

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CIVIL APPLICATION NO. 11 of 2018
IN R/SPECIAL CIVIL APPLICATION NO. 18161 of 2017**

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AAL JIGNESHBHAI MOHANBHAI

Versus

STATE OF GUJARAT

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Appearance:

PETITION WITHDRAWN/DISMISSED for the PETITIONER(s) No.

DS AFF.NOT FILED (R) for the RESPONDENT(s) No.

MR GAURAV CHUDASAMA for the RESPONDENT(s) No.

MR HS MUNSHAW for the RESPONDENT(s) No.

MS RV ACHARYA for the RESPONDENT(s) No.

RULE SERVED BY DS for the RESPONDENT(s) No.

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CORAM: HONOURABLE MR.JUSTICE S.G. SHAH

Date : 18/12/2018

IA ORDER

1. Heard learned advocate Mr. Gaurav Chudasama for the applicant, learned advocate Mr. Devang Bhatt for Mr. H. S. Munshaw for the concerned respondents and learned AGP Mr. Soham Joshi for respondent – State. Perused the record.

2. The applicant herein is original petitioner No.5 in Special Civil Application NO. 18161 of 2017, wherein petitioners have prayed as under;

“A. This petition be admitted and allowed.

B. Your Lordships be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction to direct the respondents No.3 to cancel the first stage of the Inter District Transfer Camp and the respondent No.3 may be directed to hold the first stage of the camp a fresh.

C. Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to direct the respondent No.3 to quash and set aside the order of rejecting the application forms filed by the present petitioners including the names of the petitioners in the first round of the camp.

D. Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ, order or direction to direct the respondents authorities to consider the seniority from the date of appointment in their original mother school for the purpose of inter district transfer and other transfer.

D1. Your Lordships may be pleased to direct the respondent Nos. 2 to 5 to show the vacancies / set up of the school as per the position of 31/10 of this year in the inter district transfer camp.

E. Pending hearing and final disposal of this petition the respondent may be directed to accept the physical forms of the petitioners for the inter district transfer by considering the seniority from the date of appointment in their original mother school.

E1. Pending hearing and final disposal of this petition, the respondent Nos. 2 to 13 may be directed to accept the forms of the present petitioners for the first stage of the inter district transfer camp and accordingly the transfer of the petitioners may be given by considering their seniority.

E2. Pending hearing and final disposal of this petition, your lordships may be pleased to stay the communication dated 03.10.2017 issued by the respondent No.2.

F. Any other relief that may be deemed just, proper and necessary may also be kindly granted.”



3. Considering rival submissions, this Court has on 05.10.2017

while admitting the petition granted interim relief in terms of para 19 (E), (E1) and (E2), which are quoted herein above. Thereby, respondents were directed to extend the benefit of seniority of the applicants in their respective school before they were deputed as Cluster Resource Coordinator (CRC) when they have repatriated from such deputation in the year 2017. Though exact date of different applicants may be different it is somewhere in the year 2011 or 2012.

4. So far as present applicant is concerned, as disclosed on page 141 by the respondent, it is undisputed fact that applicant has joined services on 08.09.2003 in Vasna Nanodara Primary School in Bavla taluka. She has been transferred to Adodara Primary School on 13.06.2011 because there was access teachers in Vasna Nanodara Primary School. Therefore, she was serving in Adodara primary School till 03.10.2011. On 04.10.2011, she has left the school for joining her duty as CRC on deputation. On completion of such deputation, she has been posted at Shankot Primary School from 24.01.2017. The whole set of litigations with referece to such deputation is certainly on the issue of consideration of teachers who were sent on deputation when they were to posted in particular school after completion of deputation and more particularly at the time of regular yearly / periodical inter district transfer with reference to provisions of different government resolutions applicable to such teachers on subject of their inter

district transfer considering their seniority at the given place, this is not their overall seniority in their cadre but their presence in particular school on the date of such transfer.

5. It is undisputed fact that considering the overall facts and circumstances, government has already decided and was following the practice by rule to give priority and benefit of choice to the teachers who have served for longer time at particular place. This was called as seniority at the last station at the time of inter district transfer. It is undisputed fact that at the time of posting of such teachers on their repatriation, since their seniority of mother school could not be considered because of administrative exigencies, including vacancies at the school or station from where they have deputed, by interim relief, this Court has confirmed that since such practice is in the form of government resolution which is equal to Rules because of regular following such practice and since deputation and repatriation, which is not in hands or control of the petitioners / teachers / deputees, it would be appropriate for the respondents that they should strictly follow their government resolution by offering the seniority of last station at the time of inter district transfer of such teachers even if they are posted to some other place on repatriation. Therefore, this Court has already granted relief in favour of the similarly situated applicants, so as to get the benefit of their seniority once in their service tenure

→  *તમામ શૈક્ષણિક માહિતી, સરકારી નોકરી, પ્રાઇવેટ નોકરી, મટીરીયલ ,GK, પરિપત્રો મેળવવા અમારો WHATSAPP NO.-8141911891 આપના તમામ ગ્રુપમાં એડ કરો..* → 

6. In background of above fact and circumstance and typical situation arising in this application, applicant has prayed for following relief in this application;

“18A. This application be admitted and allowed.

B. Your Lordships be pleased to direct the respondent No.2 to 14 to give the transfer orders to the applicants as per their seniority for the first stage of the inter district transfer camp and further be pleased to direct the respondent No.2 to 14 to strictly comply with the order dated 05.10.2017 passed by this Hon'ble Court.

C. Your Lordships may be pleased to direct the respondent Nos. 2 to 14 to consider the seniority of the applicants and respondent Nos. 15 to 42 for the first stage of the inter district transfer camp and accordingly grant the benefits of transfer.

D. Pending hearing and final disposal of this application letter dated 05.06.2018 issued by the respondent No.2 for the second stage of inter district transfer camp may be stayed as the same has been issued against the order of this Hon'ble Court.

E. Any other relief that may be deemed just, proper and necessary may also be kindly granted.”

7. However, without entering into factual details and without disturbing on going process of inter district transfer camps it would be appropriate to consider following facts;

Selection of applicant in upper primary school is pursuant to provisions of two different Government Resolutions viz. Government Resolution dated 19.02.2014 (R3 page 126) and communication dated 02.05.2017 (R5 page 132). Reading of

such Government Resolution and letter, which was issued pursuant to the direction by this Court in orders dated 21.04.2017 and 24.04.2017 in Special Civil Application No.7320 of 2017 makes it clear that some benefit in selection is to be offered to such candidate.

It is also clear from record that therefore benefit of seniority at Adodara Primary School was not offered at the time of selection of option by the petitioner in upper primary school where she was posted from Shankot. Therefore, petitioner has not received any benefit of her tenure of service at Adodara Primary School at the time of inter district transfer at any point of time.

The service record at page 141 confirms that she had been placed at different school at given point of time, at the time of her selection in upper primary school.

Therefore, she is certainly entitled to the benefit of her seniority at Adodara school once in her service tenure, since it is as per practice and rules followed by the respondents for all the teachers.

8. Therefore, it would be appropriate to grant suitable relief in her favour. However, while doing such exercise, it has been disclosed that applicant would disclose her choice of school considering the available vacancies, so as to avoid to disturb other teachers who had already been transferred during regular inter

district transfer process / exercise by the respondents. In any case, such transfer would always subject to availability of vacancies. In principle, during transfer camp, generally teachers have to disclose their option base upon the availability of vacancies only and thereby irrespective of different choices, that may be offered by the respondents, if there is vacancies at the place of applicant's choice, then considering her seniority at Adodara Primary School, she may be placed at such school.

9. In view of above facts, circumstances and discussion, this application is disposed of with a direction to the respondents that if petitioner submits the written application disclosing her choice for inter district transfer within four weeks from today, then such request should be considered at the earliest, so as to transfer the applicant at such school, before next academic term or at the earliest before regular camp for any reason or purpose. It is to be noted that by such selection, applicant is practically let-going selection of her choice as per her entitlement and, therefore, such direction should not be treated as precedent. For the purpose, interim relief granted earlier shall stand modified to that extent, which would enable the respondents to take care of transfer of other teachers also in due course. Civil Application is partly allowed and disposed of accordingly. Rule is made absolute to that extent.

(S.G. SHAH, J)

DRASHTI K. SHUKLA