**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

Letters Patent Appeal Nos. 368 and 371 of 2011

Decided On: 28.02.2011

Appellants: **Patel Noorjahanben Umrajibhai**
**Vs.**
Respondent: **Husaniyanagar Kelvani Mandal Through President Ayubbhai I P and 2 Ors.**

**Hon'ble Judges/Coram:**
V.M. Sahai and G.B. Shah, JJ.

**JUDGMENT**

**V.M. Sahai, J.**

1. We have heard Ms. Varsha J Brahmbhatt, learned Counsel for the Appellant, Mr Chirag B Patel for Mr B.S. Patel, learned Counsel for Respondents No. 1 and 2 and Ms. Sejal K Mandavia, learned Counsel for Respondent No. 3.

2. Since the dispute involved in these matters is common, with consent of the learned Counsel for the parties, we have heard and disposed of these two Appeals together by this common judgment.

3. It is the case of the employee that she was appointed as Assistant Teacher on 15th June, 1989 in the primary section of the school. In support of the said stand, the employee has annexed certificate issued by the Principal of the school on 20th August, 1991. It is an accepted position that at the time of appointment of the employee, trained teachers were not available and hence, the employee was appointed, though she was untrained. At the relevant point of time, the educational qualification of the employee was only S.S.C. and she had taken an examination of P.T.C. whose result was awaited. The employee was paid a lumpsum remuneration of Rs. 500/- per month from the date of joining up to May, 1990 and thereafter the amount was increased to Rs. 600/- per month. According to the employee, since June, 1991, she was prevented from attending the school without any reason and was orally informed not to attend the school. As according to the employee, the entire act of school management was without following due procedure, an application No. 275 of 1991 was preferred on the ground that her services could not be terminated without following the procedure laid down in Section 40-B of the Primary Education Act, 1947 (the Act). Interim relief was also prayed for to the effect that the school management be prevented from restraining the employee from attending the school and from withholding regular salary. On 27th November, 1991, ex-parte injunction in terms of paragraph No. 5(3) of the application was granted by the Tribunal and the same was confirmed after bipartite hearing vide order dated 09th January, 1992.

The Appellant has challenged termination order before the Gujarat State Primary Education Tribunal in Applications No. 275/91 and 32/92, The Tribunal granted interim order, The interim order was challenged before this Court by filing Special Civil Application No. 243 of 1992. The learned Single Judge directed the Respondent to continue to pay the salary to the Appellant, however, the Appellant teacher may not attend the school as the Petitioner did not want her to attend the school. After making these observations, the writ petition was dismissed as withdrawn. Liberty was granted to the Petitioner-management to make application to the Tribunal.

4. The application filed by the management before the Tribunal was rejected by the Tribunal. The salary for the month of January 1992 was paid to the Appellant by the school management and a show-cause notice asking the Appellant to show cause why her services should not be terminated was issued. As the Appellant did not tender any reply, the services came to be terminated on 18.2.1992. This termination order was challenged by means of Special Civil Application No. 2324 of 1999. The Appellant relied on a decision in Harkant G. Bhatt v. State of Gujarat in Special Civil Application No. 2463 of 1997 decided on 27.3.1997 and in Bipinchandra P Patel (Vakil) v. Mafatlal Ambalal Prajapati 2005(2)GLH 641. The Learned Single Judge considered these decisions and came to the conclusion that these decisions were of no help to the case of the Appellant as the appointment of the Appellant was dehors the Rules and, therefore, the explanation Clause (b) of Section 40B does not apply to the case of the Appellant and since the appointment was dehors the Rules, the order of the Tribunal was set aside. The Appellant challenges the order of the learned Single Judge dated 6.8.2010 in this appeal.

5. Learned Counsel for the Appellant urged that in spite of the interim order passed by the Tribunal as well as this Court, the salary was not paid to the Appellant. Be that as it may, since the salary was not paid to the Appellant and it has been found that the appointment of the Appellant was found to be dehors the Rules, in case the salary would have been paid to the Appellant, the same was recoverable from the Appellant, in the event of dismissal of the appeal.

6. In view of the aforesaid reasons, we do not find any ground to take a contrary view than what has been taken by the learned Single Judge. According to the Appellant, no salary was paid to her and since the salary has not been paid, no direction can be given for payment of salary which may have been payable under the interim order.

7. We do not find any illegality in the order dated 6.8.2010 passed by the learned Single Judge in Special Civil Application No. 2324 of 1999. The appeal is devoid of merits and is accordingly dismissed summarily.