanted to appoint Balgurus under a special scheme under which Balgurus were to impart training in the aforestated special subjects to the students studying in primary school. The petition had been filed in 1997 when the scheme for recruiting Balgurus had been

framed by the State of Gujarat.

4.4 During the pendency of the aforestated petition, the scheme with regard to appointing Balgurus had been discontinued and, therefore, there was no need to appoint any Balguru. Possibly, for the said reason nobody has appeared for the petitioner Union though the petitioner Union has already been served with the notice of this court. In the circumstances, in our opinion, in 2007 when the said petition had been finally decided, the petition had already become infructuous. It appears that attention of the learned Single Judge was not drawn to the said fact by the learned advocates appearing before the Court and, therefore, the learned Single Judge heard the matter and decided the same on merits, though, in our opinion, the entire exercise could have been avoided if the aforestated fact had been brought to the notice of the learned Single Judge.

4.5 It has been however submitted by the learned advocates that the resolutions, which have been quashed and set aside by the learned Single Judge, also affect appointment of primary teachers and, therefore, a request was made to hear the matter on merits so that the policy decision taken by the State of Gujarat in relation to appointment of other primary school teachers can be examined as such primary teachers are to be appointed in a very near future.

5. In view of the above request, the appeal has

been heard on merits even though no one is to be appointed as Balguru as the scheme with regard to appointment of Balgurus has already been discontinued.

6. Certain Government Resolutions issued by the Education Department pertaining to framing of the policy with regard to recruitment of Special Subject Teachers are required to be referred to. The said resolutions had not been annexed to the petition, but they have been placed on record with consent of all the advocates in form of a paper book by learned advocate Shri Pujara appearing for the interveners.

7. By Government Resolution dated 31st May, 1965, it was decided that while making new recruitment, not more than 15% of Primary School Teachers to be appointed should be teachers having special qualification for teaching Hindi, Drawing and Physical Training. Subsequently, by Government Resolution dated 8th June, 1993, Tailoring and Music were added in the aforestated subjects.

8. From time to time, the government had changed the upper limit of number of teachers to be appointed for such special subjects after considering actual requirement of such teachers. As we are not much concerned with all the changes effected in the policy, we do not refer to all those Resolutions passed by the Government.

9. By the impugned resolution dated 11th July, 1994, it was decided that for the purpose of teaching subjects like drawing and music, maximum 7% of the total primary school teachers should be appointed. By virtue of the impugned government resolution, provisions made in the earlier government resolution dated 27th April, 1994, had been changed.

10. By the Government Resolution dated 27th April, 1994, it was decided that 7% of Primary School Teachers should be special subject teachers, who can teach Music and Drawing.

11. By virtue of the impugned circular dated 12th June, 1997 it was decided that the District Education Committees should examine the requirement of the special subject teachers and to a maximum limit of 7% of the total posts, such teachers should be appointed.

12. The petitioner Union was aggrieved by the aforestated resolution as well as a circular because the Education Committee of each district had to assess actual requirement of special subject teachers and only after considering the requirement, total number of special subject teachers were to be appointed. Thus, it was possible to appoint less than 7% of special subject teachers of the total

number of teachers, which would result into reduction of chances of employment of the members of the petitioner-Union.

13. No affidavit was filed on behalf of the respondents in the petition and, therefore, after hearing the learned advocates, the learned Single judge has quashed Government Resolution dated 11th July, 1994 and circular dated 12th June, 1997. Thus, by virtue of the impugned judgement, according to the petitioner, now it is obligatory on the part of the respondent government to fill up at least 7% of vacant posts with teachers having special qualification in the subject of drawing and music.

14. We have heard learned Government Pleader Shri Sunit Shah appearing for the original respondents-appellants. He has submitted that the Government Resolution dated 11th July, 1994 and circular dated 12th June, 1997 had been issued for administrative reasons. It has been submitted that in fact the government never had an intention to appoint minimum 7% special subject teachers for ever but in fact the intention was to see that at the relevant time, maximum 7% of special subject teachers were appointed. The government had found that the resolutions, which had been passed earlier were being misinterpreted and, therefore, it was thought it necessary to clarify that maximum 7% special subject teachers should be appointed. In the circumstances,

the impugned resolution dated 11th July, 1994 and circular dated 12th June, 1997 came to be issued. It has been submitted by him that it is for the government to decide as to how many teachers should be appointed, and out of total number of teachers, how many special subject teachers should be appointed.

15. It has been, thus, submitted by him that the learned Single Judge ought not to have interfered with the policy decision of the State.

16. So as to substantiate his arguments, he has relied upon the judgement delivered in the case of **STATE OF ORISSA AND ORS Vs BHIKARI CHARAN KHUNTIA AND ORS, 2003 (10) SCC 144** which lays down law to the effect that the judiciary should not give directions to the government to fill up all the posts. Even if some posts are vacant, the government authorities cannot be constrained to fill up the vacant posts and the candidates have no right to be appointed even if there are vacant posts.

17. Thereafter he has relied upon the judgement delivered in the case of **FOOD CORPORATION OF INDIA AND ORS Vs BHANU LODH AND ORS, 2005(3) SCC 618** laying down law to the effect that there is no obligation on the government to fill up all the vacant posts.

18. Thereafter, he has submitted that in the case of **SECRETARY, STATE OF KARNATAKA AND ORS Vs UMADEVI (3) AND ORS, 2006(4) SCC 1**, it has been held that the Court should not interfere when the matter pertains to economic or financial arrangement of the affairs of the State and the Court should not do something, which would increase financial burden on the State exchequer.

19. Thus, it has been submitted by the learned Government Pleader that it is always for the government to decide as to whether all the posts of primary school teachers should be filled up and how many posts should be filled up by special subject teachers. He has further submitted that on administrative side, the Education Committees of all the districts are to examine the actual requirement of special subject teachers and upon ascertaining the same, within the maximum limit prescribed as per the government policy, special subject teachers are to be appointed. He has therefore submitted that the impugned judgement, whereby the discretion to be exercised by the government has been wrongfully interfered with, should be quashed and set aside so that in the interest of the students studying in primary schools, upon verifying and ascertaining the actual requirement of special subject teachers, the Government can appoint primary school teachers including special subject teachers.

20. The learned Government Pleader has incidentally submitted that at present the government is recruiting Vidya Sahayaks in pursuance of a comprehensive scheme made for recruitment of Vidya Sahayaks and in the circumstances it may not be necessary to fall back upon the government resolutions, which have been referred to hereinabove. It has been submitted that looking to the provisions of clause 5 of the said scheme, special subject teachers are to be appointed to the extent of 7% as per the need of such teachers and, therefore, the learned Single Judge was not justified in directing the government authorities to appoint a particular number of candidates having ATD qualification. He has also submitted that direction to fill up 7% posts with ATD candidates would also be contrary to Government Resolution dated 27th April, 1994 because the said resolution provides that both, ATD and Sangit Visharads, should be appointed to the extent of 7% of the posts of primary teachers.

21. On the other hand, learned advocate Shri Pujara appearing for the applicants of Civil Application No. 1787/2007 has tried to support the judgement delivered by the learned Single Judge.

22. After referring to several government resolutions issued from time to time determining qualification and requirement of special subject teachers, it has been submitted by him that as less

number of special subject teachers have been appointed, the Government must appoint prescribed number of special subject teachers as determined under Government Resolutions dated 27th April, 1994. He has also relied upon the judgement delivered by this Court in Special Civil Application No. 12401/2003 and other allied matters delivered on 1st October, 2003 to show that even the learned Single Judge, in the said judgement, had directed that 7% posts of primary school teachers must be filled up by special subject teachers.

23. He has also submitted that when adequate number of teachers having qualification of C.P.Ed. had not been appointed and an association consisting of unemployed candidates having qualification of C.P.Ed. had filed SCA no. 4006/1997, after considering the relevant circulars and resolutions, this Court had directed that 5% of the posts should be reserved for candidates possessing C.P.Ed. qualification. He has thereafter submitted that the basic qualification required for a candidate to obtain Art Teachers Diploma or certificate in Physical Education is the same and, therefore, the aforestated judgement should also be considered by this Court.

24. It has been further submitted by him that the District Education Committees, which have to look into the requirement of actual number of special subject teachers, are not consisting of qualified and competent academicians and, therefore, there are all

chances that the committees may not come to correct conclusions, and in that event, less number of special subject teachers might be appointed and that would adversely affect education of the students of primary school. It has been thereafter submitted that the State of Gujarat has recognised several colleges, where Art Teachers Diploma and certificate in Physical Education are being awarded. If less number of special subject teachers are appointed, the students qualifying themselves of the aforesaid qualification would be rendered unemployed because for such trained teachers, there is no option other than to become primary school teachers.

25. It has been also submitted by him that though the government has entrusted work pertaining to determining actual requirement of special subject teachers, who can teach Music and Drawing, to the District Education Committees, no guideline has been prescribed to the committees on the basis of which the committees have to ascertain actual requirement of such special subject teachers.

26. The learned advocate has also relied upon the judgement delivered in the case of **KAILASH CHAND SHARMA Vs. STATE OF RAJASTHAN AND ORS, AIR 2002 SC 2877** to submit that different committees might use different yardsticks for determining requirement of special subject teachers and in that event there would be different policies in different districts which would not be just and proper.

27. Senior advocate Shri Yatin Oza appearing for the applicants of Civil Application No. 2278/2007, who had prayed for being joined as respondents in this appeal has adopted the arguments advanced by learned advocate Shri Pujara, but he has added that looking to the law laid down by this Court in Letters Patent Appeal No. 1265/1999 and other allied matters, the appeal ought not to have been entertained at all because the order passed by the learned Single Judge was not complied with. According to him, first of all the government must comply with the directions given by the learned Single Judge and then only the appeal should have been taken up for final hearing.

28. We have heard the learned advocates at length and have also gone through the Government Resolutions referred to by learned advocate Shri Pujara and the impugned judgement delivered by the learned Single Judge.

29. Upon perusal of the relevant Government Resolutions, it appears that in the process of giving better education to primary school students, the State of Gujarat had decided to give prominence to certain subjects like tailoring, music, drawing and physical training. Primary school teachers, who are supposed to have educational qualification of PTC, are taught as to how to impart education to the students of primary schools. They are taught the

method whereby the children can be made to understand easily and they have specialised in the field of educating children. Such teachers might not be having specialised knowledge in the field of tailoring, music, drawing and physical training etc. and, therefore, the government has framed a policy to the effect that those candidates who are also having specialised knowledge in the aforesaid subjects should also be appointed as primary teachers.

30. By Government Resolution dated 31st May, 1965 and 8th June, 1973, it was decided that subjects such as tailoring, music, Hindi, arts, physical training etc should be taught by special subject teachers and the qualifications required by them had also been prescribed under the said resolutions. Moreover, it was also decided that total number of such teachers should not exceed 15% of total number of teachers. Thereafter, by Government Resolutions dated 19th July, 1989, and 22nd December, 1989, some changes were effected in the maximum number of such teachers.

31. Thus, from time to time, looking to the requirement of such special subject teachers, the Government had issued different resolutions. Thereafter, by resolution dated 27th April, 1994 it was decided that from 10% special subject teachers, 7% special subject teachers were to be appointed as no special teachers for tailoring were required.

Upon perusal of government files, it appears that intention of the government was to see that about 7% special subject teachers capable of teaching drawing and music were to be appointed but as language of the said Government Resolution was not very clear, it was interpreted as if at least 7% of special subject teachers having ATD and 'Sangit Visharad' qualification were to be appointed. In the circumstances, it had become necessary to clarify the intention of the government and, therefore, Government Resolution dated 11th July, 1994 had to be passed clarifying that 7% was the maximum limit for appointing special subject teachers for teaching drawing and music and ATD or 'Sangit Visharad' was the respective qualification required for such teachers.

32. After the Government Resolution dated 11th July, 1994 was passed, the government had decided that actual requirement of such special subject teachers should be determined by Education Committee of each district. At the relevant time, the policy with regard to recruitment of Balgurus was in force and, therefore, the impugned circular dated 12th June, 1997 was issued by the Director of Primary Education wherein it was stated that maximum 7% of special subject teachers having qualification of ATD should be appointed and actual requirement of such special subject teachers should be ascertained by the District Education Committee.

33. As observed hereinabove, the scheme with regard to appointment of Balgurus has been abolished and no balguru is to be appointed and, therefore, for all practical purposes the circular dated 12th June, 1997 has become redundant, but so far as Government Resolution dated 11th July, 1994 is concerned, it still survives.

34. Thus, the government finally decided that the District Education Committee of each district should determine the need for such special subject teachers and after considering the requirement, subject to maximum limit of 7% of the posts, recruitment of candidates having qualification of ATD or 'Sangit Visharad' should be made.

35. Upon hearing the learned advocates and looking to the policy laid down by the Government, in our opinion, it cannot be said that the policy decision taken by the government under the aforesaid Government Resolution and circular is improper or incorrect. It is for the Government to decide as to how many total teachers and how many special subject teachers should be appointed.

36. In our opinion, the policy framed by the government is neither arbitrary nor illegal because, the District Education Committee of all districts are

to ascertain the actual requirement and only upon ascertaining the actual requirement, subject to maximum limit fixed in the said resolution, special subject teachers are to be appointed.

37. It is pertinent to note that special subjects are subjects pertaining to extra curricular activities. Teachers teaching extra curricular activities must have a certain limit because, there are other more important subjects which are to be taught to the students. How many teachers are required to be appointed to teach different subjects is a matter of discretion of the appointing authority. Of course, if the authority is acting in an arbitrary manner, the Court can examine the decision. In the instant case, it is not shown as to how the decisions taken by the District Education Committee are improper, illegal or devoid of merits. We are sure that the government must have provided some guideline to the Education Committees or there must be some common principle on basis of which the committees would be ascertaining requirement of such special subject teachers. If the committees headed by responsible government Officers and consisting of some local representatives of people determine the actual requirement of teachers correctly, in our opinion, there is no reason for this Court to interfere with the decision of the committee. Looking to the law laid down by the Hon'ble Supreme Court in the case of **Food Corporation of India v. Banu Lodh** (supra), it is always for the appointing authority to

decide whether all the posts should be filled up or kept vacant.

38. It is also pertinent to note that special subject teachers can teach subjects of their speciality in a much better manner but possibly they might not be too good or effective in teaching other subjects. Looking to the said fact, having more number of special subject teachers might adversely affect the education of the students because such teachers might not be very good at teaching other more important subjects like Maths, Science, Geography etc. and, therefore, the Government might have put an over all limit on appointment of special subject teachers. Subjects like mathematics, science, geography and languages are of vital importance. Students cannot be deprived of teachers who can teach them the aforestated subjects and if more number of special subject teachers are appointed, then the teachers teaching the aforestated subjects would be relatively less and that might not be in the interest of the students. All these factors are to be considered by the Government and not by the Court.

39. Looking to the facts of the case, we are of the view that the learned Single Judge ought not to have directed the government to appoint a particular number of teachers having qualification of ATD by quashing the impugned resolution and circular. The

effect of the impugned judgement would be that the Government will have to appoint a particular number of special subject teachers. If more number of special subject teachers are appointed, then not only education of primary school students would be adversely affected but the State Exchequer would also be adversely affected because the State will have to pay salary to such teachers without getting optimum work from them. These are the issues which are better decided by the State on its administrative side rather than this Court.

40. In the circumstances, in our opinion, the impugned resolution dated 11th July, 1994 and the impugned circular dated 12th June, 1997 ought not to have been quashed by the learned Single Judge. We therefore quash and set aside the impugned judgment. The appeal is allowed.

41. Incidentally, it may be noted here that there was some discussion with regard to qualifications of primary school teachers. Without going into the said subject, we may simply say that the Full Bench of this Court, in its judgment dated 8.1.2007 delivered in Special Civil Applications Nos. 8075 of 2001 and 4332 of 2006, has already determined the issue with regard to the basic qualification required for being appointed as a primary school teacher and, therefore we do not wish to make any further observation on the said subject.

42. Learned advocate Shri Pujara has made a request that implementation of the judgement be stayed for a period of 10 days. We do not think the request to be reasonable. The request is rejected.

(ANIL R. DAVE, J.)

(HARSHA DEVANI, J.)

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