

Non-reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1095 OF 2010

(Arising out of SLP(Civil)No. 21627 of 2005)

SHANTINIKETAN HINDI PRIMARY SCHOOL Appellants(s)

Versus

PAL HARIRAM RAMAVTAR AND ORS. Respondent(s)

JUDGEMENT

K.S.Radhakrishnan, J.

Leave granted.

2. Shantiniketan Educational Trust claiming to be a minority institution is running two primary unaided schools, one in Gujarati medium and the other in Hindi medium, in State of Gujarat. Respondent nos. 1- 4 were working as teachers in those schools. Their services were terminated on 05.07.1996 on the ground that they had absented from duties without informing the Management which according to the management amounted to gross indiscipline. Against the order of termination of service they filed

Application no. 241 of 1996 before the Gujarat Primary Education Tribunal. While they were in service they had filed Application nos. 3 of 1993, 30 of 1993 and 193 of 1994 before the said Tribunal claiming parity of pay and allowances as per government rules applicable to the untrained teachers. All the applications were heard together by the Tribunal and a common order was passed on 14.07.2000 quashing the termination orders and directing reinstatement with full salary and other benefits from the date of termination till the date of the order with a further direction to pay the salary and other benefits applicable to untrained teachers as per Government Rules, from the dates of their appointment. The Management filed a Writ Petition being Special Civil Application No.6918 of 2001 which was dismissed by learned Single Judge of the Gujarat High Court on 19.02.2002 which was affirmed by the Division Bench vide order dated 30.10.2004. Aggrieved by the same this appeal has been preferred by the employer school.

3. Ms. Manisha T. Karia, learned counsel appearing for the appellant submitted that the Tribunal as well as the High Court has committed a grave error in ordering reinstatement with back-wages and also giving a direction to the Management to pay the salary from the date of

appointment as per Government Rules. Learned counsel also submitted that the appellant institute is a minority institution entitled to protection under Article 30 of the Constitution of India. Learned counsel further submitted that respondent nos. 1- 4 were unqualified, appointed as temporary teachers purely on *ad hoc* basis on a fixed salary of Rs.724/- per month and they were not qualified trained teachers falling under para 6 of the Schedule 'F' of Bombay Primary Education Rules 1947. Further it was also stated that the Trust was managing two primary schools, one in Gujarati medium and the other in Hindi medium. Owing to paucity of funds and due to lack of requisite number of students, the schools had to be closed down for the years 1995-96 and 1996-97. Learned counsel further submitted that the direction given by the Tribunal to pay the full salary and other benefits to respondents as per Govt. rules would cause considerable financial strain on the schools and might lead to the closing down of the schools. Learned counsel further submitted that respondent nos. 1 to 4 were untrained and unqualified teachers and the direction given to reinstate those teachers are illegal. Learned counsel further submitted that the Management had followed relevant rules before terminating the services of respondent nos. 1 to 4.

4. Mr. Nachiketa Joshi, learned counsel appearing for respondent nos.1- 4 submitted that the Management has committed a grave error in terminating the services of the respondents on flimsy reasons. Learned counsel further submitted that respondents' services were terminated since they had approached the Tribunal for pay and allowances as per Government Rules applicable to untrained teachers. He also submitted that the procedure laid down under the Bombay Primary Educational Act and Rules were not followed before terminating the services of respondents and hence the Tribunal was justified in ordering reinstatement with full salary and allowances and also giving a direction to the Management to revise the pay and allowances as per Government Rules applicable to untrained teachers.

5. The appellant is a recognized unaided Primary School governed by the provisions of the Bombay Primary Education Act 1947. The 1st Respondent, herein a graduate was appointed as Assistant Primary Teacher in the Hindi Medium of the School on 5.6.1987. 2nd respondent, who was possessing the qualification of SSC was appointed in the school as a Teacher for the course of Handicraft and Book binding on 8.7.1985. The 3rd respondent was appointed as Assistant Teacher in the Gujarati

Medium of the school on 22.6.1986 and the 4th respondent was appointed on Assistant Primary Teacher in the Gujarati medium on 5.6.1987. They were discharging their duties without any complaint from any quarters. Noticing that they were not getting the pay and allowances as per Government Rules applicable to untrained teachers, they approached the Tribunal and filed application nos.3 of 1993 and 30 of 1993 for a direction to the Management to pay the salary and allowances as per Government Rules. Apparently, irked by such demand, their services were terminated by the Management on the ground that they had absented from duty without informing the Management which amounted to gross indiscipline. The Tribunal after an elaborate discussion of the various contentions raised by the parties and also examining the provision of Bombay Primary Educational Act, 1947 and the Gujarat Amendment Rules 1978 came to the conclusion that the order of termination was bad since the Management had not followed by proper procedure in terminating their services. Further, it was also found that the respondents were entitled to get the pay and allowances as per Government Rules applicable to untrained teachers.

6. The main contention raised by the Management before us was respondents were unqualified to hold the post and also that they were

not trained teachers. We notice that the reason for termination of services was not that they were unqualified or untrained teachers but that they had absented from duties. Assuming that they had absented from duties even then admittedly procedure laid down under Clause 13 and 18 of Schedule 'F' of the Bombay Primary Education Rules, 1949 had to be followed before terminating their services. The Tribunal and the High Court had therefore rightly held that the orders of termination of services of the respondents was bad in law.

7. Rule 106A of the Bombay Primary Education Rules deals with the application for recognition. Sub-rule 2 of Rule 106-A states that every application under sub-rule 1 shall be sent to the authorized officer by registered post with acknowledgment due together with an undertaking in writing that the conditions of employment of teachers in the private primary schools shall be those as specified in Schedule 'F' appended to these rules. Schedule 'F' deals with the model conditions of employment of teachers in the private schools in the State of Gujarat which forms part of Rule 106A of the Rules. Clause (v) of sub-rule 4 states that no primary school shall be recognized or continued to be recognized unless the rates of tuition fee, pay-scales and allowances of the teaching staff shall be such as may be approved by the Government from time to time. Following the

above mentioned provisions, the Tribunal, on facts found that the respondents were working as teachers in the School for over ten years but they were paid only a consolidated monthly pay of Rs.724 per month, which was found to be not in accordance with rules. Tribunal in our view has correctly come to the conclusion that the respondents-teachers are entitled to get pay and allowances which are applicable to untrained teachers as per Government Rules.

8. Under the above circumstances, we find no reason to interfere with the order passed by the Tribunal which was confirmed by the High Court. Further, we notice that when this court had granted stay of the judgment vide orders dated 13.1.2006, recorded the statement of counsel for the management that it had disbursed Rs. 2 lakhs towards arrears of salary. Needless to say that amount would be adjusted towards salary due to the respondents. Considering the financial difficulties pointed out by the counsel appearing for the Management and the fact that the School had to be closed down for the years 1995-96 and 1996-97, and considering the fact that there were unauthorized absences, we are of the view that the respondents 1-4 are entitled to get only 50% of the salary and other benefits applicable to the untrained teachers as per Government Rules

from the date of appointment till the date of reinstatement after adjusting the above-mentioned amount. Ordered accordingly.

9. The appeal is disposed of as above.

.....J.
(R.V. Raveendran)

.....J.
(K.S. Radhakrishnan)

New Delhi;
February 01, 2010

