

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION NO. 2698 of 2014

=====

PATEL BRIJESHKUMAR RAMESHBHAI & 2....Petitioner(s)
Versus
STATE OF GUJARAT & 4....Respondent(s)

=====

Appearance:

MR ANAND J YAGNIK FOR MR UMANG A. VAGHELA, ADVOCATE for the Petitioners
MR DM DEVNANI, ASSTT. GOVT. PLEADER for Respondent(s) No. 1

=====

**CORAM: HONOURABLE SMT. JUSTICE ABHILASHA
KUMARI**

Date : 19/02/2014

ORAL ORDER

1. Learned advocate for the petitioners has moved a Draft Amendment. The same is granted and may be carried out on, or before, 20.02.2014.
2. The petitioners herein are Head Teachers and are serving as such in District Dahod. Pursuant to an Advertisement issued by the Office of the Gujarat State Primary Education Selection Committee (respondent No.2) dated 27.12.2013, the petitioners applied for the post of Head Teacher in different Districts. Petitioner No.1

BHADRASINH

gave a preference for Kheda District, petitioner No.2 gave a preference for Banaskantha District and petitioner No.3 gave a preference for Panchmahal District. The petitioners were selected and given appointments as Head Teachers. Petitioner No.1 was given appointment on 29.01.2014 in Kheda District, petitioner No.2 was given appointment on 28.01.2014 in Banaskantha District and petitioner No.3 was given appointment on 30.01.2014 in Panchmahal District.

3. The grievance of the petitioners, as voiced in the petition, is two-fold. The first grievance is that even though there is no such rule, the respondents are insisting that the petitioners and other similarly situated persons give an Undertaking to resign from their earlier posts before accepting the fresh appointments. This has been made a condition precedent for the fresh appointment. It is the case of the petitioners that if such Undertakings are given, it would result in wiping out the seniority of the petitioners and all other benefits flowing

therefrom under the earlier period of service rendered by them as Head Teachers under the same employer, that is, the State Government, and in the same Department.

4. The second grievance of the petitioners is related to the manner in which preference is being given to the promotees in the matter of choice of Districts in primary schools.
5. Rule 3 of the Gujarat Primary Education Act, 1947, as incorporated in Notification dated 18.01.2012, of the Education Department, Government of Gujarat, provides for appointment by promotion and direct selection, to be made in the ratio of 1:1. This means that the choice of place within a District shall first be offered to a promotee and then to a direct recruitee, and so on in the ratio of 1:1. However, the respondents are giving first preference of choice of District to the promotees *en block* by holding separate camps which, according to the petitioners, is contrary to the Rules and the order of this Court dated 23.08.2012, passed in

Special Civil Application No.11235 of 2012.

6. Heard Mr.A.J.Yagnik, learned advocate for Mr.Umang A.Vaghela, learned advocate for the petitioners and Mr.D.M.Devnani, learned Assistant Government Pleader, who has appeared on an advance copy of the petition.
7. It is submitted by the learned advocate for the petitioners that in Special Civil Application No.11235 of 2012, this Court has passed an interim order dated 23.08.2012, directing the respondents to make appointments as per the Rules, namely, in equal proportion and to offer places of choice first to the promotees and then to direct recruitees. Simultaneously, it has also been made clear that *en block* choice will not be given to either the promotees or direct recruitees. The petitioners are aggrieved as the respondents are giving *en block* choice to the promotees in separate camps held for them earlier, in contravention of the order of this Court.
8. Learned advocate for the petitioners further

submits that by holding separate camps for the promotees, the respondents have acted in contravention of the Rules, the interim order of the Court dated 28.08.2012, passed in Special Civil Application No.11235 of 2012, that has not been challenged by the respondents, as well as the communication dated 23.08.2012, of the Deputy Director of Primary Education addressed to all District Primary Education Officers, wherein it is contemplated that choice should be given as per the order of this Court referred to above by holding joint camps for promotees and direct recruitees, wherein first choice is to be given to the promotees, the second choice to the direct recruits, and so on. It is submitted that by holding separate camps for the promotees first in point of time and giving them *en block* choice of places of posting, the respondents have flouted the order of this Court and gone against their own instructions.

9. The petition was heard in the morning session. This Court instructed Mr.D.M.Devnani, learned Assistant Government Pleader appearing on an

advance copy of the petition, to request the Director of Primary Education to be present in the Court in the afternoon session, so as to ascertain the veracity of the averments made on behalf of the petitioners. When the matter is taken up in the second session, the Court is informed that though the Director of Primary Education is present in Gandhinagar, he has not come to the Court but has sent Mr.B.K.Trivedi, the Deputy Director of Primary Education, instead. It is unfortunate and regrettable that even an innocuous request such as this one, made with a view to eliciting the correct position, has not been acceded to.

10. On asking Mr.Devnani to take instructions from Mr.B.K.Trivedi, whether it is true that separate camps have been held for the promotees first in point of time and they have been given a chance to exercise their choices for the place of posting *en block*, it is stated by Mr.Devnani, upon instructions from Mr.Trivedi, that this is indeed true; separate camps for promotees have been held, on 17th and 18th of February, 2014,

and are being held. It is further admitted by the learned Assistant Government Pleader, upon instructions, that it is indeed true that this Court has, vide order dated 23.08.2012, passed in Special Civil Application No.11235 of 2012, directed that the place of choice be given in equal proportion first to the promotees and then to direct recruitees in the ratio of 1:1, but *en block* choice is not to be given either to the promotees or the direct recruitees. The learned Assistant Government Pleader also concedes that this order is binding upon the respondents. On a query being raised by the Court as to why this order, which has been accepted by the respondents, has not been followed in the present ongoing recruitment process, learned Assistant Government Pleader, upon instructions from Mr.B.K.Trivedi, Deputy Director of Primary Education, submits that there is no answer to this query.

11. The above clearly means that the respondents are very well aware that they are acting in direct and deliberate contravention of the order dated

BHADRASINH

23.08.2012, passed in Special Civil Application No.11235 of 2012, by holding separate camps, for the promotees first in point of time and giving them *en block* choice of places of posting. This would mean that the direct recruitees, such as the petitioners, would not get a fair opportunity to exercise their choice of posting. It is to prevent such a situation that the order was passed by this Court.

12. Insofar as the Undertakings regarding giving of resignations by the petitioners are concerned, again there is no answer from the learned Assistant Government Pleader, leave alone a plausible answer, even after taking instructions from the Deputy Director of Primary Education.

13. Having heard learned counsel for the respective parties, in view of the discussion made hereinabove and the order dated 23.08.2012, passed in Special Civil Application No.11235 of 2012, the following order is passed:

Issue notice returnable on 19.03.2014.

Ad-interim relief, in terms of Paragraphs-9(I) and 9(H)(H) of the petition is granted, till then.

14. Direct Service of this order, today, is permitted.

15. Since this order has been passed in the presence of Mr.B.K.Trivedi, Deputy Director of Primary Education, the respondents may not wait for a certified copy of this order, for its implementation.

(SMT. ABHILASHA KUMARI, J.)

sunil

BHADRASINH