

N.R. Pathak Vs. State and ors.

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Court : Gujarat

Decided On : Jan-11-1983

Reported in : (1984)1GLR61

Judge : A.S. Qureshi, J.

Appellant : N.R. Pathak

Respondent : State and ors.

Advocate for Pet/Ap. : Mr. J.D. Ajmera

Judgement :

A.S. Qureshi, J.

1. This is a petition filed under Article 226 of the Constitution of India by the petitioner who was appointed as a School Teacher in R.L. Pandya High School, respondent No. 4 herein, on and from 14th June, 1968 by the letter of appointment of the same date annexed hereto as Annexure 'A'. The petitioner continued to work as teacher in the respondent No. 4 High School which was termed as High School without any clear specification as to whether it was a primary school or a secondary school. The Government of Gujarat-respondent No. 1-herein had by its resolution passed and enforced in March 1965 bifurcated the then existing High Schools into primary/secondary section, standards I to VII were treated as primary section and VIII to XI were treated as secondary section. The petitioner continued

to work as a secondary teacher from the date of his appointment upto the year 1977 and was paid the salary of a secondary teacher with all the benefits granted to the secondary teacher. In the year 1977 it seems that the Government auditors took objection that the petitioner was not even a protected teacher and hence he ought not to have been regarded as a secondary teacher. The management of the respondent school, therefore, assigned work to the petitioner in the primary section and was paid the salary of a primary teacher from that date onwards. The petitioner thereupon filed Special Civil Application No. 1612 of 1980 in this Court gave direction that the Director of Education will determine the status of the present petitioner. Accordingly the Director of Education by his order dated Nil decided that the present petitioner having been employed in the secondary section and having worked as secondary teacher and was paid the salary of a secondary teacher, was entitled to be treated as a secondary teacher. This decision was communicated by the office of the Director of Education to their solicitors M/s. Ambhubhai & Diwanji with a covering letter dated 10th October, 1980. The petitioner has contended that the said decision of the Director of Education has not been implemented and that he has not been allocated the work as a secondary teacher.

2. Mr. J.D. Ajmera the learned Counsel for the petitioner submits that the petitioner was a secondary teacher at all material times and that he had been paid the salary of a secondary teacher till 1977, when on account of the audit objection the petitioner was allocated the work in the primary section for which there is no legal justification. According to Mr. Ajmera this act was arbitrary, illegal and void and that the petitioner's status as a secondary teacher having been confirmed by the Director of Education pursuant to the direction given by this Court in the aforesaid Special Civil Application No. 1612 of 1980 the petitioner is entitled to get the work of secondary teacher allocated to him and be paid accordingly.

3. Mr. R.M. Vin, the learned Counsel for the School Management-respondent No. 4 herein has submitted that the management has no objection in treating the petitioner as a secondary teacher and was, in fact, treated as such till the audit objection was raised in 1977 and that the management is prepared to act upon the aforesaid finding of the Director of Education. Mr. Vin, however, stated that dues in

the salary of the petitioner from 1977 when he was allocated the work of primary section and paid accordingly may have to be paid to the petitioner and that the School Management may be held to be entitled to claim the said amount by way of grant from the State i.e. respondent No. 1.

4. Against this submission of Mr. Vin, Mr. M.A. Panchal, the learned Counsels for the respondent Nos. 1, 2 & 3 has submitted that if the School Management had chosen to allocate work of primary section to the teacher the management cannot be said to be entitled to claim reimbursement for the dues in salary of the petitioner-teacher. Mr. Panchal apparently has over-looked the fact that the allocation of work in the primary section was solely due to the audit report of the Government and it was not a voluntary act on the part of the management and, therefore, the question of reimbursement in respect of the dues in salary payable to the petitioner would be governed by the Department and that the allocation of work of primary section being based solely on the audit report the management would be justified in claiming the same from the respondent-State. This question, however, will have to be decided as per the Rules in force at the material time. For the time being, it would be sufficient to direct that the respondents will give effect forthwith to the aforesaid decision of the Director of Education and treat the petitioner as a secondary teacher, allocate him work in the secondary section and pay him the salary accordingly. Similarly the dues in the salary actually paid and the amount which was payable to the petitioner as a secondary teacher also will be paid by the School Management subject to their right to reimbursement from the State Government as stated above.

In the result, rule is made absolute with no order as to costs.