

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 4368 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 9329 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 19131 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 5653 of 2019
With
R/SPECIAL CIVIL APPLICATION NO. 14716 of 2019

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KALPESHKUMAR PUNJABHAI PRAJAPATI & ORS.
 Versus
 STATE OF GUJARAT & ORS.

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Appearance:

MR SAMIR B GOHIL(5718) for the Petitioner(s) No.

1,10,100,101,102,103,104,105,106,107,108,109,11,110,111,112,113,114,115
 ,116,117,118,119,12,120,121,122,123,124,125,126,127,128,129,13,130,131,
 132,133,134,135,136,137,138,139,14,140,141,142,15,16,17,18,19,2,20,21,22
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 7,70,71,72,73,74,75,76,77,78,79,8,80,81,82,83,84,85,86,87,88,89,9,90,91,92,
 93,94,95,96,97,98,99

MR. ADITYA PATHAK , AGP ADVANCE COPY SERVED TO
 GOVERNMENT PLEADER/PP for the Respondent(s) No. 1

MR NILESH A PANDYA(549) for the Respondent(s) No. 3

NOTICE SERVED for the Respondent(s) No. 1,2,4

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 20/02/2024

ORAL ORDER

1. Heard learned advocate - Mr. Samir Gohil for the petitioners and learned Assistant Government Pleader - Mr. Aditya Pathak for the respondent- State.

2. Since the issue involved in the present group of petitions are common, therefore, the petitions are taken up jointly for final disposal. For the sake of reference, Special Civil Application

No.4368 of 2020 is treated as the lead matter. The grievance raised by the petitioners in the petition is with regard to the respondent - State Authorities not granting benefit of 1st higher pay-scale to the petitioners in the post of Education Inspector i.e. in the pay-scale of Rs.5,000-8,000 revised to Rs.9,300 – 34,800 as per the 6th Pay Commission. The petitioners are working as Primary Teachers in various schools under the District Primary Education Committees and having completed 9 years of service, the petitioners had sought for grant of benefit of higher pay-scale as per Government Resolution dated 16.8.1994 and whereas the petitioners having not been paid the higher pay-scale, the petitioners had approached this Court by way of this petition.

2.1 It is the case of the petitioners that since they were not granted higher pay-scale at all, therefore, they have approached this Court by way of this petition and whereas it would appear that while the present petition was pending, the State Government had acceded to the demands of the petitioners partially and had come out with Government Resolution dated 12.10.2022. The said Government Resolution accepts the entitlement of the petitioners to the pay-scale of Rs.5000-8000 revised to Rs.9,300 – 34,800. The petitioners are aggrieved by the Government Resolution, insofar as it restricts the payment of benefits from the date of entitlement to the date of the Resolution, deeming it as purely notional. It would appear that the petitioners after the said Government Resolution had been passed, have amended the petition, more particularly challenging the conditions with regard to

non-grant of arrears and have also sought for release of arrears with 8% interest.

3. Learned advocate Mr. Samir Gohil on behalf of the petitioners, would submit that while the petition has a chequered history inasmuch as, the petitioners, were required to come before this Court since the respondents had not granted the benefit of 1st higher pay-scale to the petitioners as available to other similarly situated persons, who had earlier come before this Court by filing petitions. Attention of this Court is drawn to the decision of a learned Co-ordinate Bench of this Court [Coram : Hon'ble Mr. Justice M.S. Shah as the then was] dated 20.12.2004 in Special Civil Application No.11267 of 2004 and would submit that the petitioners therein were similarly situated to the petitioners before this Court and a grievance has been raised that since in some of the Municipal School Boards, the post of Education Inspector had not been prescribed, therefore, the entitlement of the Primary Teachers for higher grade stands restricted and whereas in School Boards where such post had been prescribed, the higher grade had been paid in the scale of Rs.5,000-8,000. It is submitted that the learned Co-ordinate Bench *vide* the decision referred to hereinabove had directed the State Government to take a fresh decision insofar as the pay-scale of Primary Teachers employed by Municipal School Boards, more particularly with regard to revise the first / second / third higher grade for Primary Teachers.

3.1 Learned advocate Mr. Gohil subsequently referenced a pivotal decision of this Court, delivered by the Hon'ble Mr. Justice A.S.

Suprehia in the case of **Patel Rameshkumar Dharmshibhai & Others v. State of Gujarat & Others** on 26.09.2017, in Special Civil Application No.13687 of 2009 and allied matters. He contended that Primary Teachers in a situation akin to that of the present petitioners had approached this Court more particularly, challenging the decision of the respondents therein of withdrawing / reducing of higher pay-scale of Rs.5,000-8,000 to Rs.4,500-7,000. It is submitted by the learned advocate Mr. Gohil that the learned Co-ordinate Bench, after examining the entire issue, had come to the conclusion that the Primary Teachers were entitled to grant of higher pay-scale at the rate of Rs.5,000-8,000 and whereas the same was directed to be restored and whereas the orders of reducing the higher grade were set aside. It is submitted by the learned advocate Mr. Gohil that since the petitioners were similarly situated to the petitioners of the writ petitions in which order dated 26.9.2017 had been passed, therefore, the petitioners had approached the respondents for grant of similar benefit and whereas since the same had not been granted, the petitioners had approached this Court by filing the writ petition. Learned advocate would submit that during pendency of the present writ petition, the State Government had issued the Resolution dated 12.10.2022, whereby the State Government has accepted the entitlement of persons similarly situated to the petitioners for grant of 1st higher grade in the pay-scale of Rs.5,000-8,000 (Rs.9300-34800 + grade pay of 42000). It is submitted that the only grievance now which requires adjudication is with regard to the State Government having declared the period between the date

of entitlement of the petitioners till the date of the Government Resolution to be treated as notional. Mr. Gohil, the learned advocate, contends that despite the State Government acknowledging the petitioners' entitlement to a higher pay-scale in the range of Rs. 5,000-8,000, their directive to consider the period from the date of entitlement to the Government Resolution dated 12.10.2022, as merely notional, is entirely unjustified. Learned advocate would submit that as such perusal of the Government Resolution does not reveal any reason as to why the persons entitled to the benefit of the Government Resolution were not to be granted arrears of higher pay-scale from the date of their entitlement. Learned advocate Mr. Gohil would, therefore, seeks intervention of this Court on that count.

4. As against this submissions made by the learned advocate Mr. Gohil, the present petition is vehemently opposed by the learned AGP Mr. Aditya Pathak on behalf of the respondent – State. The learned AGP would take this Court to the Government Resolution dated 12.10.2022 and would submit that the Government Resolution while it recognizes that the Primary Teachers are similarly situated to the present petitioners, were entitled to higher pay-scale at the rate of Rs.5,000-8,000 and whereas, as far as the arrears is concerned, learned AGP would contend that the entire intent behind passing of the said Government Resolution would have to be appreciated by this Court. It is submitted by the learned AGP that the State Government by coming out with the Government Resolution was seeking to rectify an anomalous position, whereby Primary Teachers in certain Municipal

School Boards in which there were post of Education Inspector, were entitled to higher pay-scale as per policy of the State Government *vide* Government Resolution dated 16.08.1994 in the pay-scale of Rs.5,000-8,000 and whereas in other School Boards like in the case of the present petitioners in Vadodara etc., the Primary Teachers were granted higher pay-scale in the pay-scale of Rs.4,500-7,000 more particularly, since there were posts of Education Inspector available. Learned AGP would submit that the State Government while it resolves to grant the benefit of higher pay-scale to all similarly situated Primary Teachers in the pay-scale of Rs.5,000-8,000, the same would be inextricably linked to the fact of availability of the post of Education Inspector in the concerned School Board. Learned AGP would submit that without availability of the post of Education Inspector, in their School Boards, the petitioners may not be declared as being entitled to benefit of higher pay-scale in the pay-scale of Rs.5,000-8,000 from the date of their entitlement.

5. Learned AGP would also rely upon a decision of the Hon'ble Division Bench of this Court in a Letters Patent Appeal in which, according to the learned AGP, facts were similar being order dated 16.9.2020 rendered in Letters Patent Appeal No.439 of 2020 in Special Civil Application No.28774 of 2007, in the case of **Administration Officer v. Girishchandra G. Punjani**. Learned AGP would submit that the Hon'ble Division Bench while explaining Clause 3.3 of Government Resolution dated 16.08.1994, has come to the conclusion that a person serving in a junior cadre, upon being

stagnated while he would be entitled to revision of salary in the first higher grade as per the policy of the State Government yet, the revision of salary would be to the promotional post, which was available in the cadre of the department concerned and not to any other post concerned. Learned AGP would submit that the petitioners may not be entitled to grant of arrears unless the petitioners or the concerned Municipal School Board come out with a case that there was availability of higher post of Education Inspector, which carried a pay-scale of Rs.5,000-8,000 revised to Rs.9,300 – 34,800. Learned AGP would also draw the attention of this Court to affidavit-in-reply filed by the Under Secretary, Education Department dated 09.06.2023 and would submit that the petitioners are not entitled to arrears since they have approached this Court after inordinate delay.

5.1 Having regard to such submissions, the Learned AGP contends that this Court should not grant any additional prayers, especially those pertaining to the request for arrears, and urges their dismissal.

6. Heard learned advocate Mr. Gohil for the petitioners, learned AGP Mr. Pathak for respondent - State and perused the documents on record.

7. The only question which arises for consideration of this Court is as to whether the respondent - State was justified in restricting the grant of benefits of higher pay-scale in the pay-scale of Rs.5,000-8,000 revised to Rs.9,300 – 34,800, by directing the period from the date of entitlement to the date of the Government Resolution dated

16.8.1994 as being treated notionally. In this regard it would appear that the prayers made by the petitioners for grant of arrears are being opposed by the learned AGP on the following counts:-

(i) That there being no promotional post available in the Municipal School Board in which the petitioners are working.

(ii) That there being no averment in the petition and no confirmation by the concerned School Board that there existed a post of Education Inspector in the set up of the concerned School Board.

(iii) That the petitions are being delayed.

8. In the considered opinion of this Court, all the objections taken by learned AGP, are absolutely misconceived and goes beyond the decision of the State Government in the Government Resolution dated 12.10.2022. A perusal of the Government Resolution more particularly, the recital part of the Government Resolution clearly reveals the reason behind its formulation. It appears that the State Government was conscious of the fact that there existed a serious anomaly in the matter of grant of first higher grade to Primary Teachers in various Municipal School Boards. It would appear that on account of there being no promotional post of Education Inspector available; therefore, seniors working in a particular Municipal School Board would be drawing salary much less than the salary being drawing by the juniors working in a different Municipal School Board where there was a promotional post of Education Inspector available. In the considered opinion of this Court, being conscious of the anomaly, the State Government had come out with a Government

Resolution and whereas the very purpose of the Government Resolution was to ensure that even if there were no post of Education Inspector in the set up of the Municipal School Board concerned then also, the Primary Teachers would be entitled to higher grade in the scale of Rs.5,000-8,000.

8.1 In the considered opinion of this Court, to state that the payment of higher grade in the scale of Rs.5,000-8,000 is inextricably linked to availability of promotional post, is completely fallacious. In the considered opinion of this Court, if there existed a promotional post of Education Inspector, which carried pay-scale of Rs.5,000-8,000, the petitioners and all other similarly situated persons would have been automatically entitled to revision in 1st higher grade in the pay-scale as carried by the post of Education Inspector and whereas there would not have been any issue with regard to the entitlement of the petitioners and such similarly situated Primary Teachers for revision in the higher grade in the pay-scale of Rs.5,000-8,000. The very reason for which the petitions have been filed from the year 2009 to the present petition was that on account of non-existence of post of Education Inspector in the set up of the concerned School Board, resulting in the Primary Teachers being discriminated in the matter of revision of salary in higher grade i.e. wherever a post of Education Inspector was available, revision would be in the pay-scale of Rs.5,000-8,000 and wherever such post was not available, then revision would be in the pay-scale of Rs.4,500-7,000.

8.2 In the considered opinion of this Court, since it was to

resolve the above anomaly that the State Government had passed the resolution, thereafter the learned AGP on behalf of the State cannot be heard to argue that the provision of arrears should be contingent upon the availability of the post of the Education Inspector with the concerned School Board.

9. As a matter of fact, a perusal of the Government Resolution dated 12.10.2022, while it holds that from 1.1.1996, to ensure equality amongst Primary Teachers in Municipal School Boards, benefit of 1st higher grade would be in the pay-scale of Rs.5,000-8,000 revised to Rs.9,300 – 34,800 subject to certain conditions and whereas while the condition No.2 states about the period from the date of entitlement to the date of Government Resolution to be treated as notionally yet, one does not find the Government Resolution laying down any condition that in case post of Education Inspector is available in the set up of the concerned Municipal School Board, then the Primary Teacher would be entitled for the arrears from date of entitlement to the date of Government Resolution.

9.1 In the considered opinion of this Court, to state that the arrears would be granted to only such School Boards where the post of Education Inspector was in existence, would be going against the grain of the Government Resolution itself and would result in a paradoxical situation same. To clarify on one hand the Government comes out with a resolution to rectify an anomaly in the payment of 1st higher grade between Primary Teachers in School Board where the post of Education Inspector was available and where such a post was not

available. Having come out with a policy now to state that payment of arrears would be dependent on availability of the promotion post of Education Inspector would amount to perpetuating the same anomaly which was sought to be rectified. The paradox being too obvious to be misused.

10. As a matter of fact, it would appear that even the State has not implemented the Government Resolution in its true prospective more particularly, considering the fact that the State had passed an order dated 20.04.2023 i.e. after similarly situated Primary Teachers had preferred writ petitions before this Court being SCA No.5849 of 2023 and allied matters i.e. preferred by the Primary Teachers in the Municipal School Board at Surat, who had raised similar grievance and whereas *vide* order dated 20.04.2023, the State had deemed it appropriate to hold that the said Primary Teachers working with the Municipal School Board, Surat would be entitled more particularly, since the promotional post of Education Inspector was available in the set up of the Municipal School Board, Surat. In the considered opinion of this Court having come out with the resolution, which granted benefit of higher grade in the pay-scale of Rs.5,000-8,000, from 1.1.1996, irrespective of availability of any post of Education Inspector, it was not open for the State to have restricted the grant of benefit of arrears to only such Primary Teachers where the post of Education Inspector existed. For the above reasons, the stand of the learned AGP cannot be countenanced and the same is rejected.

10.1 It would be required to be reiterated at this stage that the

intent of the Government Resolution dated 12.10.2022, if read carefully, was to provide for exception to the general rule and whereas it would appear that the same was probably based on the observations of learned Co-ordinate Bench in the decision dated 26.9.2017 in SCA No. 13687 of 2009 and allied matters to ensure that there is no discrimination amongst Primary Teachers working in School Boards with different Municipalities, based upon availability of higher post, of Education Inspector, the Government Resolution, *inter-alia*, envisaged that after 1.1.1996, payment of salary in the higher grade, would be at the rate of Rs.5,000-8,000 and whereas the Government Resolution does not restrict the revision to only such School Boards where the post of Education Inspector was available.

11. Insofar as reliance on decision of the Hon'ble Division Bench in Letters Patent Appeal No.4339 of 2020 dated 16.09.2020 is concerned, while it is attempted to be stated that facts of the present case and facts of the case before the Hon'ble Division Bench were similar, to this Court it does not appear to be so. In the considered opinion of this Court and in the facts of the case before the Hon'ble Division Bench, it would appear that Junior Clerks, who had the post of Senior Clerks available in their establishment, were requesting for grant of higher grade scale in the cadre of Head Clerk and whereas the Hon'ble Division Bench had, *inter-alia*, observed that as per Clause 3(3) of the Government Resolution dated 16.08.1994, the higher grade would be available in the pay-scale of the post of Senior Clerk i.e. the available higher post in the set up and not to that of Head Clerk. Thus,

in the considered opinion of this Court, on account of the facts in the present case being different then the facts before the Hon'ble Division Bench, the observation of the Hon'ble Division Bench in the decision dated 16.9.2020 would not advance the cause of the State, as submitted by the learned AGP. Again the State having passed the Resolution dated 12.10.2022, accepting the entitlement of the petitioners, reliance placed upon the decision of the Division Bench appears to be absolutely misplaced.

11.1 Insofar as the aspect of delay as sought to be explained in the affidavit-in-reply filed by the Under Secretary is concerned, it requires to be mentioned i.e. the Government Resolution itself envisages the entitlement of the Primary Teachers to revision in the 1st higher grade with effect from 1.1.1996. The only grievance was with regard to the payment of arrears from the date of entitlement till the date of the issuance of the Government Resolution. While the respondent State may or may not be justified in raising objection with regard to delay in filing the petition before the GR dated 12.10.2022 came to be passed, yet in the considered opinion of this Court the contention with regard to delay cannot be countenanced after the State has passed the GR dated 12.10.2022. The said GR having accepted the entitlement of the petitioners for the benefit of first higher scale in the scale of Rs.5,000-8,000. The only challenge is with regard to the entitlement of the petitioners to the arrears which as per the GR would be available only notionally. Thus, in the considered opinion of this Court, upon the GR dated 12.10.2022 being issued and the grievance

was being with regard to the arrears being treated notionally, the petition is not barred by delay given the cause of action would relate to the GR dated 12.10.2022 itself.

12. Reverting back to the substantive issue, perusal of the Government Resolution does not reveal any reason whatsoever as to the State taking a stand as regards non-payment of arrears to the beneficiaries. On the contrary, perusal of the recitals as noted hereinabove reveals that one of the primary reasons, which weigh with the State was the fact that on account of the anomaly, as explained hereinabove, Junior Teachers in a set up where the promotional post of Education Inspector was available upon revision were being paid salary in the higher pay-scale of Rs.5,000-8,000 whereas seniors in a set up where the promotional posts were not available were being paid salary in the scale of Rs.4,500-7,000 i.e. lower than the scale in which the juniors were being paid. It was to ensure that such an anomaly is removed that Government Resolution had been promulgated by the State and in the considered opinion of this Court, when the State was conscious of the fact that on account of the anomaly, there would be dissatisfaction amongst seniors, who would not be entitled to payment of higher grade in the scale of Rs.5,000-8,000 only on account of the Municipal School Board not having the post of Education Inspector in its set up, then it was incumbent upon the State to have ensured that the Teachers like the present petitioners be paid arrears of salary.

12.1 Furthermore it clearly appears that the Government Resolution fails to provide any rationale for the withholding of arrears,

and considering the lack of merit in the argument regarding delay as evidenced in the affidavit-in-reply, the submissions made by the learned AGP regarding delay are untenable and are thus dismissed.

13. In the considered opinion of this Court, based on the aforementioned discussion, observations, it would appear that the Government Resolution dated 12.10.2022 insofar as it restricts payment of arrears, is required to be interfered with. Hence, the following directions are passed:-

- (i) The present petition is hereby **allowed**.
- (ii) Government Resolution dated 12.10.2022 is interfered with insofar as it states about treating the period between the date of entitlement till the date of Government Resolution required to be treated notionally.
- (iii) The petitioners are declared to be entitled for grant of arrears upon revision as per 1st higher grade in the pay-scale of Rs.5,000-8,000 i.e. from the date of their entitlement till the date of the Government Resolution. Arrears to be calculated and paid to the petitioners within a period of 12 weeks from today. In the facts of the present case, more particularly since it relates to a policy decision by the State, where an exception is made to the general rule, therefore, in the considered opinion of this Court, the petitioners are not entitled to any interest upon the arrears. The petition stands disposed as **allowed**. Rule made absolute to the above extent.

MANISH MISHRA

(NIKHIL S. KARIEL,J)