

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

R/SPECIAL CIVIL APPLICATION NO. 13704 of 2014

**With**

R/SPECIAL CIVIL APPLICATION NO. 10639 of 2014

**With**

R/SPECIAL CIVIL APPLICATION NO. 12528 of 2014

**FOR APPROVAL AND SIGNATURE:****HONOURABLE MS JUSTICE SONIA GOKANI**

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 or any order made thereunder ?	

LUHAR PANKAJBEN TARAKBHAI & 570 other(s)

Versus

UNION OF INDIA & 34 other(s)

Appearance:

MR GM JOSHI for the Petitioners: **SPECIAL CIVIL APPLICATION NOS. 13704, 10639 & 12528 of 2014**

DS AFF.NOT FILED (N)(11) for the Respondent(s) No. 15,25,26,34

MR RASHESH RINDANI, GOVERNMENT PLEADER for the Respondent(s) No. 2

MR DEVANG VYAS(2794) for the Respondent(s) No. 1

MR NIRZAR S DESAI(2117) for the Respondent(s) No. 1

MR VIJAY H NANGESH(3981) for the Respondent(s) No. 9

MR.D K.PUJ(3836) for the Respondent(s) No. 1

MS ARCHANA U AMIN(2462) for the Respondent(s) No. 1

NOTICE NOT RECD BACK for the Respondent(s) No. 25,26,34

NOTICE SERVED(4) for the Respondent(s) No.

11,12,13,14,15,16,17,18,19,20,21,22,23,24,25,28,29,30,32,33,35,4,5,6,8

NOTICE UNSERVED(8) for the Respondent(s) No. 10,27,31,7

**CORAM: HONOURABLE MS JUSTICE SONIA GOKANI**

**Date : 16/01/2017**

**COMMON ORAL JUDGMENT**

1.0 Since, all these matters involve similar

question of law and facts, they are heard together and disposed of by this common judgment and order.

2.0 All the petitioners are qualified Special Teachers, possessing the qualifications for teaching differently abled children classified in various categories. They possess the qualification of Diploma in Special Education for the Mentally Retarded Children, which is conferred by the National Institute for the Mentally Handicapped, Secunderabad, which is an institution under the Ministry of Welfare, Government of India. Out of the total 571 petitioners, five are holding the qualification of Bachelor of Education in Special Education through distance education from Bhoj (Open) University, Madhya Pradesh, which runs the course in collaboration with the Rehabilitation Council of India. Said Council came to be established by virtue of the Rehabilitation Council of India Act, 1992.

2.1 It is the case of the petitioners that, initially, they rendered services to the differently abled children, which was a measure of charity. But, later on, it was given a status of welfare and thereafter, a measure of security. At present, under the International Treaty under

the United Nations Convention for Rights of Persons with Disablement, same is considered and accepted as a right available to such persons all over the world. India being one of the signatories to the convention, the children suffering from various kinds of challenges either mental or physical are entitled to the services rendered by the petitioners. Union of India has an obligation for fulfilling such objectives. Initially, the first of such scheme was introduced in the year 1986, which was modified in the year 1992. The latest scheme is known as Centrally Sponsored Scheme of Inclusive Education of the differently abled at Secondary Stage (for short, 'IEDSS').

2.2 Pursuant to a public advertisement and under the supervision of the Committee of officers from the government agencies, viz. Gujarat Council of Educational Research & Training ('GCERT', for short) and District Institute of Education and Training ('DIET', herein after referred to as), the appointment of the petitioners came to be made through Non Governmental Organizations (in brief, 'NGOs'). In other words, the appointment of Special Teachers was supervised by the Administrative Cell of the State Government, i.e. GCERT. The condition No.11.3 of the Scheme provides that the same

scales of pay, as available to the teachers of the corresponding category in the concerned State / Union Territory, shall be given to the Special Teachers. Further, considering the special type, they will also be given a special pay of Rs.150/- per month in urban areas, whereas, Rs.200/- in rural areas. It, further, enjoins upon the State Government to recruit such teachers by following the regular recruitment procedure. The Ministry of Human Resource releases the grant of salary, which is to be distributed amongst the teachers, who are appointed through the NGOs under the supervision of the Administrative Cell of GCERT. It may be noted that in regard to the persons, who were appointed prior to 31.03.1990, a formal request was made by the Ministry of Human Resource Department to State Government to pay their salary, whereas, the persons, who were appointed after 31.03.1990, the salary is being paid by the Central Government. Said Scheme was revised by the Ministry of Human Resources in the year 1992.

2.3 The petitioners in these petitions have urged that the Scheme for teaching the differently abled children was introduced and financially supported by the Central Government and the State Government has no say in the matter of grant of benefits like Provident Fund,

Pension, allowances, leave etc.. The teachers, who were teaching the differently abled students were not attending the schools full time, but, they were visiting the schools as a periodical teacher. They also have to help the parents of the differently abled students in further studies. The Special Teachers also help the regular teachers and guide them how to tackle the differently abled students. There were no permanent posts created at the time of appointing the Special Teachers through the NGOs. The Special Teachers were paid salary as well as other allowances at par with regular teachers, like House Rent Allowance, Medical Expenses and Dearness Allowance. However, there is no provision for pension, provident fund etc.. The pay-scale of the Special Teachers in primary education is fixed at Rs.4000-Rs.6000, whereas, for those in secondary education is fixed at Rs.5000-8000.

2.4 The Government of India addressed a letter dated 21.10.2008 to the Secretary (Education), Government of Gujarat, regarding launching of the new Centrally Sponsored Scheme of IEDSS. Which was responded on 15.04.2009 by the Government of Gujarat, for continuation of the earlier Scheme, namely Integrated Education for differently abled Children Scheme (for short,

'IEDC') in the interest of differently abled students and itinerant teachers. The Government of India vide its letter dated 01.05.2009 called for the specific details about the number of differently abled students and the teachers deployed for them. Pursuant thereto, the Government of India addressed another letter to the Government of Gujarat on 09.07.2009. It emerges that out of total 49,775 differently abled children in the age group of 6 to 18 years in primary, secondary and higher secondary schools, the number of Special Teachers providing them educational assistance is 1248. As per the communication dated 15.09.2009 of the State Government, all the teachers working in the IEDC Scheme have been absorbed in the new Scheme, namely IEDSS. All the petitioners have been advised by the State Government to improve their educational qualification by getting Special Bachelor of Education degree. It is the say of the petitioners that as of today, there is only one university, namely Dr. Baba Saheb Ambedkar Open University, which imparts education for external Special B.Ed. in Gujarati language, which has a very limited intake capacity. As a result thereof, except 170 teachers, all other teachers have acquired the degree of Special B.Ed.. It is the say of the petitioners that they have already acquired the requisite qualification

prescribed by the State Government vide Government Resolution dated 29.03.2000 and thereby, have improved their qualification. They have urged that the Division Bench of this Court, in a group of petitions being Special Civil Application No. 33 of 2005 and the allied matters, while deliberating over the issue of service conditions of Special Teachers recognized that they are performing more duties than regular teachers and allowed those petitions. The Court held that the Special Teachers, since, are performing their job for the State Government, the duty of NGOs is merely to assist the State Government in the selection process and the fate of the Special Teachers cannot be left in the hands of NGOs, but, the selection should be made by following the regular procedure of recruitment. The Court further held that by allowing the NGOs to demand bond or to give appointment letters on certain conditions, although, the selection was under the active supervision of the Department of Education, Government of Gujarat, the State Government cannot deprive the selected Special Teachers of their rights accrued out of the normal recruitment procedure under the supervision and Control of the State.

2.5 It is the grievance of the petitioners

that, though, they have rendered continuous services in IEDC and they have been now absorbed into IEDSS, they are treated as fresh recruitees and they are also getting the salary and allowances as if they are fresh recruitees by completely ignoring their past service of 10 years in IEDC. The petitioners are, therefore, getting the salary in the pay-scale of Rs.9300-34800 since April 2009 and that too irregularly, with a delay of about 3 to 4 months. It is, further, their say that salary and allowances are not being paid directly to them, but, they are paid through NGOs. Further, no maternity or paternity leave or medical leave is available to them. They are not even considered regular teachers for the purpose of inter-district transfer. Respondent-authorities have taken no decision with regard to grant of terminal benefits to the petitioners and they are also not given Leave Travel Concession. In short, it is their grievance that the grievances referred to in Paragraph-23 of the judgment of this Court in Special Civil Application No. 33 of 2005 and the allied matters are still made available to the petitioners.

2.6 The petitioners state that they had moved a contempt petition being Misc. Civil Application No. 498 of 2014 along with Misc.

Civil Application No. 843 of 2014, which came to be disposed of on 06.05.2014, as the arrears of salary and allowances, as directed by this Court, was paid and for the remaining grievances, the petitioners were granted liberty to approach the Respondent-authorities by way of a representation, which was to be decided within a period of six weeks. The petitioners are, therefore, before this Court with the following prayers, as prayed for in Special Civil Application No. 13704 of 2014;

"7. ...

(A) This Honourable Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction in the form of Mandamus or any other appropriate writ, order or direction commanding the Respondents to pay the petitioners regular salary and allowances and payment thereof directly to the petitioner teachers as is done in case of regular teachers and all other benefits flowing therefrom forthwith;

(B) This Honourable Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction in the form of Mandamus or any other appropriate writ, order or direction directing the respondents to confer the benefits of continuity of services which the petitioners have rendered initially in the IEDC and after their absorption in IEDSS and to pay the petitioners such

benefits flowing therefrom;

(C) This Honourable Court be pleased to issue a writ of Mandamus or any other approached writ, order or direction in the form of Mandamus or any other appropriate writ, order or direction directing the respondents to pay the petitioners salary for the period of year 2010 and 2011 and interest on the delayed payment of the salary;

(D) This Honourable Court be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction in the form of Mandamus or any other appropriate writ, order or direction quashing and setting aside the interpretation of the respondents qua the ratio of 5 students to 1 teacher by holding that 5 students would be maximum and not minimum as interpreted by the Respondents.

(E) Be pleased to award the cost of this petition;

(F) ..."

3.0 Affidavit-in-reply is filed by the Dy. Director, IEDSS Cell, GCERT, Gandhinagar, Dated: 10.12.2014, denying the very maintenance of these petitions under the law. It is urged by the Respondent that the Respondent-authorities had preferred a review petition before this Court being Misc. Civil Application No. 3296 of 2014, which came to be disposed by the Division Bench of this Court vide its order dated 12.12.2014,

whereby, it held that the judgment of the Division Bench is sufficiently clear and gives direction on the basis of material on record, and therefore, the same requires no further clarification or modification. The Division Bench, however, left it open to both the sides to pursue the legal remedies available to them in case, if any, contested issue arises in future, as it refrained itself from commenting anything on the aspects, which were not looked into by the earlier Bench.

3.1 It appears that later on, the challenge was taken to the Apex Court by way of Special Leave Petition No. 17860 & 17861 of 2016, by stating that "*The Special Leave Petitions are dismissed. Pending application, if any, stands disposed off... It will not be out of place to refer to Review Application*", which was also not entertained by the Apex Court. Respondent No.2 has filed his affidavit stating, therein, that the petitioners have prayed for a direction to the Respondent-authorities to pay them regular salary and also to grant the benefit of continuity of service so also to declare that the ration provided under the Scheme of one teacher for five students is not proper and none of the prayers worth granting. It is also urged that the petitioners are being paid the salary, which is

at par with the salary of the regular teachers. Again, as provided under IEDSS Scheme, the petitioners are getting the special allowance to the tune of Rs.400/- per month over and above their salary, which is paid at par with the regular teachers. The IEDSS is 100% sponsored by the Central Government and as per the said Scheme, the State Government is just an implementing agency. The educational qualification, the student-teacher ratio and all the benefits made available to these teachers are as prescribed by the Central Government. The State Government is strictly told to follow the criteria provided under the Scheme. In other words, the State Government is simply being an implementing agency, it has to follow the guidelines and the instructions issued by the Central Government. It is, further, contended that all the petitioners, 571 in numbers, do not possess the degree in Special B.Ed., as provided under the guidelines. It is urged that after coming into force of the Right to Free Education Act, 2009, the students studying in Standard- 1 to 8 are already covered under the said Act, and therefore, the Central Government has closed down the earlier Scheme, i.e. IEDC. However, the State Government being a welfare State decided to continue the teachers, who were earlier rendering services. It is emphasized that the petitioners,

were never appointed by the State Government, but, they were appointed by the concerned NGOs. Central Government releases the grant to the State twice in a year and yet, the State Government makes payment to those teachers on monthly basis. In the earlier Scheme, as per the reply filed by the Respondent, the students studying in Standard- 1 to 8 were covered, whereas, under the new Scheme of IEDSS, the students studying in Standard- 9 to 12 shall be covered. The earlier Scheme required one year diploma in Special Education, whereas, under the present Scheme, the minimum qualification required is a degree of B.Ed. in Special Education. Therefore, according to the answering Respondent, there is no question of granting the benefit of continuity of service to the petitioners.

3.1 So far as the challenge to the student and teacher ratio is concerned, the Clause 5.2.II(6) of the Scheme clearly provides that Special Educators need to be appointed in the ratio of 1:5. Therefore, the challenge to the said ratio is totally misconceived. It is, further, the say of the Respondent that as far as the implementation of the decision of this Court in Special Civil Application No.33 of 2005 and the allied matters are concerned, the State

Government vide its letter dated 04.02.2015 has already informed the Government of India, Ministry of Human Resource Development regarding the same that IEDSS Scheme is 100% Central Government sponsored Scheme. The details of launching of the new Scheme being IEDSS is by virtue of the communication dated 07.11.2008, which is forming the part of the affidavit as Annexure-R1.

4.0 Both the sides have made extensive submissions.

4.1 According to the learned Advocate, Mr. Joshi, appearing for the petitioners when the Division Bench of this Court has already granted the benefits to the Special Teachers in the earlier group of petitions and when the review petition filed by the State has not been challenged and even the challenge before the Apex Court also has failed, the Respondent-authorities cannot take a stand of non-granting of the continuity. He, further, has urged that even if, the earlier Scheme was meant for the primary education and the qualifications required by the Special Teachers was different, it is not the case of the Respondent-authorities that the petitioners do not possess the requisite qualifications, more particularly, when they were

permitted to acquire the requisite qualification as per the new Scheme of IEDSS. Once, most of them have acquired the requisite qualification and even if, some of them are left out that is due to limited intake capacity of the concerned University, which is offering the concerned course through distance education. He, further, urged that the Scheme covers specially targeted groups of children in the age group of 14 to 18 years, studying in Standard- 9 to 12 and suffering from blindness, low vision, leprosy cured, hearing impairment, locomotors disabilities, mental retardation, mental illness, autism and cerebral palsy. This may also cover the learning disabilities, as per the communication issued by the Central Government dated 07.11.2008. According to him, even if, the Scheme is 100% sponsored by the Central Government, it is to be implemented by the Education Departments of the States and Union Territories through the Non-governmental Organizations having experience in the filed of education. It is the Court's direction that the Scheme has to be implemented by the State Government and the petitioners cannot be affected because of any action or non-action on the part of the Respondent-authorities. He, further, has urged that the ratio of five students and one teacher also has no rationale, and therefore,

also this requires stricter implementation. He has heavily relied on some of the findings and observations made by the Division Bench of this Court in Special Civil Application No. 33 of 2005 and the allied matters.

5.0 Once again, learned GP, Ms. Manisha Luvkumar Shah, and learned AGP, Mr. Rindani, appearing for the Respondents urged that the petitioners are not appointed by the State, but, they are recruited by the Non-governmental Organizations under the supervision of the Administrative Cell of the GCERT and that would not make them the employees of the State Government. Therefore, the prayer on the part of the petitioners to deposit their salary in their account and to treat them, for the purpose of continuity of service, the employees of the State Government cannot be permitted. He, however, fairly admitted that the Apex Court in Special Leave Petition No. 17860 & 17861 of 2015 chose not to entertain the challenge of the State Government to the decision of this Court in Special Civil Application No. 33 of 2005 and the allied matters. However that, according him, would not *ipso facto* entitle the petitioners to claim the reliefs sought for in the present petitions.

6.0 Having, thus, heard the learned Advocates on both the sides and on thoroughly considering the scheme of IEDSS floated by the Central Government so also the decision of this Court rendered in Special Civil Application No. 33 of 2005 and the allied matters the issues that need to be addressed by this Court are (i) whether the petitioners are entitled to get the benefit of regular salary and other benefits coupled with the continuity of service? (ii) whether the challenge to the ratio of five students per one teacher under the Scheme deserves interference by holding that the number of students should be maximum and not minimum, as is interpreted by the Respondent-authorities?

6.1 Before adverting to the points of difference, as mentioned herein above, the decision of this Court rendered in Special Civil Application No. 33 of 2005 and the allied matters deserves a detailed look.

6.2 A news item was published in relation to the difficulties faced by teachers of the handicapped children. As per the said news item, the State of Gujarat introduced Integrated Education Scheme in each district of Gujarat and about 800 teachers were engaged in 50 different institutions for handicapped students, who were

about 32000 in numbers. Those special teachers imparting education to the children who were suffering from blindness, low vision, leprosy cured, hearing impairment, locomotors disabilities, mental retardation, mental illness, autism and cerebral palsy etc.. They were getting salary and allowances from the Education Department, Government of Gujarat, but, there were no rules and regulations prescribed for them. They were, though, getting the salary regularly, the benefits of Provident Fund, Pension, allowances, leave etc. were not provided to them. Further, there was complete absence of maternity leave and were being exploited by the respective school management. They, therefore, made request to the Office of the Chief Minister also ventilating their grievances.

6.2 The Division Bench of this Court vide its order dated 17.01.2005 issued notice to the State and in response thereto the Under Secretary, Education Department, filed an affidavit, therein, making a request to join the Secretary, Ministry of Human Resources Development, New Delhi, since, the entire Scheme was financially assisted and administratively controlled by the Central Government. It was noted by the Division Bench of this Court that the Scheme known as the Integrated Education for

differently abled Students was introduced in the year 1974 by the Welfare Department of the Central Government. The different states of India accepted the said Scheme in different years and the State of Gujarat accepted the same in the year 1981. After the said Scheme was revised in the year 1987, the Central Government advised to bring the Non-governmental Organizations into picture, which were to be controlled under the Scheme. The State of Gujarat set-up an administrative cell under the GCERT. The appointments of Special Teachers were also made through the NGOs under the supervision of Administrative Cell of GCERT.

6.3 In that matter, the Respondent-authorities took the defence that the Scheme for teaching differently abled students was introduced by the Central Government, which was also fully financed and controlled by the Central Government and the State had no say in the matter with regard to the benefits of pension, provident fund, allowances, leave etc.. It was, further, their say that the teachers, who were teaching the differently abled students were not attending the schools full-time, but, they were visiting the schools as a periodical teacher. These special teachers also used to help the parents of the differently abled students in further

studies. The special teachers also used to help the regular teachers and guide them how to tackle the differently abled students. There were no permanent posts created by the State of Gujarat for those special teachers, as they were to be appointed by the NGOs. Admittedly, they were not being given the benefits of pension, provident fund, medical leave etc., as they were covered under the Scheme floated by the Central Government. They were placed in the pay scale of Rs.4000-6000 and were also being paid dearness allowance, medical expenses and HRA. They were not required to attend the school for eight hours, like the other regular teachers, who were treated as permanent employees, and therefore, there was no question of providing them pension, provident fund and other benefits available to permanent employees. The Court, after the detailed examination of the said Scheme, noticed that the Government of India guidelines have left matters relating to recruitment, service conditions etc. to be individually governed under the rules framed by the respective State Governments.

6.3.1 The government of Gujarat also clarified the position by filing additional affidavit dated 03.05.2005 before the Division Bench stating, therein, that the special teachers

engaged were not permanent employees, and therefore, the Government of India cannot force State or NGOs to appoint them on permanent basis. The Division Bench noticed that several representations were made to the Office of the Chief Minister and even they had also taken out procession and rallies ventilating their grievances. The Chief Minister's Office has acknowledged the receipt of the representation by letter dated 27<sup>th</sup> July 2009. Moreover, in the information disclosed in response to an application made under the Right to Information Act, 2005, that the grievances of the special teachers of differently abled students are under consideration and accordingly, the State Government accepted the responsibility of 58 Special Teachers, who were appointed prior to 31.03.1990 under the IEDC Scheme vide government resolution dated 05.07.1996. The Court considered the Constitutional as well as statutory provisions and directed the Respondents, therein, to put all the 1248 special teachers of 49775 differently abled students in the Gujarat State at par with other teachers under the State Government and in the Grant-in-Aid Schools in respect of their salaries, allowances and all other service conditions. The Court also took note of the fact that the erstwhile Scheme of IEDC is replaced by the new Scheme, i.e. IEDSS,

on 01.04.2009, whereby, the existing special teachers working under IEDC Scheme have been absorbed in the said new IEDSS Scheme, as per the State Government's communication dated 15.09.2009, as mentioned herein above. However, their working conditions and problems continued.

6.4 This Court noted that the duties of the Special Teachers are far more onerous than the teachers of the primary, secondary and higher-secondary schools imparting education to the normal students and despite that they are not getting the benefits at par being provided to the teachers serving in government schools and grant-in-aid private schools. It also noticed that as the scheme is being implemented entirely through NGOs, the special teachers serving under the said scheme are suffering the agonies of exploitation, highly irregular payment of salaries and payment of less salaries than the salaries payable as per rules as even the procedure of Direct Payment of Salaries (DPS) in the Bank Account of the concerned teachers has also not been introduced. The Scheme provides that the NGOs will provide the salary and other expenses to the teachers who will be employed by them, which will be reimbursed by the State Government as the State is receiving assistance from Central Government. The IEDSS further provides that any person, who

wants to be a teacher under this Scheme, will have the responsibility to find out students from their areas and to see that such students are identified, and thereafter, to motivate the students for getting education and also to motivate parents of the said children so that they join the school with the normal children and are imparted education. Thus, the main responsibility is on the teachers to identify the students and to bring them to the schools. The scheme, hence, provides that for every 8 students, there should be one teacher. The scheme further provides for fixed salary to such teachers and also provides financial assistance with regard to any equipments for such children such as hearing aid, tricycle etc. for which teachers put the vouchers and the same will be reimbursed to the NGOs under whom they are appointed. Since, they are not regularly appointed teachers, as done in other schools, such as Blind People Association, Schools for Deaf and Dumb etc. where the whole school is for the purpose of these special students, whereas in the present case, the teachers bring the students to the schools wherein the schools are not of special category for those differently abled students but it is for normal students, wherein, these students are adjusted. Thereafter, the new Scheme of IEDSS introduced from 01.04.2009 is

meant for the students of Standard- 9 to 12, who are visually impaired, hearing impaired and mentally challenged, which is being 100% funded by the Central Government. As per the new Scheme, for every five students, there should be one teacher. After discussing the Scheme at length, which was otherwise called a Scheme or Project, the Court held that the education of differently abled children cannot be a matter of scheme or a project. But, it has to be treated as a part and parcel of the regular education process/school system governed by the statutory provisions. The Court also found no justification in depriving the Special Teachers of the benefits, which are given to other teachers imparting education to the normal students. The Court also did not find any fault in the recruitment process and held that this appointment is not based on no process of selection, as envisaged by the Rules and has pointed out by the Apex Court in the case of '**STATE OF KARNATAKA VS, UMADEVI**', AIR 2006 SC 1806.

6.4.1 Here, it would be profitable to reproduce the relevant findings and observations made by this Court in Special Civil Application No. 33 of 2005 and the allied matters.

"11.9 The 1248 special teachers whose cause it is espousing were employed in the IEDC Scheme and they are possessing requisite qualification in special education obtained from the institutions and courses recognized by the Rehabilitation Council of India (RCI) which is a statutory body established under the Rehabilitation Council of India Act, 1972. They were duly selected and appointed by the State Government through its administrative cell in the GCERT under the Education Department. Most of the said special teachers have by now rendered service of teaching the differently abled children for about 20 to 25 years and though they were entitled to be treated at par with the teachers of normal children of the corresponding category in the State in the matter of pay and pay scales and allowances and benefits, the said teachers were deprived of most of the benefits which were being given to the general school teachers of the corresponding categories in the State, despite large number of representations and agitations by them for several years, in the background of which the present suo motu petition was initiated by the High Court.

11.10 It is all the more shocking and surprising that prior to IEDSS Scheme came to be introduced on 1<sup>st</sup> April 2009, the said special teachers of differently abled students were being paid pay scale of primary teachers of Rs.4000-6000 as per the 5<sup>th</sup> Pay Commission and

some other allowances w.e.f. 1<sup>st</sup> January 1996, but after the IEDSS Scheme came into force w.e.f. 1<sup>st</sup> April 2009, the said special teachers are engaged on contractual basis and on fixed salary as under:

For the year 2009-10 Rs.17,000 + 400  
 For the year 2010-11 Rs.19,000 + 400  
 For the year 2011-12 Rs.22,000 + 400  
 For the year 2012-13 Rs.22,000 + 400

11.10.1 On the other hand, the general school teachers in the State of Gujarat in primary schools, secondary schools and higher Secondary schools were being paid the following pay scales under the 5<sup>th</sup> Pay Commission w.e.f. 1<sup>st</sup> January 1996 and they are being paid the following pay scale under the 6<sup>th</sup> Pay Commission w.e.f. 1<sup>st</sup> January 2006.

11.10.2

Type of Teachers	5 <sup>th</sup> Pay Commission	6 <sup>th</sup> Pay Commission
Primary	4000-100-600	5200-2400-20200
Secondary	5000-150-8000	9300-4200-34800
Higher Secondary	5500-175-9000	9300-4400-34800

11.11 As stated in the Scheme itself, the special teachers of differently abled children are also entitled to be paid salaries and pay scale and all other allowances and benefits at par with the teachers of

secondary and higher secondary schools as above because special teachers for differently abled children under IEDSS scheme are providing education to differently abled children of secondary school and higher secondary school. The strength of such special teachers engaged in IEDSS scheme is 966.

11.12 So far as the special teachers of differently abled children imparting education to differently abled children in primary school are concerned, according to the respondents, they are covered under Sarva Shiksha Abhiyan [SSA]. The said special teachers for differently abled children of primary schools are also entitled to be treated at par with the primary school teachers of the normal children in the State in the matter of pay and pay scale and allowances and all other benefits. However, the respondent-State authorities are giving highly arbitrary and discriminatory treatment to the said special teachers by engaging them on contract basis and by paying them a fixed salary of Rs.900 + 900 per month. By covering or considering the special teachers for differently abled children in primary schools in Sarva Shiksha Abhiyan, the respondents State authorities cannot escape their constitutional and statutory obligations towards the differently abled children and towards their special teachers.

11.13 It is pertinent that when the State Government introduced the scheme of appointing Class-3 and

Class-4 employees on fixed pay for the initial period of 5 years by G.R. Dated 16<sup>th</sup> February 2006, the said G.R. was also made applicable to the special teachers of differently abled children serving under IEDC scheme as is revealed from communication of GCERT dated 2<sup>nd</sup> May 2006. Thus, the employment under IEDC scheme was treated as an employment under the State Government and not under private NGOs. Therefore, the State Government cannot give discriminatory treatment in the matter of regular pay and pay scales and allowances and all other benefits to the special teachers of differently abled children.

11.14 The respondent-State authorities are contending that the special teachers for differently abled children are engaged in the project or scheme and therefore, they cannot be treated at par with the teachers of normal children.

11.14.1 However, the respondents-State authorities have themselves relied upon the Report of Public Study Group of Central Advisory Board for Education Committee [CABE committee] dated 8<sup>th</sup> December 2004 which is annexed with the additional affidavit of Mr. R.J. Gameti, Secretary, GCERT. In the said report, the said committee has observed that IEDC scheme is continuing on the false assumption that education of the differently abled needs to be viewed as a project or scheme rather than

organic responsibility of the education/school system. This scheme based approach also negates the possibility of looking at the issue of education of differently abled as an opportunity for undertaking systematic reforms in the formal education system.

11.15 In the light of the statutory provisions which have now been brought on the statute book, the education of the differently abled children cannot be a matter of a project or a scheme but it has to be treated as a part and parcel of the regular education process/school system governed by the statutory provisions., Therefore, it is now not open to the respondent-State authorities to give discriminatory treatment to the special teachers of differently abled children vis-?vis the general teachers of normal children of the corresponding category viz. Primary, secondary or higher secondary, as the case may be.

11.16 In the aforesaid premises the respondent authorities are required to be directed to forthwith give the benefit of the same pay and pay scale and allowances and all other benefits as are given to the teachers of primary schools, secondary schools and higher secondary schools of normal children which are mentioned in paragraph 6.14 hereinabove.

12. In the other Special Civil Application being SCA No. 1219 of 2010, the grievance made by the

writ-petitioners are as follows:-

12.1 The Central Government sponsored a scheme known as IEDC with an object of imparting education to differently abled children. The Scheme receives 100% grant from the Central Government and is implemented in the State of Gujarat through the GCERT. The petitioners were appointed in the post of special teachers for the differently abled children. In spite of the fact that the petitioners were working regularly, the petitioners were not paid their monthly salary from April 2009. The petitioners have made several representations, however, till date, the petitioners were not paid their salary. Their further grievance was that the State Government issued a resolution purportedly on the basis of a letter of the Central Government dated 21<sup>st</sup> October 2008 by which the said IEDC scheme has been discontinued by the Central Government and the petitioners were ordered to be taken afresh on contractual basis on fixed pay. From the perusal of the above referred letter dated 21<sup>st</sup> October 2008, it is clearly evidenced that the Central Government has merely replaced the IEDC Scheme with a scheme known as IEDSS. Thus, the say of the State Government that the IEDC scheme is discontinued by the Central Government does not get fortified. There is no dispute with regard to the fact that the State Government has already decided to continue the services of the petitioners in the

new scheme and thus, the action of the State Government of passing the resolution dated 7<sup>th</sup> January 2010 whereby the services of the petitioners were ordered to be taken afresh on contractual basis in fixed pay is illegal, arbitrary and mala fide.

13. Similar are the grievances of the other writ-petitioners in the other writ-petitions.

14. Therefore, the question that falls for determination in these applications is whether the special teachers for differently abled children are entitled to the relief claimed in these applications. In other words, whether the special teachers involved in these applications have been deprived of their right conferred under Articles 14 and 16 of the Constitution of India and whether they should be given the same benefit as given to the regular teachers doing similar type of job in the teaching of the normal students.

15. It is now well settled that a writ-court can grant appropriate relief to a person who complains violation of fundamental rights or any other legal rights at the instance of a State within the meaning of Article 12 of the Constitution of India.

16. We, therefore, first propose to consider whether by the appointment of the petitioners in the post of special teachers, any right has

been accrued in their favour and secondly, whether there is any violation of fundamental or other legal right of the special teachers at the instance of the State.

17. We find that by virtue of the newly inserted Article 21-A of the Constitution of India, a duty has been cast upon the State to provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

18. It further appears that Section 26 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 also imposes an obligation on the Government to provide free education to every child with disability till he attains the age of 18 years, and such duty includes :

(a). to ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years;

(b). to endeavour to promote the integration of students with disabilities in the normal school;

(c). to promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools;

(d). to endeavour to equip the special schools for children with disabilities with vocational

training facilities.

19. There is no dispute that in the State of Gujarat 1248 special teachers are appointed for 49775 differently abled children in the schools run by the State Government or in the Grant-in-Aid Schools. Accordingly, the State Government has laid down guidelines for appointment of special teachers thereby fixing qualifications and the scale of pay. It appears that the qualification of the special teachers are equivalent to that of other teachers who are being appointed for teaching normal children and in addition to that, a special teacher teaching in the primary schools must have additional qualification of one year course in special education or specialization in teaching any type of differently abled children and for the secondary schools, Graduates with B.Ed (Special Education) or any other equivalent professional training in special education. So far as the scale of pay is concerned, according to the guidelines, the same scale of pay as available to the teachers of the corresponding category in that State should be given to special teachers and over and above it, considering the special type of duties, such special teachers should also be given a special pay of Rs.150/- per mensem in urban areas and Rs.200/- per mensem in rural areas. It was further provided that the State Education Department may recruit such teachers for this purpose following the normal recruitment procedures.

20. It further appears that the Government of India has issued guidelines and left the matters relating to recruitment, service conditions etc. to be individually governed under the rules framed by the respective State Governments.

21. It may be mentioned here that in the year 2004-2005, the number of differently abled children was 31377 and the number of special teachers was 842 under the IEDC Scheme. However, in the year 2008-2009, the IEDC Scheme covered a total of 49775 differently abled children in the age-group of 6-18 years in Primary, Secondary and Higher Secondary Schools and a total number of 1248 special teachers were recruited by NGOs for providing education to the differently abled children under the Scheme. The IEDC Scheme has now been replaced by the new scheme known as IEDSS w.e.f. 1<sup>st</sup> April 2009 and the existing special teachers working under IEDC Scheme have been absorbed in the said new IEDSS Scheme, as per the State Governments communication dated 15<sup>th</sup> September 2009.

22. It, thus, appears that a duty is cast upon the State Government to appoint teachers for education of the differently abled children in the age group of 6-18 years in Primary, Secondary and Higher Secondary Schools and for the said purpose, the petitioners have been appointed as special teachers having requisite qualifications. There is no dispute about their mode of

recruitment nor is there any dispute about their qualification fixed by the Government. We have already pointed out that the scale of pay under the Scheme has been fixed to be the same as given to the ordinary teachers teaching normal children.

23. As pointed out earlier, the grievances of the special teachers in these writ-applications is that they are not given the following benefits which are given to the teachers of Primary, Secondary and Higher Secondary Schools:

- (i). Pay and Pay scale as per 6<sup>th</sup> Pay Commission
- (ii). Direct payment of salary (DPS)
- (iii) Higher Grade Pay scale
- (iv). Pension
- (v) GPF
- (vi) Maternity Leave for Female employee
- (vii) Privilege Leave
- (viii) Sick leave
- (ix) Seniority and continuity of service in the event of change of institution
- (x) Bonus
- (xi) Compassionate appointment to one member of the family in the event of untimely death of the employee.
- (xii) Protection of service condition and redressal forum for the disputes arising therefore, viz. Tribunal.
- (xiv) Group Insurance, etc.

24. According to the State Government, there is no relationship of employee and employer between the special teachers and the State and

while giving appointment to the special teachers, they have also executed bonds and affidavits that their appointment was only on contractual basis. The State has further highlighted that the special teachers are appointed under the Scheme where the teachers who will bring eight students of such differently abled categories will be considered whereas the regular teachers are appointed by advertisement in the newspapers. The State further contends that the timings of the teachers who are employed in the schools for normal children is fixed whereas the timings of special teachers are not fixed as they might have to go to one school on one day and another school on another day. The State further contends that the student-teacher ratio in the general school is 60 : 1 whereas the student-teacher ratio under the IEDC Scheme was 8 : 1 and under the IEDSS Scheme is 5 : 1. Therefore, according to the State Government, it cannot be legitimately contended that special teachers are doing similar job as done by the ordinary teachers or that they are deprived of rule of equal pay for equal work.

25. At this stage, we may profitably refer to the following observations of the Supreme Court in the case of **State of Karnataka vs, Umadevi** reported in **AIR 2006 SC 1806** where the Apex Court pointed out the difference between ad hoc, temporary, daily wages and permanent employee employed by the State in the following way:-

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be differently abled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. **Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules.**

It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and

**statutory mandates.**

35. The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated directions and mandatory orders that no

temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain - not at arms length - since he might have

been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently.  
(Emphasis supplied by us).

26. Bearing in mind the aforesaid principles, we now propose to consider whether the teachers involved herein are appointed on contractual basis or temporarily and whether they were appointed without following the regular process of selection prescribed by the Government.

27. The conditions regarding teachers appointment, their salary, remuneration is stated at paragraph 12 of the guidelines are reproduced below :-

#### **12 . Appointment of Special Teachers**

12.1 The teacher-pupil ratio for special education teachers envisaged under this scheme is 1:8. This ratio will be the same for normal classes as well as for preparatory pre-school classes. The same teachers will provide counseling to the parents. In accordance with this ratio the requisite number of special teachers may be appointed in schools (or for a cluster of schools) for children requiring special teacher support.

#### **12.2 Qualifications**

special teachers so appointed should

possess the following qualifications:-

(a) **Primary** : Academic qualifications as prevalent in the states and Union Territories with one year course, preferably multi-category, in special education or with specialization in teaching any type of differently abled children depending upon the category of children enrolled in the IEDC Units. Such teachers can be oriented subsequently in the education of other categories of disability.

(b) **Secondary** : Graduates with B.Ed (Special Education) or any other equivalent professional training in special education.

Prescribed qualifications should be adhered to. In case qualified special teachers are not available, teachers with short training course may be appointed with the condition that they will complete the full course within three years of appointment. Special allowance for these teachers will be admissible only after completion of the full course. Teachers with single disability professional course will be encouraged to take courses in other disabilities to improve viability in rural areas.

Since teachers with experience in Non-Formal Education (NFE) and Adult Education (AE) are likely to have a better understanding of local environment and need, they could also be identified for training under the scheme and appointed as special teachers.

**12.3 Scale of Pay:** The same scales of pay as available to the teachers of the corresponding category in

that State/UT will be given to special teachers. Considering the special type of duties, these teachers will be given a special pay of Rs. 150 per month in urban areas and Rs. 200 per month in rural areas. The State Education Department may recruit such teachers for this purpose following the normal recruitment procedures.

28. From the materials placed before us, it is apparent that the scheme under which the petitioners have been appointed is one which is approved by the Central Government and it is permanent in nature. There is no trace of any indication in the scheme that the same is for a specified period or that the appointment is to be made based on contract for specified period. The Central Government has framed the guidelines and has also fixed the scale of pay of those teachers which is similar to one available to the teachers of the corresponding category in the State with additional amount of special pay of Rs. 150/- per mensem in urban area and Rs. 200/- per mensem in the rural area and the mode of appointment of teachers has been left to the State Government to frame.

29. Therefore, in the cases before us, the appointments made are not for a temporary period, but the need of appointment is perpetual in nature for the advancement of differently abled children and we find that some of the petitioners are even working for about 20 years.

30. When the scale of pay has been fixed by the Central Government by specifying that in addition to the regular scale of pay available to the other teachers of the same category, these special teachers should be entitled to some additional special pay, there is no dispute about fixation of the remuneration to those teachers and the State has no authority to deviate from the above guidelines.

31. Regarding the mode of appointment also, according to the scheme framed by the Central Government, the special teachers should be appointed by regular mode of appointment that will be fixed by the State Government. Regarding the mode of appointment, there is no dispute about the fact that appointment of the teachers concerned were made with full approval of the State Government. We have also pointed out that there is also no dispute that all these teachers have the requisite qualifications fixed under the scheme. Merely because in the guidelines issued by the Central Government, the State Government was given liberty to take assistance of the experienced NGOs in the field for the purpose of selecting the teachers, such fact does not mean that the teachers can be appointed by the NGOs without adhering to the qualification according to their own choice. The process of selection must be under direct supervision of the State Government. Moreover, taking assistance of the experienced

NGOs in the field is not even mandatory for the State Government. Therefore, the plea of the State Government that there is no relationship of employer and employee between the State and the special teachers and that the teachers are the contractual employees of the NGOs is not tenable. These are not the cases of appointment based on no process of selection as envisaged by the Rules as pointed out in the case of the **State of Karnataka vs. Umadevi and others** (supra).

32. Such being the position, in our opinion, there is no justification of depriving these teachers, who are having slightly higher qualification than those appointed for teaching the ordinary students, of the benefits of the direct payment of salary, pension, GPF, maternity leave for female teachers, privilege leave, sick leave, seniority and continuity of service in the event of change of institution, bonus, compassionate appointment or monetary benefit in lieu thereof in the event of untimely death, protection of service conditions and redressal forum for disputes arising there from, L.T.C. and Group Insurance, which are available to the other teachers. We are unable to accept the contention of the State Government and the Central Government that the duties performed by these special teachers are lighter than those of other teachers who teach ordinary children. It is the Central Government itself which has prescribed the qualifications of

the teachers which is higher than those who teach the ordinary students, inasmuch as, in addition to their educational qualifications, they are also required to have special qualification for teaching the differently abled students.

33. By depriving the special teachers of the regular benefits that are given to the other teachers, in our opinion, the State Government has violated Articles 14 and 16 of the Constitution of India. From the nature of the duty performed by these teachers, we find that their duty is more onerous than that of the ordinary teachers and they are also required to visit more than one school for the purpose of performing their duty. From the materials placed before us, we find that number of differently abled students which was in existence earlier, has increased a lot and may go on increasing.

34. We, therefore, find that after framing a scheme fixing the educational qualifications and other qualifications, the scales of pay, special teachers ratio, mode of recruitment and also the nature of duties to be performed by them, there is no justification of depriving the petitioners of their benefits other than the regular scale of pay which are enjoyed by the ordinary teachers by describing the job as a temporary one. It is not the case of the State that the number of differently abled students are on the decrease; on the other hand, figures for the last ten years

suggest that the number has gradually increased and in view of enactment of the right of the differently abled students in the Constitution and after enactment of specific laws on the field, there is no scope of withholding of the scheme in question in future.

35. We, therefore, find that it is a fit case where we should allow these writ-applications by holding that the petitioners are entitled to get other benefits available to the ordinary teachers, when these special teachers are required to be placed in the same scale of pay with additional special pay. It is for the State Government to decide whether the mode of appointment will be left to the NGOs or not, but the salary should be paid by the State Government just like other ordinary teachers who are performing similar type of duty for teaching the ordinary students. We do not find any reason to leave the fate of these special teachers in the hands of the NGOs when they are really doing the job for the State and the duty of the NGOs is merely to assist the State in the process of selection. But as the Scheme goes, the selection should be made by following the normal recruitment procedures. By allowing the NGOs to demand a bond or to give appointment letters with imposition of some conditions, although the selection was under the active supervision of the Department of Education, Government of Gujarat, the State Government cannot deprive the selected teachers of the right

accrued out of the normal recruitment procedure under the control of the State.

*[Emphasis Supplied]*

36. All the applications are, thus, allowed with the above directions and with further direction that all the petitioners will be entitled to the benefits declared by us in these applications notionally from the date of their regular appointment, but the actual benefit should be given to them from the date of passing of this order.

36.1 The Union of India is directed to go on releasing the funds to the State Government for payment of the benefits declared by us in these applications to the special teachers appointed under the Scheme.

37. Rule is made absolute in each of the writ-applications accordingly."

6.5 Thus, the above judgment of this Court granted all the benefits to the Special Teachers, except, specifically specifying anything regarding the continuity of service. It was also contended before the division Bench that those teachers are not the employees of the State Government, as they have been engaged by the concerned NGO. On the aspect of continuity also, according to the State, as stated in its affidavit-in-reply, they have shown grace being a welfare State by continuing those teachers,

though, initially they were not possessing the requisite qualification under the new IEDSS Scheme.

6.6 Undoubtedly, the recruitment of the present petitioners was done with the assistance of the NGOs under the direct supervision of the State. The Division Bench of this Court has, therefore, mentioned and held in Paragraph-31 of its judgment that this is not an appointment based on no process of selection, and therefore, it shall not be hit by the decision of the Apex Court in '**STATE OF KARNATAKA VS, UMADEVI**' (Supra). If, one looks at the decision of the apex Court in the case of '**RENU AND OTHERS V. DISTRICT & SESSIONS JUDGE, TIS HAZARI AND ANOTHER**', AIR 2014 SC 2175, then, the Respondent-authorities shall not be in a position to contend that the appointments were not as per the process of selection. As contemplated under the Public Employment Act, 1957, the appointments will have to be in the terms of relevant rules and after an appropriate competition amongst the qualified persons. The Apex Court in the case of '**STATE OF KARNATAKA VS, UMADEVI**' (Supra) held that the contractual appointments come to an end at the end of the contract and a contractual employee cannot claimed to be made permanent on expiry of the term. Even, continuing a temporary employee

for a long period of time also would not make him entitle to be absorbed in regular services nor could be made a permanent employee on the strength of such continuation of service, if, the original appointment is not made by following the due procedure, as envisaged under the relevant rules. The High Court also, while exercising powers under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. The length of the service of the employee also would have no bearing, if otherwise, the employment at the initial stage was not in accordance with rules or it was done by bypassing the Constitution and statutory mandate. This would have no applicability in the instant case.

6.7 So far as the present petitioners are concerned, who are the employees in whose case the Division Bench of this Court has held as mentioned herein above at Paragraph-31 of its judgment that it is not the case of the Respondent-authorities that the appointment of the petitioners was based on no process of selection and that being the Case, the Division Bench of this Court did not deem it fit to deprive them of any of the benefits, which are

otherwise made available to the other teachers teaching normal students.

6.8 As a matter of record, it may be noted that after the introduction of new Scheme of IEDSS on 01.04.2009, the State Government vide its communication dated 15.09.2009 absorbed the Special Teachers, who were working under the erstwhile IEDC Scheme (No reference is made of any substantiating document).

6.9 Once the Division Bench has negated calling this to be a scheme or a project, more particularly, noting the report of Public Study Group of Central Advisory Board for Education Committee [CABE committee] dated 08.12.2004, which is annexed with the additional affidavit of one Mr. R.J. Gameti, Secretary, GCERT, wherein, the said committee has observed that "IEDC scheme is continuing on the false assumption that education of the differently abled needs to be viewed as a 'project' or 'scheme' rather than organic responsibility of the education/school system. This scheme based approach also negates the possibility of looking at the issue of education of differently abled as an opportunity for undertaking systematic reforms in the formal education system". This Court, further, held that

the education of the differently abled children cannot be a matter of a project or a scheme, but, it has to be treated as a part and parcel of regular process of school system governed by the statutory provisions. The obligation of the State to provide free and compulsory education to all the children within the age group of 6 to 14 years is the Constitutional mandate, whereas, for the differently abled children, this age is upto 18 years. Since, that would include not only elementary but secondary and higher education as well, the Division Bench of this Court, further, held that the State cannot escape from its obligation to engage sufficient number of teachers to provide special education to differently abled children and to pay the salaries and allowances and all other benefits to them at par with other general teachers teaching the normal children in primary, secondary and higher secondary schools in the State.

6.10 As can be noticed that the switch over from the erstwhile IEDC Scheme to the new Scheme of IEDSS and for smooth transition on the ground that there was 'Sarva Shiksha Abhiyan' initiated by the Central Government and with more focus to the secondary education for the differently abled children, the new IEDSS Scheme has been initiated. All these teachers are otherwise not

only had the educational qualifications required under the IEDC Scheme even as per the revision of the Scheme in the year 1987, they have wide experience of teaching differently abled children. Further, considering their different type of onerous duties, they are also being given special pay of Rs.150/- per month in urban areas and Rs.250/- per month in rural areas. The government even chose to continue the services of those teachers by shifting them from the IEDC Scheme to IEDSS Scheme, which according to the Division Bench of this Court needs to be considered not a project or a scheme, but, a constitutional mandate or a constitutional obligation on the part of the State to impart education to the differently abled children. Merely because, these Special Teachers do not have the educational qualification prescribed under the new IEDSS Scheme cannot be the hampering ground for not treating their services as continuous service.

6.11 It is a matter of great concern that all these years, though, we as the nation were aware of the plight of the differently abled children, could not cope up with their educational requirement. There is hardly any support system of the pupils or of others. The requisite sensitivity amongst those who do not suffer or

who have none in the family / friends also is missing more often than not. The schools and educational institutions meant for normal children are more concerned about maintenance of standards of their results and their apathy towards the education of the differently abled children is a matter of major concern, which need to be surely understood in times of commercialization of the education. As it amounts to swimming against the current for both the parents as well as for the differently abled children, it is rightly been emphatically stated to be the onerous task on the part of these teachers. To deny them the benefits, which have been granted to them by the Division Bench of this Court, even, while holding that the process of recruitment was in accordance with statutory requirements, is nothing but a sheer insensitive approach and apathy on the part of the State in its approach towards Special Teachers. As also noted by the Division Bench, several representations were made by the petitioners, but, the salary also had not been paid to them. In the opinion of this Court, when the Division Bench of this Court has already granted all the benefits to the Special Teachers, except, a specific prayers discussion on the continuity of service for those, who are shifted from the old Scheme of IEDC to new Scheme of IEDSS, the

uncaring approach of the State towards the needs of these teachers surely calls for interference.

6.11 So far as the teacher - student ratio is concerned, here, it would be profitable to reproduce the relevant findings and observations made by the Division Bench of this Court at Paragraphs- 11.7 and 11.8 of Special Civil Application No. 33 of 2005 and the allied matters;

*"11.7 It is pertinent that even when the aforesaid constitutional and statutory provisions were not enacted, the IEDC Scheme (as revised in 1987), inter alia, provided that the scheme shall be financed 100% by the Central Government on condition of creating technically qualified staff as per the scheme, the scheme shall be implemented through the State Government, the Education Department would be the implementing agency, the appointment of special teachers shall be made in the Teacher-Pupil ratio of 1:8, and the teachers shall be possessing qualification in special education as stated therein and with regard to the scale of pay. It was clearly stated that "same scale of pay as available to the teachers of the corresponding category in that State/U.T will be given to special teachers. Considering the special type of duties these teachers were given special pay of Rs.150/- per*

month in urban areas and Rs.200/- per month in rural areas. The State Education Department may recruit such teachers for this purpose following normal recruitment procedure. In the revised IEDC Scheme of 1992 also, the same provisions were made.

11.8 The respondent-State authorities are now contending that the earlier IEDC scheme has been replaced with effect from 1st April 2009 by the new scheme-centrally sponsored scheme known as IEDSS. However, even in the said IEDSS scheme, the implementing agency is the Educational Department of the State Government/U.T. Administration and it also contemplates appointment of special educational teachers, to be paid salaries as applicable for general teachers and in addition, a sum of Rs.400/- per mensem. In Appendix-III of the said scheme, it has been categorically laid down that "any school where the number of children with disabilities is more than five, should appoint one special teacher." Qualifications of the special teachers are also laid down therein. With regard to remuneration, it is stated that "Salary of special teachers will be as applicable to general school teachers of the corresponding category in that State / U.T. Considering the special type of duties these teachers will also be given a special allowance. The State Government may recruit teachers for this purpose following normal recruitment procedure".

6.12 What has been specified in the IDESS Scheme is that any school, where the number of differently abled children is more than five, shall appoint a Special Teacher. It is an incorrect approach and say of the State that, since, the ratio of 5:1 is prescribed under the Scheme, no salary would be paid for the period during which the number of students would drop below five. It is averred by the petitioners that the interpretation of the State that requirement of five students is minimum and not maximum is irrational and illogical. It is also urged that as a result of the same, the needy students, who are stationed in remote areas shall be deprived of the benefits of the Scheme, as whenever their number would be less than five, they shall not be entitled to have a teacher for them.

6.13 The very object of the Scheme is to provide education to the differently abled children at their door-step, which, by no means, can be frustrated or defeated by such interpretation. Therefore, the interpretation of the State that one teacher shall be provided for every five students, and therefore, if, there is less than five differently abled children, who require help of a Special Teacher, shall not be

entitled to get the help of a Special teacher, is illogical and irrational, to say the least. At the most, it can be said that one Special Teacher can render services or impart education to maximum five differently abled children, as the minimum number of differently abled children prescribed for any school for appointing a Special Teacher is five or less. It is difficult to accept that the teachers, who are otherwise teaching the normal students, would be able to handle the differently abled children or for that matter even one differently abled child. Unless, of course, he or she is trained or is supported by a Special Teacher.

6.14 Right to education being the constitutional right of every citizen and to defend the same, even one differently abled student is require to be provided with the aid of a teacher by the ordinary school. To interpret it in the manner suggested by the State would be defeating the very objective and would also amount to letting down the provisions of the Constitution. Therefore, it is being held that even if the number of the differently abled children is less than five, the presence of one Special Teacher is a must, unless the concerned school has a mechanism to take care of the education of the differently abled children. It

is also held that the ratio of one teacher per five students is to be construed as limiting the number of teachers, which prescribes minimum and not the maximum number of students, if otherwise, such a need is felt by the Respondent-authorities.

6.15 It is also to be regarded that the State has taken a stand in affidavit-in-reply for not continuing the services of these petitioners through introduction of IEDSS for the students of Class 9 to 12, diploma of one Year in specific education may not suffice and minimum qualification requires is of degree of Bachelor in Special Education.

6.16 In other words, even with one student aid of specially skilled teacher is a must and if, such number is reduced from five, the State cannot withdraw the services and wait till that number increases to five to provide education. Again, considering very special need of such children, it may not be feasible for such teacher to look after the educational need of such children. If, their number is more and, therefore, ratio of teacher students of 1:5 sounds more convincing and logical, where, one teacher would take care of five students maximum. In the opinion of this Court, this hardly is the

ground not to honour various other directions of the Division Bench in relation to these petitioners nor is this the ground not to continue their services, who are, otherwise, sufficiently skilled and continued to discharge their duties diligently. This requirement may be insisted by the State by permitting them certain time period to accomplish their studies as offering degree by distant learning course also is available and even otherwise, periodical requirement for enhancement of special skill every employee may insist, provided there is sufficient time and notice given to the employer and conducive atmosphere with protective umbrella is provided to achieve the same. To deny these petitioners continuity only on such count is not the ground to be sustained.

17. In the result, all these petitions deserve to be allowed to the following extent;

(1) The interpretation of the Respondents qua the ratio of five students to one teacher being minimum is found and held to be erroneous, faulty and contrary to the very objective of the scheme. It is held

that the said ratio of teacher -students of 1:5 is to be maximum and not minimum, in light of the detailed discussion held herein above.

(2) Respondents are also directed to accord continuity to the Petitioners who have been absorbed in IEDSS for having rendered their services initially in the IEDC , subject to of course their fulfilling requirements of acquisition of minimum qualifications for IEDSS within the reasonable time period ,on receipt of such notice from the Respondents.

(3) Respondents shall also attempt to absorb the Petitioners gradually on the regular establishment and shall pay to the Petitioners salary and other allowances as done in case of other regular teachers, considering the

permanent requirement of such special need students.

(4) Till that is done, the Respondents shall continue to pay to the Petitioners according protective umbrella to the students and to the teachers both.

Rule is made absolute to the aforesaid extent. Direct service is permitted. No order as to costs.

**(SONIA GOKANI, J)**

UMESH/-