

## IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2873 of 2003

With

CIVIL APPLICATION No. 12452 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

=====

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 ?

=====

ADMINISTRATOR, TEJAS VIDYALAYA ATMAJYOTI & 2 -  
Petitioner(s)

Versus

ASHA SRIVASTAVA &amp; 2 - Respondent(s)

=====

Appearance :

MR AJ SHASTRI for Petitioner(s) : 1 - 3.

MR RK MISHRA for Respondent(s) : 1,

MS VJ BRAHMBHATT, AGP for Respondent(s) : 2 - 3.

=====

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

Date : 30/11/2007

ORAL JUDGMENT

Leave to make corrections in the cause title by describing  
respondent No.3 as Commissioner of Midday Meals and Schools  
instead of Commissioner of Higher Education.

This petition is filed by the management of Tejas Vidyalaya, Baroda for challenging the judgment and order dated 16.08.2001 of the Gujarat Secondary Education Tribunal in Application Nos.371 of 1995 and 86 of 2000.

2. Since the management of this school as well as respondent No.1 - teacher have amicably resolved their disputes, it is not necessary to set out all the facts in detail. It shall suffice to state that the school management had issued an advertisement on 09.04.1994 inviting applications for the post of teacher in Hindi / Sanskrit in the secondary section of the school. Respondent No.1 - teacher who is having the qualifications of M.A. (Hindi) and M.A. (Sanskrit) and M.Ed. had applied for the post. Interviews were held on 06.05.1994. Respondent No.1 was selected by the Selection Committee and the management had issued the appointment order on 09.05.1994. Respondent No.1 (hereinafter referred to as "the respondent" or "the respondent teacher") joined duties on 25.06.1994 and since then she has been rendering her services as Assistant Teacher in the subjects of Hindi and Sanskrit.

3. Apprehending termination of her services, the respondent had filed Application No.164 of 1995 challenging the oral order of termination. That application was disposed of on the statement being made on behalf of the management that no termination order

was passed and that whenever any action will be taken, it shall be in accordance with law. The Tribunal accordingly disposed of that application after directing that no penal order shall be passed against the applicant before the Tribunal (respondent No.1 herein) without following the procedure under Section 36 of the Gujarat Secondary Education Act and Regulations thereunder. Subsequently, the services of the respondent teacher came to be terminated by order dated 07.08.1995 with effect from 05.08.1995. The order came to be challenged before the Tribunal in Application No. 371 of 1995. The Tribunal granted interim relief and therefore, the respondent continued in service during pendency of the application. The other teachers in the school were granted the benefit of fifth pay commission pay scales and therefore, the respondent filed Application No.86 of 2000 for the same benefits.

4. Ultimately, both the applications came to be allowed by the Tribunal by the impugned order dated 16.08.2001. The Tribunal held that the appointment of the respondent teacher was on a permanent post and that she possessed all the requisite qualifications. The Tribunal thereafter noted that at the relevant time the management was of the view that the respondent teacher (the applicant before the Tribunal) required to improve her English for their English medium school, but otherwise the result of the students in the subjects being taught by her was 100% and that her behaviour was also good and that there was no complaint against

her either by the colleagues or by the management. The Tribunal ultimately allowed the applications and directed the management to pay the respondent teacher (original applicant) salary and allowances in the scales recommended by fifth pay commission as is done in the case of the other teachers of the school.

5. Aggrieved by the above judgment, the management filed the present petition which came to be admitted on 17.03.2003 and the Court granted ex-parte ad-interim stay against implementation of the order of the Tribunal in so far as it directed that the benefits of fifth pay commission were required to be given to the respondent teacher. Thereafter on 20.07.2004, this Court directed the school management by way of interim relief to pay the respondent teacher monthly salary of Rs.8,000/- commencing from 01.08.2004.

Subsequently on 28.10.2004, this Court directed the school management not only to pay the respondent teacher salary of Rs.8,000/- per month as directed earlier, but also the following directions were given :-

(a) The school management was to pay the respondent teacher arrears of difference of salary for the period from the date of judgment of the Tribunal (16.08.2001) till 31.07.2004 so as to ensure that the respondent teacher was paid salary during the above period at the rate of Rs.8,000/- per month.

(b) The management was also directed to deposit the difference between the amount payable as per the Fifth Pay Commission and the amount being paid to the respondent teacher at Rs.8,000/- per month for the period from 01.11.2004 onwards every month in a recurring deposit account with a scheduled bank so that the amount of difference to be deposited separately in such recurring deposit scheme, earns interest till disposal of the petition. The separate recurring deposit account was to be opened in the name of Registrar of this Court, C/o. Administrator, Tejas Vidyalaya, with a scheduled bank at Baroda.

6. When the petition reached hearing on 28.11.2007, this Court suggested to the parties to amicably resolve the dispute between the parties and the petitioner school management as well as the respondent teacher have responded positively. Under instructions of the school management through Ms. Trivedi, Principal of the school who is present before the Court, Mr AJ Shastri for the petitioner school management states that the aforesaid interim directions have been complied with and the differential amount as directed by this Court has been regularly deposited in Recurring Deposit Account No.3408000110000751 with Punjab National Bank, Aatma Jyoti Branch, Baroda and further states that the respondent teacher may be permitted to withdraw 50% of the amount lying in the aforesaid recurring deposit account. The

balance is stated to be Rs.1,80,311/- rounded off Rs.1,80,000/-. In other words, the school management is agreeable that the respondent teacher may be permitted to withdraw a sum of Rs.90,000/- from the amount lying in the aforesaid account and the balance amount may be permitted to be withdrawn by the school management and the account be closed. It is further stated that this amount pertains to the deposit of differential amount upto the month of October 2007 and the last deposit for the month of October 2007 was made on 17.11.2007. It is also stated by Mr. Shastri for the school management that full salary payable to the respondent teacher for the month of November 2007 will be paid to her in December 2007 along with payment of salaries to other teachers in the pay scales of the Fifth Pay Commission recommendations and that the petitioner school management shall continue to pay the respondent teacher salary in the pay scale which is being paid to the other teachers in Tejas Vidyalaya and that as and when such pay scales are revised in future, the respondent teacher will also be given the same benefits. Similarly Mr. Shastri states that all the allowances and benefits being given to the other teachers in Tejas Vidyalaya will also be given to the respondent teacher.

7. Mr RK Mishra appearing for the respondent teacher (Ms. Asha Srivastava) has also agreed to accept the above formula and has agreed to accept 50% of the difference between the amount

payable to the petitioner on the basis of the salary payable to the petitioner in the pay scale as recommended by fifth pay commission on the one hand and the salary at the rate of Rs.8,000/- received by her for the period from 01.11.2004 to 31.10.2007 and that the full salary in the pay scale recommended by fifth pay commission be paid to the petitioner for the month of November 2007 onwards (salary payable in December 2007) just as the other teachers in the school are being paid.

8. In view of the above consensus between the parties, it would have sufficed to pass an order that the respondent teacher may be permitted to withdraw a sum of Rs.90,000/- from the amount lying in the above-numbered recurring deposit account with Punjab National Bank and that the remaining amount may be permitted to be withdrawn by the school management. However, on a perusal of the passbook, the Court that above-numbered recurring deposit account was opened only at the fag end of December 2004 and therefore, the deposit of the differential amount started only in January 2005. Besides the previous order dated 28.10.2004 had not provided for the differential amount to be deposited for the period from 01.08.2004 to 31.10.2004, because the order was passed on 24.10.2004. It may not, therefore, be accurate to state that 50% of the differential amount for the period from 01.08.2004 to 31.10.2007 would work out to only Rs.90,000/-. Taking into account the differential amount for the period from 01.08.2004

onwards. It would appear that 50% of the differential amount for the entire period from 01.08.2004 to 31.10.2007 would come in the region of Rs.1 lac.

In this view of the matter instead of adjourning the hearing to another date, in the facts and circumstances of the case, this Court directs that a sum of Rs.1 lac be paid to the respondent - Ms. Asha Srivastava in full and final settlement of her claims against the school management for the period from the date of appointment till 31.10.2007 on the basis of the judgment dated 16.08.2001 of the Gujarat Secondary Education Tribunal in Application No.371 of 1995.

It is clarified that whatever contributions are payable by the school management towards the provident fund, gratuity, etc. of the respondent teacher shall not be treated as covered by the aforesaid amount of Rs.1 lac.

9. Ms Brahmbhatt, learned Assistant Govt. Pleader appearing for the District Education Officer, Baroda and Commissioner of Higher Education, Gujarat State, states that since Tejas Vidyalaya is not receiving any grant from the State Government, the District Education Officer has no objection to the aforesaid arrangement being arrived at between the parties.



10. In view of the above consensus between the petitioner school management and the respondent teacher, and in view of the above discussion, this petition is disposed of in terms of the following directions :-

(i) the petitioner school management shall treat the respondent teacher - Asha Srivastava as regularly appointed Assistant Teacher in Tejas Vidyalaya with effect from 09.05.1994 / 25.06.1994.

(ii) the Registrar of this Court shall give necessary instructions to Punjab National Bank, Baroda, Aatma Jyoti Branch to close down recurring deposit Account No. 3408000110000751 in the name of Registrar of Gujarat High Court, Ahmedabad, A/c. Administrator, Tejas Vidyalaya, Baroda after issuing a cheque for Rs.1,00,000/- in favour of Ms. Asha Srivastava and the cheque for the balance amount in favour of management of Tejas Vidyalaya. The Registrar shall carry out these directions by 15.12.2007 and the bank shall carry out the said instructions within ten days from the date of receipt of the instructions of the Registrar.

(iii) the petitioner school management shall treat the respondent teacher as regularly appointed Assistant Teacher in Tejas Vidyalaya secondary section and give her the salary in the same pay scale and same benefits and allowances which are being given to the other

teachers of Tejas Vidyalaya.

11. The petition stands disposed of accordingly.

Liberty to apply in case of difficulty.

In view of the above order, Civil Application does not survive and is disposed of accordingly.

[M.S.SHAH, J.]

mrpandya\*