

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****LETTERS PATENT APPEAL NO. 332 of 2007****In****SPECIAL CIVIL APPLICATION NO. 11651 of 2004****With****LETTERS PATENT APPEAL NO. 516 of 2007****In****SPECIAL CIVIL APPLICATION NO. 11651 of 2004****With****LETTERS PATENT APPEAL NO. 636 of 2007****In****SPECIAL CIVIL APPLICATION NO. 13746 of 2005****With****SPECIAL CIVIL APPLICATION NO. 2599 of 2009****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE A.G.URAIZEE**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
  - 2 To be referred to the Reporter or not ?
  - 3 Whether their Lordships wish to see the fair copy of the judgment ?
  - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
  - 5 Whether it is to be circulated to the civil judge ?

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GUJARAT RAJYA ASHRAMSHALA KARMACHARI SANGH....Appellant(s)  
Versus  
STATE OF GUJARAT & 2....Respondent(s)

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Appearance:

MR KAUSHIK B. PUJARA WITH MR MAHENDRA K PATEL, ADVOCATE for  
the Appellant(s) No. 1

MR ROSHAN YAGNIK Asst. GOVERNMENT PLEADER for the Respondent(s)  
No. 1 - 3

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**  
and  
**HONOURABLE MR.JUSTICE A.G.URAIZEE**

Date : 22/04/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. All these matters arise out of the common judgment and order passed by the learned single Judge dated 04.02.2006 in Special Civil Applications No.11651/2004 and 13746/2005 and hence, they are decided by this common judgment.

1.1 LPA No.332/2007 has been preferred by the original petitioner of SCA No.11651/2004 against the non-grant of retiral benefits like pension, etc. to the members of the appellant-union, original petitioner.

1.2 LPA No.516/2007 & 636/2007 have been preferred by the State against the impugned

judgment for partly allowing the writ petitions.

1.3 SCA No.2599/2009 has been preferred by "Bhil Seva Mandal", which is a Grant-in-aid Educational Institution registered under the Bombay Public Trusts Act, 1950 seeking financial assistance from the State Government for the payment of Gratuity and similar benefits to its employees.

2. The learned single Judge has elaborately discussed the facts giving rise to the present proceedings in the impugned judgment and hence, they are not repeated for the sake of brevity. However, briefly stating, the grievance of the original petitioners was that the staff of primary schools run by the District Panchayat Education Committees are being paid various benefits, including that of Government Pension, Gratuity, Group Insurance, Medical allowance, etc., whereas, the members of the petitioner-union, who are the staff of Ashram Shalas, are being denied the said benefits.

3. Mr. Kaushik Pujara learned counsel appearing with Mr. M.K. Patel for the appellant-Union drew our attention to the Government Resolution dated 21.01.1986 wherein it is resolved to confer all benefits to the staff of Ashram Shalas, as are being available to staff of primary schools run

by District Panchayat Education Committees. He also drew our attention to the Government Resolution dated 25.11.1988 which provides for the pay-scales of the staff of Ashram Shalas. He took us through the Government Resolution dated 22.12.1953 issued by the erstwhile Government of Bombay whereby the scheme of Ashram Shalas was formulated. He also took us through the scheme of *The Bombay Primary Education Act, 1947*, the definition of "approved school" provided in Section-2(2), definition of "private primary school" provided in Section-2(18A) and also Section-40A regarding recognition of "private primary schools". He also took us through the provisions of Section-18 of *The Right of Children to Free and Compulsory Education Act, 2009*.

3.1 It was submitted by learned counsel Mr. Pujara that the scheme of Ashram Shalas is recognized by the State Government and is also recognized under *The Bombay Primary Education Act*. Therefore, the staff of Ashram Shalas are entitled for all benefits, as are made available to the staff of primary schools run by the District Panchayat Education Committees. He submitted that in pursuance of the litigation filed before this Court, the State Government agreed to grant all benefits to the staff of District Panchayat Education Committees vide

Resolution dated 06.04.2002. They have also been granted benefits of different Pay Commissions. Therefore, the learned single Judge erred in not recognizing the staff of Ashram Shalas as "Government Employees" and in refusing to grant them all benefits.

4. Mr. Roshan Yagnik learned AGP submitted that the learned single Judge erred in granting the benefit of pay-scales to the members of appellant-Union. He submitted that the impugned order has huge financial implications upon the State Exchequer and that the learned single Judge ought not to have issued such directions since it is a policy matter of the Government. He, therefore, submitted that the impugned judgment deserves to be quashed and set aside.

5. Mr. Yogi Gadhia learned counsel appearing on behalf of the petitioner-Mandal in SCA No.2599/2009 adopted the arguments advanced by learned counsel Mr. KB Pujara and submitted that the petitioner-Mandal is a 100% Grant-in-aid institution recognized by the State Government under *The Bombay Primary Education Act* and is imparting education, which is now compulsory under *The Right of Children to Free and Compulsory Education Act, 2009*.



6. We have heard learned counsel for the respective parties and have perused the documents on record. We have also gone through the impugned judgment rendered by the learned single Judge. It appears from the record that the idea of starting "Ashram Shalas" was conceptualized way back in the year 1953 by the erstwhile Government of Bombay. The then Government recognized the problem of lack of education amongst the inhabitants of the poor and weaker sections of the society and decided to set up schools with free lodging and boarding facilities with the object to impart intensive basic training under the constant supervision and guidance of able teachers. The activities carried out by the Ashram Shalas are at grass-root levels and that to in tribal areas. It is also granted recognition by the State Government under the provisions of Section-40A of *The Bombay Primary Education Act, 1947*. Further, free education is also a legal right under *The Right of Children to Free and Compulsory Education Act, 2009*.

7. In the present day scheme of education, several private institutions, which are not getting Grants from the State Government, flourish in the urban areas. However, one cannot see such private educational institutions operating in the tribal or rural areas. Ashram

Shalas are such exceptions, which also provide lodging and boarding facilities to students, who basically belong to backward strata of the society and are living in tribal areas. When the Ashram Shalas are recognized under *The Bombay Primary Education Act* and education has now become a legal right under *The Right of Children to Free and Compulsory Education Act, 2009*, to deprive the staff of Ashram Shalas of the benefits, as are being given to the staff of schools run by District Panchayat Education Committees, would be discriminatory and thereby, unconstitutional.

8. In our considered opinion, once the State Government granted recognition to the Ashram Shalas as "approved school" u/s.2(2) of *The Bombay Primary Education Act* and released necessary financial aid, it is not proper on the part of the State Government to back out from the promise made in the Government Resolution dated 21.01.1986. Having said that, the staff of Ashram Shalas cannot also be placed in the category of "Government Employees". Nevertheless, to deprive them the status of "approved schools" under *The Bombay Primary Education Act* would be unconstitutional. Hence, we are of the opinion that the learned single Judge erred in holding that Ashram Shalas are not covered under private institutions. The Ashram Shalas are covered under

*The Bombay Primary Education Act*, otherwise, they could not have carried out educational activities in view of Section-40A r/w. Section-18 of *The Right of Children to Free and Compulsory Education Act, 2009*.

9. In view of the above, we hold that the staff of Ashram Shalas will be entitled for all benefits of the Government Resolution dated 21.01.1986, as are being given to the staff of primary schools run by District Panchayat Education Committees since they are carrying out educational activities under *The Bombay Primary Education Act* just like any other private institution. Such benefit shall be extended from the date when it was given to the staff of primary schools run by District Panchayat Education Committees. It is clarified that the above benefits will also be extended even to the Non-teaching Staff of the Ashram Shalas. The impugned judgment and order of the learned single Judge, accordingly, stands modified to the aforesaid extent. Consequently, LPA No.332/2007 and SCA No.2599/2009 are partly allowed whereas, LPA No.516/2007 and 636/2007 are dismissed.

**(K.S.JHAVERI, J.)**



(A.G.URAIZEE,J)

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