IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 21926 of 2023

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CHUNILAL GANGAJI MODIYA
Versus
STATE OF GUJARAT

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Appearance:
MR.SUBHASH G BAROT(2619) for the Petitioner(s) No. 1
for the Respondent(s) No. 2,3,4,5,6
ADVANCE COPY SERVED TO GOVERNMENT PLEADER/PP for the Respondent(s) No. 1
MR ADITYA PATHAK, AGP for the Respondent(s) No.1

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CORAM:**HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**

Date : 04/01/2024
ORAL ORDER

1. Heard learned advocate Mr. Subhash G. Barot on behalf of the petitioner and learned AGP Mr. Aditya Pathak on behalf of the respondent – State.

2. By way of this petition, the petitioner *interalia* challenges a communication dated 01.12.2023 by the District Education Officer, Sabarkantha, Himmatnagar to the respondent No.6 herein whereby it has been informed that in view of the order passed by the Director of Schools dated 07.11.2023, more particularly, in an appeal filed by the respondent No.6 – School, from the next month, the grant in so far as the salary being paid to the petitioner would not be issued by the State.

3. Having considered the submissions made by learned advocate Mr. Barot and having perused the petition, it

would appear that the petitioner had been appointed with the respondent No.6 as an Office Assistant in fixed pay of Rs.4,500/-, and whereas since the appointment of the applicant was not being confirmed, the applicant had approached the Gujarat Secondary Education Tribunal, vide Application No.75 of 2013 and whereas vide an order dated 23.11.2013, the learned Tribunal had disposed of the application with a direction to the School to send a proposal to the DEO for regularizing of the appointment of the applicant and DEO to pass an appropriate order upon the proposal in accordance with rule. It would appear that pursuant to such a direction, the appointment of the applicant had been confirmed and whereas it would appear that after approximately 9 years of of such confirmation, the Audit Department had raised an objection as regards the confirmation of the present applicant, vide an audit objection dated 20.04.2022. It would appear that the said audit objection had been challenged by the respondent No.6 – School before the Commissioner of Schools and whereas vide an order dated 07.11.2023 the same have been rejected. It would also appear that the respondent No.6 – School has preferred an appeal against the said order before the Education Department which is pending

consideration. It would also appear that pending the appeal before the Commissioner, the respondent – State had continued to pay the salary to the present petitioner and whereas it is in this context after order dated 07.11.2023 that the DEO had informed respondent No.6 – School as regards the decision of the State to discontinue the grant as far as salary to be paid to the petitioner was concerned.

4. Having regard to the above position, since it would appear that the appeal preferred by the respondent No.6 – School is pending consideration of the Education Department and since it would appear that during the proceedings before the Commissioner of Schools, the petitioner had received salary, in the considered opinion of this Court, the grievance of the petitioner could be redressed if a direction is given to the Education Department to decide the appeal preferred by the respondent No.6 – School within a stipulated period of time and whereas the salary being paid to the petitioner would be continued till then.

5. Learned advocate Mr. Barot and learned AGP Mr. Aditya Pathak would not have any objection to such a

course of action. Considering the same, following directions are passed:-

(i) The respondent No.1 i.e. the Education Department, State of Gujarat to decide the appeal preferred by respondent No.6 – School against order dated 07.11.2023 passed by the respondent No.2 within a period of one month from the date of receipt of this order.

(ii) The respondent - State shall continue to pay salary to the petitioner till the appeal as referred to hereinabove, is finally decided.

6. With this observations and directions, the present petition stands disposed of. Needless to clarify that this Court has not observed anything on the merits of the matter and whereas the Education Department where the appeal preferred by respondent No.6 – School is pending shall taken an independent decision in accordance with law.

(NIKHIL S. KARIEL,J)

Manoj Kumar Rai