

HIGH COURT OF GUJARAT**CHAIRMAN MANAGING COMMITTEE & 1**
Versus
BHAVESHKUMAR MANUBHAI PARAKHIA & 3**Date of Decision:** 08 February 2017**Citation:** 2017 LawSuit(Guj) 105**Hon'ble Judges:** [J B Pardiwala](#)**Eq. Citations:** 2017 LabIC 1379**Case Type:** Special Civil Application**Case No:** 10029 of 1999**Subject:** Constitution, Labour and Industrial**Acts Referred:**[Constitution Of India Art 227](#)[Industrial Disputes Act, 1947 Sec 17\(b\).](#)[Gujarat Secondary Education Act, 1972 Sec 31](#)[Bombay Primary Education Act, 1947 Sec 40E, Sec 40B\(1\)\(a\), Sec 2\(17\).](#)**Advocates:** [Nanavati Associates](#), [A D Oza](#), [H S Munshaw](#)**Cases Referred in (+): 13****J.B.Pardiwala, J.**

[1] By this application under Article 227 of the Constitution of India, the applicants have prayed for the following reliefs :

"(A) Your Lordships may be pleased to issue a writ of certiorari or any other writ in the nature of certiorari or a writ of mandamus or any other writ in the nature of mandamus or any other appropriate writ, order or direction, quashing and setting aside the impugned judgment and order dated 30.10.99 at Annexure-A.

(B) Pending the hearing and final disposal of this petition, Your Lordships may be pleased to stay the operation and implementation of the impugned judgment and order dated 30.10.99 at Annexure-A.

(C) Ex-parte ad-interim relief in terms of Prayer (B) above may kindly be granted.

(D) Such other and further relief as may be deemed just and proper in the facts and circumstances of the present case may kindly be granted."

[2] The facts giving rise to this application may be summarised as under :

The applicant no.1 is the Chairman of the Managing Committee of the Birla Sagar Higher Secondary School run and managed by a public trust. The applicant no.2 is the Principal of the school. The school is affiliated to the Central Board of Secondary Education, New Delhi. The school imparts education from Standard-I to Standard-XII in the English medium and Standard-I to Standard-X in the Hindi medium. The respondent no.1 was appointed as a P.T. Teacher purely on temporary basis on 14th June 1995 and his tenure expired in May 1996. Thereafter, the respondent no.1 was reappointed purely on temporary basis in the Hindi medium section of the Birla Sagar Higher Secondary School. The respondent no.1 was reappointed from time to time on temporary basis and lastly on 8th June 1998 till May 1999 on temporary basis subject to the terms and conditions stated in the appointment letters. The school management, acting on the complaint filed by various students, terminated the services of the respondent no.1 with effect from 25th September 1998. The respondent no.1 being aggrieved with such action on the part of the applicants, challenged the order of termination before the Primary Education Tribunal by way of an Application No.156 of 1998. The Tribunal, vide order dated 12th October 1998, stayed the operation of the order of termination. Ultimately, vide order dated 30th October 1999, allowed the application filed by the respondent no.1 declaring the termination to be illegal. The Tribunal ordered reinstatement in service with full backwages.

[3] Being dissatisfied, the applicants have come up with this application.

[4] On 20th September 2002, the following order was passed :

"Heard Mr.K.S.Nanavati for the petitioner-school management and Mr. A.D.Oza for the respondentteacher.

2. The case of the management is that respondent No.1 was appointed as a teacher on a temporary basis from year to year basis with continuity of service and that in any view of the matter, his appointment as per the order dated 8.6.1998 was to enure only till May, 1999 and as per the said order, the respondent-teacher was to be paid consolidated salary at the rate of Rs.2,600/- per month. It is submitted that even if the termination is found to be invalid for any reason, the respondent-teacher would not have been entitled to be continued in employment

beyond 31.5.1999. Strong reliance is placed on the decision of the Apex Court in [Mahendra Singh Dhantwal vs. Hindustan Motors Ltd.](#), 1976 4 SCC 606, the decision of the Madras High Court in [VRMS Bus Service vs. Labour Court, Coimbatore](#), 1961 2 LLJ 507 and on the decision of the Orissa High Court in [Hindusthan Steel Ltd. vs. Rourkela Mazdoor Sabha](#), 1969 2 LLJ 202 in support of the contention that even the Labour Courts under the Industrial Laws cannot grant a relief which would go beyond the period for which the workman was appointed.

It is also submitted that the provisions of Schedule "F" to the Bombay Primary Education Rules, 1949 would not apply as the petitioner school is a school affiliated to the Central School Board.

As regards the direction given by the Tribunal for payment of salary in the pay-scale prescribed by the State Government, it is submitted that the respondent teacher has not raised any such dispute before the Tribunal while he was in service. It was only after the termination of services, the claim was made for higher pay-scale.

Reference is also made to the conduct of the respondent-teacher as set out in para 9(iii) of the reply before the Tribunal.

3. On the other hand, the case of the respondent-teacher is that the Tribunal has already held that the petitioner-school management is governed by the provisions of Schedule "F". As per the said provisions, a temporary employee on completion of two years' service shall be treated as a permanent employee and that even a probationer on completion of two years' service is required to be treated as a permanent employee. Reference is also made to the procedure prescribed by Rule 13 of Schedule "F" and to the provisions of Section 40B of the Bombay Primary Education Act in support of the submission that the Tribunal has rightly held that the services of the respondent-teacher were terminated without following the procedure prescribed by law; the Tribunal has rightly granted arrears of difference of salary right from the date of appointment. Strong reliance is placed on the decisions of this Court in 18 GLR 615, 19 GLR 247, 20(2) GLR 697 and 21(1) GLR 573.

4. Having heard the learned counsel for the parties, the following order is passed :-

Rule. Till final disposal of the petition, there shall be interim relief against implementation and execution of the impugned judgment and order dated 30.10.1999 (Annexure "A") subject to the following terms and conditions:-

(i) The respondent-teacher shall either be reinstated in service by 1-10-2002 or the respondent-teacher shall be paid (by an account payee cheque in the name of the respondent) the salary last drawn by him at the time of termination i.e. Rs.2600/- per month regularly on or before 10th day of every subsequent month with effect from 1-10-2002, that is to say, the first such payment shall be made for the month of October by 10th November, 2002.

(ii) The petitioner-management shall pay to the respondent-teacher by 20th October, 2002 the arrears of salary at the rate of Rs.2600/- per month for the period from 25th September, 1998 to 30th September, 2002.

The amount of Rs.25,000/- paid by the petitioner management to the respondent-teacher recently shall be adjusted against the aforesaid amount.

(iii) The arrears of difference of salary payable to the respondent-teacher as per the impugned judgment of the Tribunal for the period from 14.6.1995 to 30.9.2002 shall be worked out by the petitioner-management and the same shall be deposited with the Registry of this Court by 20th November, 2002 and the Registrar shall invest the same in Fixed Deposit in cumulative interest scheme with State Bank of India. The amount shall be invested for a period of three years and shall continue to be invested until further orders of this Court.

(iv) As far as difference of salary for the period from 1.10.2002 onwards is concerned, the Court shall pass appropriate orders at the time of final hearing."

[5] The order passed by a learned Single Judge of this Court referred to above was challenged by the applicants herein by filing the Letters Patent Appeal No.807 of 2002. The Letters Patent Appeal came to be disposed of vide order dated 26th November 2002, which reads as under :

"The appellants have challenged the order of the learned Single Judge dated 20.09.2002 to the extent of grant of interim relief on the condition that the respondent-teacher shall be paid the salary last drawn by him at the time of termination i.e. Rs.2,600/- per month regularly and that the appellants should also pay to the teacher arrears of salary at the said rate from the period from 25.09.1998 to 30.09.2002 by 20th October, 2002. As regards the arrears of difference of salary payable to the teacher as per the judgment of the Tribunal from the period from 14.06.1995 to 30.09.2002, it was directed that it should be worked out and deposited in the Registry by 20th November, 2002 and be invested in the fixed deposit.

2. Though the provisions of Section 17(B) of the Industrial Disputes Act are not applicable, the learned Single Judge appears to have exercised discretion of imposing these conditions while granting stay against reinstatement of the teacher. According to the learned counsel for the appellants, because no regular departmental inquiry was held in respect of the alleged misappropriation of the amounts which were meant to be spent on the students by the respondent who was a physical training teacher when the students were taken for a hockey tournament and the order of termination simpliciter was made, the Tribunal, finding that it was in reality a punishment, set aside his termination.

3. The condition imposed by the learned Single Judge for granting interim stay against the order of reinstatement, does not appear to be harsh or improper and the order is made by the learned Single Judge in a valid exercise of judicial discretion. We do not find any sufficient reason to interfere with the said order by exercising our appellate powers under Clause-15 of the Letters Patent Appeal. Since the time for paying arrears was granted by the learned Single Judge upto 20th October, 2002 and the time for paying arrears of difference of salary payable to the teacher was granted upto 20th November, 2002 in terms of clauses (ii) & (iii) respectively of para 4 of the order and the appellants were pursuing the present appeal, we direct that the time for paying the arrears under clause (ii) and arrears of difference under clause (iii) of para 4 of the order shall stand extended upto 16th December, 2002 as prayed for by the learned counsel for the appellants.

4. Having regard to the facts and circumstances of the case, we direct that S.C.A. No. 10029 of 1999 be listed for final hearing before the learned Single Judge on 22nd January, 2003. Subject to this direction, the appeal is summarily dismissed.

The application stands rejected as the appeal is dismissed."

On 31st July 2012, the following order was passed : "Learned counsel, Mr.Chudgar appearing for Nanavati Associates for the petitioners and learned counsel, Mr.A.D.Oza, for respondent no.1 jointly submitted that overall amount required to be paid to the respondent by the petitioners is being calculated and on that basis they propose to negotiate for an amicable settlement. Therefore, some time was required for finalizing calculations of the parties and working out a solution, as far as possible by agreement and mutual consent. Accordingly, hearing is adjourned to 16th August 2012, by which date the parties concerned should have exchanged their calculations and offers and negotiated so as to facilitate the Court in disposing the matter either on the basis of a compromise or, if necessary, on merits."

On 8th February 2016, the following order was passed :

"Counsel for the petitioners submitted that the petitioners' school is affiliated to Central Board and enjoys exemption from the purview of the Section 31 of the Secondary Education Act. He submitted that the Central Board does not recognise different sections in a school like primary, secondary or higher secondary. There are guidelines regarding the terms and conditions of teaching and non teaching staff of the school which have to be followed by affiliated schools. There is no material on record with respect to these aspects. The petitioners shall file affidavit producing necessary materials in support thereof within 2 weeks with a copy to the other side. To be placed for hearing after that."

[6] Mr.Nandish Chudgar, the learned counsel appearing for the applicants, vehemently submitted that the Tribunal committed a serious error in passing the impugned order. He submitted that the Tribunal had no jurisdiction to entertain the application filed by the respondent no.1. He submitted that the school is affiliated to the Central Board of Secondary Education since its inception. The permanent affiliation was granted by the Central Board to the school for Standard-I to Standard-XII and is not restricted to any medium. He submitted that the Tribunal failed to consider that the school in question is not a primary school within the meaning and definition of 'primary school' as defined in Section 2(17) of the Bombay Primary Education Act, 1947. He submitted that the Tribunal failed to consider the provisions of Section 40E of the Act. Under Section 40E, the Tribunal has the jurisdiction to decide a dispute between a manager of a recognised private primary school and its teacher in respect of the condition of service of a teacher.

[7] Mr.Chudgar submitted that the appointment of the respondent no.1 was not within the parameters prescribed by the provisions of the Act. It is submitted that according to the Schedule-F to the Bombay Primary Education Rules, 1949, the pre-requisite condition for appointment as a teacher in a private primary school is that a person should not be more than 25 years of age. The respondent no.1, at the time of his initial appointment, was aged 26 years. He submitted that even if the Bombay Primary Education Act is applicable, the appointment of the respondent no.1 could be termed as illegal and void-ab-initio. He was otherwise not qualified to be appointed as a teacher of a primary school. In such circumstances referred to above, Mr.Chudgar prays that there being merit in this application, the same be allowed and the impugned order of the Tribunal be quashed.

[8] In support of his submissions, Mr.Chudgar has placed reliance on the following decisions :

- (i) [State of M.P. and others v. Shyama Pardhi and others](#), 1996 7 SCC 118;

(ii) [Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. v. Devendra Kumar Jain and others](#), 1995 1 SCC 638; and

(iii) [Raj Narain Bajpai and others v. Central Board of Secondary Education, New Delhi, and others](#), 1989 1 GLR 367

[9] On the other hand, this application has been vehemently opposed by Mr.A.D.Oza, the learned counsel appearing for the respondent no.1. Mr.Oza submitted that no error, not to speak of any error of law, could be said to have been committed by the Tribunal in passing the impugned order. Mr.Oza invited my attention to Section 40B(1)(a) of the Act, which reads as under :

"40B. Dismissal removal or reduction in rank of teachers.- (1)(a) No teacher of a recognised private primary school shall be dismissed or removed or reduced in rank nor service be otherwise terminated until

(i) he has been given by the manager an opportunity of showing cause against the action proposed to be taken in regard to him; and

(ii) the action proposed to be taken in regard to him has been approved in writing by the administrative officer of the school board in the jurisdiction of which the private primary school is situate :"

[10] Mr.Oza thereafter invited my attention to Section 40E of the Act, which reads as under :

"40E. Dispute to be decided by Tribunal.- Where there is any dispute between the manager of a recognised private primary school and teacher in service of such school, which is connected with the conditions of service of such teacher, the manager or, as the case may be, the teacher may make an application to the Tribunal constituted under section 40F for the decision of the dispute."

Section 40F reads as under :

"40F. Tribunal.- (1) there shall be constituted by the State Government by an order published in the Official Gazette one or more Tribunals for the purpose of this Chapter.

(2) A Tribunal shall have jurisdiction for such area as may be specified by the State Government in the order referred to in sub-section (1).

(3) The State Government shall appoint a District Judge or a person who has been or is qualified to be Judge of a High Court or to be a district Judge to be the

Tribunal.

(4) It shall be the duty of the Tribunal to entertain and decide disputes of the nature referred to in section 40E and the deal with and decide all applications and proceedings made or transferred to it under sub-section (2) of section 40G and also entertain and decide appeal made under sub-section (5) of section 40B.

(5) The Tribunal shall follow such procedure as the State Government may by general order direct.

(6) The Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (V of 1908), when trying a suit, in respect of the following matters, namely:

(a) enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents and material subjects;

(c) issuing commissions for the examination of witnesses;

(d) such other matters as may be prescribed: and every inquiry or investigation by the Tribunal shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228 (XLV of 1860), of the Indian Penal Code.

(7) The Tribunal shall be deemed to be a court for the purpose of section 5 of the Limitation Act, 1963 (36 of 1963).

(8) The decision of the Tribunal shall be final and no suit shall lie in any civil court in respect of the matters decided by it.

(9) Where any order of dismissal, removal or reduction in rank of a teacher of a recognised private primary school is decided by the Tribunal to be wrong, unlawful or otherwise unjustified, the Tribunal may pass an order directing that the teacher concerned shall be reinstated in service or, as the case may be, restored to the rank which he held immediately before his reduction in rank, by the manager, and the manager shall forthwith comply with such direction."

[11] He submitted that the affiliation of a school to the Central or the State Board is not relevant in so far as the jurisdiction of the Tribunal established under Section 40F of the Act is concerned.

[12] Mr.Oza submitted that the service of his client came to be terminated by the applicants on the ground of misappropriation of funds, misbehaviour with the students, etc. He submitted that the termination was not simplicitor but it contained a stigma

and the service of even a temporary employee cannot be terminated if it carries a stigma. He invited my attention to the following averments made in the affidavit-in-reply filed by the Principal of the school, wherein it has been stated as under :

"(i) As stated herein above the applicant was appointed as Physical Education Teacher in the Birla Sagar Higher Secondary School.

(ii) The applicant had accompanied 11 students of the school to Dhoraji on 7.9.1998 to participate in State level winter hockey tournament.

(iii) On 19.9.1998 aforesaid students complained against the applicant for misappropriation of funds, misbehaving and cheating with the students. The said fact was communicated to the opponent no.2 by the principal of Birla Sagar Higher Secondary School, vide letter dated 19.9.1998. The said complaint dated 19.9.1998 along with letter of opponent no.1 dated 19.9.1998 is annexed herewith and marked as Annexure"IV" collectively. The expense report dated 9.9.1998 and vouchers submitted by the applicant are annexed hereto and marked as Annexure "V" collectively.

(iv) It was found that the applicant paid less daily allowance to the students and claimed double the amount. Fraudulently the applicant took signatures of the students against the name of each of them by keeping the column of daily allowance in the document blank so that the students may not know the difference of payment and the claimed one. Transportation charges were also claimed more than really spent. Also, the applicant made the students walk the distances, while he claimed Rickshaw charges from the management.

(v) The said facts were confirmed by the students. The amount thus embezzled was not a big one but the act itself was not a moral one for a teacher and was of cheating not only the management, but the students also. Also, the applicant instead of taking the students in Rickshaw, made them walk and suffer for his own monetary gain.

(vi) The school management decided for termination simplicitor on humanitarian ground, so that the record of the applicant would not suffer. Hence, an inquiry was not held by the school management against the applicant and the applicant was terminated simply."

[13] Mr.Oza, in support of his submissions, has placed reliance on the following decisions :

- (i) [Satsangi Shishuvihar Kelavani Trust and others v. P.N.Patel and others](#), 1977 GLR 615;
- (ii) [Chhaganbhai P.Oza v. The Ahmedabad Jesuit Schools Society and others](#), 1978 GLR 347;
- (iii) [Natvarbhai Purshottambhai Patel and another v. Secretary Pariaj High School and others](#), 1979 2 GLR 697; and
- (iv) [Vinodkumar Hematram Dave v. Secondary Education Tribunal and others](#), 1980 1 GLR 573

[14] Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is, whether the Tribunal committed any error in passing the impugned order.

[15] Section 2(17) of the Act, 1947 defines 'primary school' to mean, 'a school or a part of a school in which primary education upto any standard is imparted'. Section 2(18)(A) of the Act defines 'private primary school' to mean 'a private primary school which is not maintained by the State Government or by a school board or by an authorized municipality'. Sub-section (1) of Section 40A of the Act imposes prohibition against imparting primary education by private primary schools without recognition. Sub-section (3) thereof provides, inter alia, that every private primary school which, on the commencement of the Bombay Primary Education (Gujarat Amendment) Act, 1986, shall be deemed to have been recognised under the said section from the date of such commencement and shall continue to be so recognised until such recognition is withdrawn under sub-section (7) thereof. Section 40E of the Act provides that, where there is any dispute between the manager of a recognised private primary school and teacher in service of such school, which is connected with the conditions of service of such teacher, the manager or the teacher may make an application to the Tribunal for decision of the dispute. Sub-section (1) of Section 40F of the Act provides for establishment of the Tribunal. Subsection (4) thereof enjoins upon such Tribunal to entertain and decide disputes of the nature referred to in Section 40E of the Act. Neither of the aforesaid provisions referred to affiliation of a primary school. Therefore, affiliation of a school to one board or another is not relevant in so far as the jurisdiction of the Tribunal established under Section 40F of the Act is concerned. The contention of Mr.Chudgar that the school is not recognised as envisaged under the Act should fail in view of Section 40A of the Act. The school in question being a recognised private primary school, the Tribunal established under Section 40F of the Act has the jurisdiction to entertain and decide the dispute raised by the respondent no.1. (see

[Mrs.Ranjan Odedra v. Birla Sagar Higher Secondary School and another](#), 2004 1 GLH 175)

[16] The only further question which would arise for my consideration is, how far in the writ jurisdiction or supervisory jurisdiction the order of the Tribunal can be interfered with. That position is completely well settled after the decision in the case of [State of A.P. v. C.Venkata Rao](#), 1975 AIR(SC) 2151. At page 2155, Their Lordships pointed out that the jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction and the Court which exercises is not an appellate Court. The findings of fact reached by an inferior Court or Tribunal as a result of the appreciation of evidence are not reopened or questioned in the writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact; however, grave it might appear to be. In regard to a finding of fact recorded by a Tribunal, a writ can be issued if it is shown that in recording the said finding the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said findings are within the exclusive jurisdiction of the Tribunal. (see [Syed Yakoob v. K.S.Radhakrishnan](#), 1964 AIR(SC) 477)

[17] I am not at all impressed by the submission canvassed on behalf of the applicants that since the initial appointment of the respondent no.1 was illegal or void-ab-initio, he could not have questioned his termination before the Tribunal.

[18] The reliance placed on the decision of the Supreme Court in the case of State of Madhya Pradesh in this regard is thoroughly misconceived. In the said case, the Supreme Court took the view that since the persons were not possessing the pre-requisite qualifications prescribed by the statutory rules and were wrongly selected after successful completion of the training, the termination of their appointment did not attract the principles of natural justice. This ratio, in my view, has no application to the facts of the case at hand. The respondent no.1 was appointed by the applicants and they cannot take advantage of their own wrong. Even otherwise, this contention has no merit. The Division Bench decision of this Court in the case of Raj Narain Bajpai is also of no avail to the applicants.

[19] In the overall view of the matter, I do not find any good reason to interfere with the impugned order passed by the Tribunal. This application, therefore, fails and is

hereby rejected. Reinstatement of the respondent no.1 in service is now out of question as he has already retired from service. I am told that the school is also non-functional. The backwages will have to be worked out after adjusting the amount which has been deposited with the registry of this Court and invested by way of a fixed deposit and the amount which has been paid by the applicants so far to the respondent no.1 in accordance with the directions issued by this Court in the order dated 20th September 2002. I am not going into the issue as regards the exact amount due and payable as on date to the respondent no.1 as, in my view, this exercise should be taken up by the Tribunal itself. If there is any dispute in this regard, the Tribunal shall look into the same and pass appropriate orders in accordance with law.

