

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 13505 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13542 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13506 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13508 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13509 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13510 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13511 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13513 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13512 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13515 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13531 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13529 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13525 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13530 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13527 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13535 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13528 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13533 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13548 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13547 of 2018****With****R/SPECIAL CIVIL APPLICATION NO. 13540 of 2018****With**

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With
R/SPECIAL CIVIL APPLICATION NO. 13519 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 13516 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 16030 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE N.V.ANJARIA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

HEEMABEN ASHVINKUMAR BAROT

Versus

DISTRICT EDUCATION OFFICER & 2 other(s)

Appearance:

MR VAIBHAV N SHETH(5337) for the Petitioner(s) No. 1

MR KM ANTANI, AGP (1) for the Respondent(s) No. 1

NOTICE SERVED BY DS(5) for the Respondent(s) No. 2,3

CORAM: HONOURABLE MR.JUSTICE N.V.ANJARIA

Date : 28/06/2019

COMMON CAV JUDGMENT

All these 46 petitions involved similar facts and contained identical prayers. Since they raised common issues, they were heard together, to be treated for disposal by this common order.

1.1 Heard learned advocate Mr.Vaibhav Sheth for the petitioners in all the petitions and learned Assistant Government Pleader Mr.K.M. Antani for the respondent - State and its authorities in each of the petitions, at length.

2. All the petitioners have directed their respective petitions to challenge the decision reflected in the internal communication dated 02nd August, 2018 of the Joint Director, Rashtriya Madhyamik Shiksha Abhiyaan - respondent No.2 herein, in turn, was based on Note dated 31st July, 2018 of the State Project Director - respondent No.3. This impugned communication and the contents of Note resulted into termination of the services of all the petitioners in view of *inter se* communication between the authorities not to renew the service contracts of the petitioners.

2.1 The challenge is based on the ground that the action was abrupt, without observance of process of law and without providing any opportunity of hearing to the petitioners. It is the case that action of terminating petitioners' services was directly in breach of Article 14 of the Constitution inasmuch as a set of similar employees came to be reinstated by the respondent authorities, excluding however the petitioners, doing them injustice by ousting them from service.

3. The Scheme of Rashtriya Madhyamik Shiksha Abhiyaan (RMSA) under which the petitioners were appointed, is launched with an object of giving boost

to the educational programmes. Under the Scheme, different schools are run and the programmes are conducted with an object of imparting of the secondary education by extending the educational activities in all the Districts of the State. What is aimed is to ensure and improve the access of secondary schooling as a continuous process. The petitioners came to be employed under the Scheme. It is the duty of the petitioners to provide education to children and to look after the infrastructure for education and educational activities.

3.1 Since the facts in all the petitions run parallel, basic facts are noticed from the first captioned Special Civil Application No.13505 of 2018. This petitioner applied to the post of District Coordinator pursuant to advertisement issued by the authorities. She was regularly appointed by order dated 29th March, 2010 passed by respondent No.3. The appointment letter was given for a period of 11 months on contractual basis. Services of this petitioner as Gender Coordinator came to be extended from time-to-time by passing various orders by the competent authority. Services of the petitioner came to be continued until it was decided not to renew the contract.

3.2 The other petitioners came to be appointed in the similar way on different posts such as District Coordinator, Computer Operator, District Accounts Officer, District MIS Coordinator, etc. It is their case that they came to be appointed by way

of regular selection process pursuant to the advertisement under the RMSA which is the Scheme run and supervised by the Gujarat Council of Secondary Education. The services of the petitioners came to be extended from time-to-time.

3.3 The basic details of each of the petitioners are given in tabular form below.

Special Civil Application Number and Name of the petitioner	Designation and Date of Joining
13505/2018 Heemaben Ashvinkumar Barot	District Coordinator 29 th March, 2016
13506/2018 Niravkumar Ramabhai Patel	District Coordinator 17 th March, 2012
13508/2018 Rathod Dharmendra Somabhai	District Coordinator 08 th December, 2014
13509/2018 Ranjitbhai Bhagwanbhai Makwana	District Coordinator 08 th August, 2016
13510/2018 Solanki Vinodkumar Danjibhai	Computer Operator 02 nd November, 2011
13511/2018 Jigar Nitinbhai Shah	District Coordinator 11 th April, 2012
13512/2018 Nayankumar Chamanlal Parmar	District Coordinator (IEDSS) 08 th August, 2016
13513/2018 Ghanshyamsinh Mohabatsinh Solanki	District Accounts Officer 29 th September, 2015
13515/2018 Pratap Kumar Mansukhbhai Chudasama	District MIS Officer 04 th August, 2016
13516/2018 Harsha Pravinbhai Bodar	Gender Coordinator 29 th September, 2015
13518/2018 Shah Pujaben Jayeshbhai	Gender Coordinator 19 th May, 2014
13519/2018 Hardik Bhagvandas Chavda	District Coordinator (IEDSS) 09 th August, 2016
13520/2018 Abhesang Mansnagbhai Patel	District Coordinator (IEDSS) 04 th August, 2016
13521/2018 Shah Trushna Satischandra	District Coordinator (IEDSS) 08 th August, 2016
13522/2018 Devalbhai Ashvinkumar Barot	District Gender Coordinator 03 rd November, 2015

13524/2018 Maneshkumar Natubhai Patel	District Accounts Officer 23 rd March, 2016
13525/2018 Dhingani Savankumar Vinodbhai	District Coordinator 30 th April, 2012
13526/2018 Vinodkumar Babubhai Patel	District Coordinator 24 th September, 2015
13527/2018 Samirabanu Gulammohammad Shaikh	Gender Coordinator 07 th October, 2015
13528/2018 Dhavalikumar Ashvinkumar Patel	Gender Coordinator 23 rd March, 2017
13529/2018 Thakore Jaydipsinh Ranpalsinh	Computer Operator
13530/2018 Dipeshkumar Dipakbhai Bhatiya	District Coordinator
13531/2018 Pritiben Shankarlal Patel	Gender Coordinator 28 th September, 2015
13532/2018 Hasmukhkumar Jayantilal Patel	Gender Coordinator 16 th January, 2016
13533/2018 Vikrambhai Natvarbhai Patel	Computer Operator 12 th January, 2013
13534/2018 Patel Dharmishtaben Natubhai	Computer Operator 24 th September, 2015
13535/2018 Hiren Dilipbhai Joshi	District Accounts Officer 24 th September, 2015
13536/2018 Rugani Ravindra Madhusudan	Computer Operator 15 th April, 2011
13537/2018 Jignaben Kantibhai Patel	Gender Coordinator 01 st April, 2016
13538/2018 Nishantbhai Bhupenedrakumar Darji	District MIS Coordinator 07 th December, 2016
13539/2018 Keyurkumar Rameshchandra Patel	District MIS Officer 16 th October, 2013
13540/2018 Kalpeshbhai Babubhai Patel	District MIS Officer 08 th August, 2016
13541/2018 Tushar Gagjibhai Solanki	Computer Operator 13 th June, 2011
13542/2018 Rinkuben Natvarlal Thakkar	Computer Operator 28 th September, 2015
13543/2018 Jalpaben Rameshbhai Patel	Computer Operator 28 th September, 2015
13544/2018 Manoj Vinodbhai Manjusha	District Coordinator 01 st April, 2016
13545/2018 Sagar Naranbhai Patel	Computer Operator 03 rd March, 2014

13546/2018 Makwana Birendrakumar Hirabhai	Assistant Project Coordinator 12rd December, 2014
13547/2018 Niravkumar Bharatkumar Panchal	District MIS Coordinator 06 th August, 2016
13548/2018 Dipsang Hathisang Mori	District Coordinator (IEDSS) 04 th August, 2016
13550/2018 Dipikaben Gordhanbhai Solanki	District Coordinator (IEDSS) 08 th August, 2016
13551/2018 Nirajkumar Harshadbhai Patel	District Coordinator 01 st April, 2016
13642/2018 Saiyed Irshadali Mumtazali	Computer Operator 24 th August, 2011
13644/2018 Mistri Krunal Jayantilal	District Coordinator 13 th July, 2015
13645/2018 Munafbhai Fakirmohammad Shaikh	Accounts Officer 06 th October, 2015
13646/2018 Bhumika Dalpatbhai Lad	Accounts Officer 30 th March, 2016
16030/2018 Jalpaben Babubhai Chaudhary	District Coordinator (IEDSS) 06 th August, 2016

3.4 It is to be noted that while petitioners came to be appointed under the Scheme at the District level, other persons out of the class were given appointment at the State level. All these employed persons, either at the District level or at the State level, were appointed under the same Scheme in similar circumstances, by the mode of appointment and the duties attached to the post were similar.

3.5 The services of the petitioners are governed by Resolution dated 11th October, 2017 of the State Government. Those who were appointed under the State level also stand governed by the very Scheme and the Resolution. All those persons either at the District level or at the State level institute a single class of employees, of having been appointed under the Rashtriya Madhyamik Shiksha Abhiyaan. The services of

all these employees at the District level as well as at the State level came to be dispensed with simultaneously.

3.6 It is not in dispute that after the services of all the petitioners along with those posted at State level came to be terminated upon a Note dated 31st July, 2018, as per communication dated 02nd August, 2018 aforementioned, the District Education Office recommended on 04th August, 2018 that services of each of the 46 petitioners were satisfactory and they worked efficiently and it was recommended by the said authority that petitioners were required to be taken back and needed to be reinstated in service.

3.7 The events may be recapitulated as under.

(i) On 02nd August, 2018 the contracts of all the petitioners were not renewed and their services came to be terminated on the basis of a 'Note' or 'Noting' dated 31st July, 2018 put by higher authority without affording any opportunity of hearing. Moreover, 10 of the employees who were appointed at State Level by Rashtriya Madhyamik Shiksha Abhiyan were also terminated by the same order dated 02nd August, 2018,

(ii) On 04th August, 2018 the District Education Officer recommended that the Services of each petitioner being 47 in numbers is satisfactory and efficient and they may be

taken back and their services be reinstated,

- (iii) On 06th August, 2018 the employees appointed and terminated at State Levels made a representation to take them back in their services,
- (iv) On 10th August, 2018 the 10 employees of State Level came to be reinstated by the respondent authorities to their original post under Rashtriya Madhyamik Shiksha Abhiyan,
- (v) On 01st October, 2018 the Rashtriya Madhyamik Shiksha Abhiyan (RMSA) came to be merged in Sarva Shiksha Abhiyan (SSA) by way of government resolution to said effect for its effective implementation and the work and services rendered by the petitioners is being done by strangers who are unqualified given by the office of District Education Officer.

4. Learned advocate for the petitioners submitted that the termination was in the nature of group victimisation which was effected in arbitrary manner. It was submitted that District Education Officer recommended for taking the petitioners back in service but the same was not attended to though similarly placed persons were taken back at the State level. It was submitted that the term was arbitrary and irrational when some of the employees were taken back and the petitioners were kept out of service.

4.1 The petitions were contested by filing reply on behalf of respondent No.2 wherein it was contended *inter alia* that the petitioners were engaged on contractual basis and that their rights could not extend beyond the contract. It was submitted that the Court may not exercise the jurisdiction to grant relief as it would amount to extending the term of the contract which is not permissible to be done by the writ court. It was sought to be contended that there was no termination of employment but it was non-continuation of contract.

5. It is an admitted position on record that employees at the State level were continued and reinstated. It is also admitted position that except the present petitioners, all the employees whose services were terminated came to be reinstated in service. As per the facts given out in the affidavit-in-reply, there were 209 contractual posts sanctioned across the State. 69 employees were employed at the District level. Posts were also sanctioned at the State level. It further emerged that Rashtriya Madhyamik Shiksha Abhiyan Scheme was subsequently merged with Sarva Shiksha Abhiyan as per the Resolution dated 01st October, 2018 passed by the State Government. The Sarva Shiksha Abhiyan Scheme is an independent functional Scheme at the District level across the State. The educational programmes under the Scheme is continuous process, where the services of the petitioners are utilised.

5.1 What were the content of the Note or Noting

which became the basis for termination of services was never known. The Note was not produced on record. Nor it was referred to by the respondents in their reply. It turned out to be action of abrupt termination of services behind the back of the petitioners. In the totality of facts, there was an element of justification in the contention of the petitioners that opportunity of hearing ought to have been accorded to them. For the fact that the reinstatement was permitted of the employees at the State level, there was no plausible explanation. It was a clever pleading on part of the respondents that for those who were reinstated at the State level, the work was available, resting there conveniently. It is not the case of the respondents that petitioners' non-reinstatement was due to non-availability of work. Rather, it could hardly be disputed that the Scheme under which the petitioners working on the different posts was a continuous process and when the Scheme was continued, the absence of availability of work could hardly be pleaded. On the contrary, the District Education Officer recommended for taking all the petitioners back in service.

5.2 While it is true that jurisdiction of the writ court under Article 226 of the Constitution would not be exercised to extend the contractual period, which is also the ground on which the petitions sought to be defended by the respondents, the facts of the case raise a different scenario. There is a striking dissimilar treatment, and therefore discrimination, meted out to the

petitioners. On one hand the petitioners are kept out of service and on the other hand, all other persons except the petitioners including the persons at the State level came to be reinstated. Though there was a recommendation dated 04th August, 2018 in case of the petitioners that the petitioners had been discharging their services efficiently and they are required to be reinstated, the same was not followed. Such recommendation was also there in respect of others who were reinstated.

5.3 In **GRIDCO Limited v. Sadananda Doloi [(2011) 15 SCC 16]**, the Supreme Court observed as under.

"A conspectus of the pronouncements of this court and the development of law over the past few decades thus show that there has been a notable shift from the stated legal position settled in earlier decisions, that termination of a contractual employment in accordance with the terms of the contract was permissible and the employee could claim no protection against such termination even when one of the contracting parties happened to be the State. Remedy for a breach of a contractual condition was also by way of civil action for damages/compensation. With the development of law relating to judicial review of administrative actions, a writ Court can now examine the validity of a termination order passed by public authority. It is no longer open to the authority passing the order to argue that its action being in the realm of contract is not open to judicial review. A writ Court is entitled to judicially review the action and determine whether there was any illegality, perversity, unreasonableness, unfairness or irrationality that would vitiate the action, no matter the action is in the realm of contract. "

(Para 26)

6. In light of the facts obtained and discussed hereinabove, the decision on part of the respondents in excluding the petitioners for different treatment of not reinstating them, as against those similarly

situated employees posted under the Scheme who were reinstated, could be said to be suffering from vice of unreasonableness, unfairness and irrationality and contrary to the tenets of Article 14 of the Constitution. It is not possible to treat the petitioners as belonging to heterogeneous class so as to justify different treatment to them. In not reinstating the petitioners, breach of Article 14 is manifest. Therefore, the defence on part of the respondents that the action was in realm of contract could not be countenanced. The relief deserves to be accrued to the petitioners.

7. Thus, all the petitioners are entitled to be reinstated in service by extending them the equal treatment with those similarly situated employees who are reinstated since all could be said to be belonging to a single class for the purpose of treatment to them. The reinstatement of the petitioners shall be on the same post, in the same status and on same conditions. The respondents shall act through their competent authority to pass the order of reinstatement within a week from the date of service of copy of this order. However, on the principle of no-work-no-pay, monetary benefit will not be paid to the petitioners.

All the petitions are allowed accordingly.

Direct service is permitted.

(N.V.ANJARIA, J)

Anup