

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 6808 of 2008
 With
R/SPECIAL CIVIL APPLICATION NO. 6809 of 2008
 With
R/SPECIAL CIVIL APPLICATION NO. 6810 of 2008
 With
R/SPECIAL CIVIL APPLICATION NO. 6811 of 2008
 With
R/SPECIAL CIVIL APPLICATION NO. 6812 of 2008
 With
R/SPECIAL CIVIL APPLICATION NO. 6813 of 2008
 With
R/SPECIAL CIVIL APPLICATION NO. 6814 of 2008

=====

STATE OF GUJARAT & 2 other(s)
 Versus
 RAVINDRA S. SHUKLA & 22 other(s)

=====

Appearance:

MS SURBHI BHATI, AGP for the Petitioner(s) No. 1,2,3
 MR RR VAKIL(964) for the Respondent(s) No.
 1,10,11,12,13,14,15,16,17,18,19,2,20,21,3,4,5,6,7,8,9
 RULE SERVED for the Respondent(s) No. 23
 RULE SERVED BY DS for the Respondent(s) No. 22
 SERVED BY AFFIX. (R) for the Respondent(s) No. 22

=====

CORAM: HONOURABLE MR. JUSTICE A.Y. KOGJE

Date : 12/07/2022

ORAL ORDER

1. These petitions under Article 227 of the Constitution of India is filed by the State for setting aside the order dated 23.10.2007 passed by the Gujarat Secondary Education Tribunal, Ahmedabad in Application Nos.290/06, 291/06, 16/07, 23 to 25/2007 and 44/07. The applicants before the Gujarat Secondary Education Tribunal, Ahmedabad were the teaching staff/non teaching of the Janta Education Trust Sanchalit, Janta Hindi/Gujarati Madhyamik-Uchchatar Madhyamik Shala of Ahmedabad whose recognizance was

canceled by the State Government for different reasons and that time the applicants- teaching staff/non teaching were required to be declared surplus and as such there being a delay in undertaking and concluding the exercise for declaring the teaching staff/non teaching as surplus, the teachers had discharged their duties, as such under the directions of the D.E.O, but were not paid with the salary till the D.E.O. passed a specific order declaring them as surplus. The Tribunal has, therefore, considered the case of teaching staff /non teaching (respondents herein) and ordered that the respondents are entitled to the salaries for the services rendered by them between February-2005 till 28.10.2005.

2. It is the case of the State Government that in view of the fact that the school where the respondents were working as Teachers was derecognized on account of irregularities and illegalities, as the school had claimed to be falsely recognized as a minority institution and in fact, the State Government has ordered recovery from the school management to the tune of Rs.22 crore and more.

2.1 It is submitted that this order of the State Government for recovery of the amount from the school management was challenged at various stages even till High Court, but such order was sustained, and therefore, the action of the State Government for canceling the registration of the school managed by the Trust was justified. This being so obviously, the Teachers and staffs, who were working under the Trust which claimed to be the minority institute, cannot claim the benefit, as their appointment itself was in question.

2.2. It is submitted that the Tribunal has not taken into consideration the fact that the application was made for declaring the respondents, as surplus, which was for the good reason turned down, and therefore, by a reasoned order, the D.E.O, at the relevant time, has not accepted the proposal for declaring the respondents, as surplus Teachers, and therefore, there is no question of the government taking the responsibility of the respondent-teachers. Moreover, it is submitted that while rejecting the proposal from the respondents, it was categorically held that the financial responsibility of the staff would that be of the school management. Lastly, it is submitted that it is ironical that at one hand on account of the irregularities and illegalities by the school management, the State Government has to recover the huge amount of 22 crore and more and on the other hand, the State Government has to pay to the staff of such school.

3. As against this, learned advocate appearing for the respondents submitted that the initial order passed by the D.E.O refusing to declare the respondents as surplus was based only on the ground that the proposal was required to be moved by the school management and that the D.E.O, therefore, did not consider the proposal, which was forwarded by the school teachers themselves.

3.1 It is submitted that except for this, there was no other ground for rejecting the proposal for declaring the respondents, as surplus, and therefore, by applying the proper regulation, governing the principles of declaring surplus, the Tribunal has rightly considered the case of the Teachers, as admittedly, by the action of the government itself, the recognition of the school management was canceled, and therefore, expecting the school management to move the proposal for declaring the school

teachers as surplus was a condition impossible to be fulfilled at least by the staff, and therefore, the proposal moved by the Teachers themselves was required to be accepted.

3.2 It is submitted that such proposal was thereafter accepted pursuant to the directions given by this Court in an application filed by the respondents in Civil Application for Joining Party in the main matter filed by the management against canceling of registration.

4. Having considered the rival submissions of learned advocates for the parties and having perused the documents on record and from the facts on record, it appears that the school viz. Janta Hindi/Gujarati Madhyamik-Uchchatar Madhyamik Shala run by a public trust viz. Janta Education Trust Sanchalit, had faced an action by the State Government, as according to the State Government, the school management had falsely claimed to be a minority school and enjoyed the benefits of Grant-in-Aid available to a minority school.

4.1 It appears that the issue with regards to the fact that whether the school is minority school or not was carried at various level and ultimately, the State Government passed an order to the effect that the school was not entitled to enjoy the status of minority school and that benefit has been taken by the school management is required to be paid back to the government and accordingly, the order was passed, directing the school management to refund the amount to the tune of Rs.22 crore and more. This order was also a subject matter of challenge before this Court, ultimately the order of the State Government had prevailed. During these proceedings against the school management, as the school was derecognized, the issue of

the salary of the school teachers also would be of relevant consideration, and therefore, apparently the school teachers raised this issue before the District Education Officer (D.E.O.) for declaring them as surplus teachers. Initially, the D.E.O. did not accept the application of the school teachers and rejected such application, however, in the pending petition before this Court being Special Civil Application No.191 of 2005 filed by the school management against the order of the State Government, the Teachers filed Civil Application No. 9668 of 2005 and by order dated 28.10.2005, this Court directed the State Government to pass appropriate orders in the matter, as regards the staff being declared as surplus latest by 29.10.2005. The order dated 29.10.2005 came to be passed by the D.E.O., whereby 33 employees of the school were declared as surplus and accordingly, they were absorbed in different schools and salaries were being paid with effect from the date on which they were declared surplus, however, with regard to the period between the date on which recognizance of the school stood canceled i.e. 08.12.2004 till the date on which the D.E.O. declared the respondents-teachers as surplus for that period. According to the respondents, as they had continued to discharge their duties in the benefit of the school children for remaining part of the academic year, they were entitled to the salaries. The Tribunal by taking into consideration Regulation 10(A) (g) of the Gujarat Secondary Education Regulation, 1974 and the provision therein for the purpose of declaring the school teacher as surplus arrived at a conclusion that the respondent-school teachers had rightly raised their claim for declaring them as surplus and that too within a reasonable time. Thereafter, considering a reasonable time within which such decision could have been taken by the D.E.O., but was not taken as such, and

therefore though respondents had discharged their duties, but still did not receive any salary. Therefore, in the opinion of this Court, the Tribunal has given justifiable reasons for recognizing the services rendered by the respondents-teachers during the period between de-recognizing of the school till absorption of the respondents and granted 75% of their salaries.

4.2 It is reported that subsequent to the order dated 29.10.2005, now, the respondents have been regularly absorbed in various schools and some of them have also attained the age of superannuation.

4.3 It is the policy of the State Government, as contained in several resolutions, the last in line being G.R. dated 06.07.1998 that whenever the employees of private secondary school are required to be retrenched either due to the closure of classes or due to the closure of school, if they fulfill the criteria prescribed in the G.R.s then they are not required to face actual termination, but by declaring them surplus Government of Gujarat extends protection to their services and they are absorbed in any other aided registered private secondary school. There are two situations in which an employee can be declared surplus. The employee may be required to be declared surplus due to reduction of class or classes. Another situation is that the employees are required to be declared surplus due to deregistration of the school. In the first situation, the school continues, but some classes are reduced. For reduction of classes by continuing the school u/s.10-A of the Gujarat Secondary Education Regulations, 1974 the school management is required to send a proposal in writing to the D.E.O. and on that proposal the D.E.O. passes the order about reduction of classes so also declaring the affected employees surplus. In the

situation like this where the Gujarat Secondary Education Board has canceled the registration of the school, the existence of the school itself does not remain. In such situation, in my view, Reg. 10-A would not come into play. The management is not required to send any proposal because the entire school is closed due to deregistration. The D.E.O. is immediately after the Board's order required to take steps and pass order declaring the eligible employees surplus. Moreover, it is the settled practice of the Department that in such cases where the registration of the school is canceled by the board the process of declaring the employees surplus is undertaken by the D.E.O. on his own and no proposal by the management is necessary. In this view of the matter, the submission of the D.E.O. that there was no proposal from the management for declaring the employees surplus and therefore, they were not declared surplus is not tenable. The submission of the D.E.O. about pendency of the appeal by the management before the department and in the High Court, in my view, cannot be considered as a cogent ground for not taking steps to declare the employees surplus. From the facts noticed above, it can be seen that from October 2004, the salaries of the employees were withheld and they have made several representations for releasing their salaries, but despite such requests the D.E.O. has not taken any steps to release their salaries or to declare them surplus. If the D.E.O. had passed timely order declaring them surplus then they would have been absorbed elsewhere immediately and the question of non-payment of salaries for such a long time would not have arisen. Instead of passing the order on 29.10.05, if the D.E.O. had on his own as per the government guidelines and policy passed the order within reasonable time after 08.12.04, then this hardship to the teachers and non-teaching staff could have been averted.

5. In the opinion of the Court, no ground is made out to assail a just and proper decision of the tribunal and the decision of the Gujarat Secondary Education Tribunal, Ahmedabad is not required to be interfered with. Hence, the present petition deserves to be dismissed and is hereby dismissed.

GIRISH

(A.Y. KOGJE, J)