Reserved On : 09/02/2026
Pronounced On : 16/02/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 960 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT *Sd/-*

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Approved for Reporting	Yes	No
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HIRABHAI M MAKWANA
Versus
STATE OF GUJARAT & ORS.

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Appearance:
MR DIPAK R DAVE(1232) for the Petitioner(s) No. 1
MR. SIDDHARTH RAMI, ASST. GOVERNMENT PLEADER for the Respondent(s) No. 1
HCLS COMMITTEE(4998) for the Respondent(s) No. 3
MS BHAVIKA H KOTECHA(2942) for the Respondent(s) No. 3
NOTICE SERVED BY DS for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

CAV JUDGMENT

1. Heard Mr. Dipak R. Dave, learned advocate for the petitioner as also Mr. Siddharth Rami, learned AGP for respondent Nos. 1 & 2 and Ms. Bhavika Kotecha, learned advocate for respondent No.3, at length.

2. The present writ petition is filed by the petitioner, under Articles 14, 21 and 226 of the Constitution of India, seeking the

following reliefs:-

> *"7. (A) This Hon'ble Court may be pleased to issue a writ of mandamus and / or a writ in the nature of mandamus and/or a writ in the nature of certiorari and/or a writ in the nature of certiorari or nay other appropriate writ, order or directions*
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> *(i) to quash and set aside the order dated 10.12.2013 passed by respondent No.2- District Education Officer and further be pleased to direct respondent No.2 to immediately grant protection of surplus to the petitioner from the date respondent No.3 – school came to be closed down, i.e. from June, 1995, and to grant service benefits including salary and allowance considering the petitioner as continued in service as surplus teacher;*
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> *(ii) To treat the petitioner as surplus teacher and In-charge Headmaster and be pleased to issue direction to count service of the petitioner from June, 1987 until his age of superannuation as continuous and on the basis of said service, be pleased to direct respondent no.2-DEO to fix pension of the petitioner;*
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> *(III) Be pleased to direct respondent No.3 to pay all salary and consequential benefits to the petitioner as per the order passed by this hon'ble court on 19.10.2000 in Special Civil Application no.3285 of 1991.*
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> *(B) Pending the admission, hearing and final disposal of the present petition, this Hon'ble Court may be pleased to direct respondent No.2 – DEO to immediately pass order granting benefits of surplus teacher to the petitioner on the basis of order dated 19.10.2000 passed by this Hon'ble Court and further be pleased to direct respondent No.2 to fix pension of the petitioner on the said basis;*
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> *(C) Any other and further relief or reliefs to which this Hon'ble Court deemed fit, in the interest of justice; may kindly be granted;"*

SHORT FACTS

3. The petitioner was appointed as a teacher by respondent No.3 and given the charge of Headmaster of its Secondary School in the year of June, 1987. The petitioner was terminated from service in June, 1990. Therefore, the petitioner approached the Gujarat Secondary Education Tribunal, Ahmedabad (hereinafter referred to as ***'the Tribunal***') by filing Application No.365 of 1990.

3.1 After hearing the parties, the Tribunal dismissed the said application on the ground that the appointment of the petitioner was not in consonance with Section 35 of the Gujarat Secondary Education Act, 1972 (hereinafter referred to as '***the Act, 1972***'). Thereafter, the petitioner approached this Court by way of Special Civil Application No.3285 of 1991, whereby he challenged the order of his termination as well as the judgment of the Tribunal. The coordinate Bench of this Court, vide its judgment and order dated 19.10.2000, partly allowed the said petition and set aside the order of termination by declaring that it was passed by respondent No.3 in violation of the principles of natural justice. It was directed to respondent No.3 to pay the entire back wages till the school was closed in the year 1995. No direction was issued to the respondent - State – District Education Officer to pay any monetary benefit to the petitioner.

3.2 Further, it was observed in said judgment that if respondent No.2 – District Education Officer has considered

other such teachers as supernumerary teachers, and if such benefits is given, the said benefit also should be given to the petitioner.

3.3. Apropos to the aforesaid direction, the petitioner made representations to respondent No.2 on 16.12.2000 and 05.02.2001, but the same were not paid any heed by the DEO. Again, he had approached this Court by way of Special Civil Application No.1577 of 2001, wherein the coordinate Bench of this Court, vide its order dated 27.06.2001, directed the DEO to decide representation of the petitioner at the earliest. As the representation of the petitioner was not decided by the DEO within reasonable time, the petitioner again had approached this Court by way of Special Civil Application No. 2933 of 2003. Again, the coordinate Bench of this Court vide its judgment dated 12.09.2013, directed the DEO to decide the representation within three months from the date of receipt of a copy of that judgment.

3.4 Pursuant to the aforesaid direction, respondent No.2 – DEO appears to have heard the petitioner but rejected the representation of the petitioner vide its decision dated 10.12.2013, now impugned in this petition. It is specifically observed by respondent No.2 – DEO that, since the original appointment of the petitioner as a teacher was not in consonance with Section 35 of the Act, 1972, thus, illegal, the petitioner is not entitled to claim any right to be considered as a supernumerary teacher.

3.5 It is also not in dispute between the parties that no such teacher like petitioner appointed by respondent No.3, i.e., not in consonance with the said provision, has been appointed as supernumerary teacher by respondent No.1 or 2 as the case may be.

3.6 Feeling aggrieved and dissatisfied with the aforesaid decision, the petitioner approached this Court by way of this petition.

SUBMISSION OF PETITIONER

4. Mr. Dave, learned advocate for the petitioner has assiduously argued as follows: -

4.1 The petitioner was appointed as a Teacher in the Secondary School by respondent No.3 and his illegal termination was quashed and set aside by this Court vide its judgment dated 19.10.2000 passed in Special Civil Application No.3285 of 1991. Once the illegal termination of the petitioner was quashed and set aside, as a consequence, he was to be reinstated in service. Since the respondent No.3 – School was closed down in the year 1995, this Court directed the respondent No.3 to pay the wages up to that period.

4.2 This Court has specifically directed the DEO to consider the petitioner like other teachers working in respondent No.3-School, as a supernumerary teacher, thereby, the petitioner was required to be accommodated in another school.

4.3 For no reason, and despite repeated directions issued by this Court, finally on 10.12.2013, the impugned decision came to be passed, thereby the DEO has not decided the claim of the petitioner to be considered as supernumerary Teacher. While passing the impugned order, the DEO has committed a serious error in placing reliance upon the aforesaid decision of the Tribunal, which was already quashed and set aside by this Court. Since, the illegal termination of the petitioner is already quashed and set aside by this Court, and the DEO was directed to consider him as a supernumerary Teacher like other teachers of respondent No.3, it ought to have treat him as a supernumerary Teacher.

4.4 Respondent Nos.1 & 2 have failed to consider that once the order of the Tribunal is quashed and set aside, there was no reason for them to treat the appointment of the petitioner as illegal, i.e., not in consonance with the said provision of the Act, 1972. Respondent Nos.1 & 2 have not taken into account the previous order passed by the predecessor of respondent No.1, thereby committed serious error in law. The respondent No.1 has approved such type of other appointment like of petitioner vide its order 02.05.1989, in a matter of appointment of teacher in Sarasvati Uttar Buniyadi Vidhyalaya, Faijrabad, Taluka – Matar, District – Kheda.

4.5 This Court, while admitting the matter on 21.09.2015, has recorded the submissions of both sides and specifically observed that the DEO has been directed to consider the case of the

petitioner, if other teachers are considered as supernumerary teachers and given any benefits, then he should be given. This Court has also not entertained the application of the respondent No. 1 & 2 being Civil Application (for modification) No.1 of 2024 filed in the present petition vide its order dated 23.08.2024, thereby, not disturbed its order dated 23.04.2024, whereby the DEO was directed to prepare pension papers of the petitioner. When such would be the position, this Court should exercise its discretionary powers in favour of the petitioner by directing respondent Nos.1 and 2 to fix the pension of the petitioner and release retiral benefits in his favour.

4.6 Lastly, Mr. Dave, learned advocate for the petitioner, under instruction of his client, would state that if the respondent No.1 & 2 are ready to make payment of pension, then the petitioner will not claim any back wages from 1995 till he attained the age of superannuation.

4.7 Mr. Dave, learned advocate for the petitioner would request this Court to allow the present petition.

SUBMISSION OF RESPONDENTS

5. *Per contra,* Mr. Siddharth Rami, learned AGP has strongly opposed this petition by making the following submissions: -

5.1 It is undisputed that the appointment of the petitioner as a Teacher was in violation of Section 35 of the Act, 1972, and therefore, the petitioner is not entitled to claim any relief, as

prayed for in this petition.

5.2 It is the settled position of law that any appointment of a Teacher by a private School without following due procedure of law, it is treated as null and void and as such, illegal. Since the appointment of the petitioner is void ab initio, the petitioner is not entitled to claim any benefits, including pension.

5.3 The entire basis of the petition to make the claim of retiral benefits including pension is based upon the direction issued by this Court vide its judgment dated 19.10.2000 passed in Special Civil Application No.3285 of 1991. This Court has never directed the DEO to grant supernumerary teacher benefits to the petitioner as claimed. This Court in its said decision, never held that the appointment of the petitioner was in accordance with law, but set aside his termination on the ground that it was in violation of the principles of natural justice. Rather, the argument of the petitioner also recorded in the said decision and as per the opinion of this Court, it is so held that so far as payment of salary to such teacher (petitioner) is concerned, the Government may refuse to pay the salary of such teacher, as his appointment is not valid appointment. Thus, liability of salary was only fashioned upon the shoulders of respondent No.3 (school).

5.4 The petitioner was appointed in the year 1987 and terminated in the year 1990. Thus, he worked only for three years and as such, respondent No.3- School was closed in the

year 1995. In that factual scenario also, the petitioner not even completed the qualifying service to receive pension. The petitioner is seeking all monetary benefits including pension, without having worked for more than three years. This Court, at no point of time, has directed respondent Nos.1 and 2 to make payment of pension but the direction was only to prepare the service book / pension papers. So, in the absence of any adjudication of entitlement of the petitioner to receive pension, the petitioner is wrongly placing reliance upon the orders dated 23.04.2024 and / or 23.08.2024 passed in this matter and the said application, respectively.

5.5 The DEO has after hearing the petitioner and taking note of the undisputed fact that the appointment of the petitioner was not in accordance with law, rejected the representation of the petitioner. Though, the order of the Tribunal is referred to by the DEO in its impugned decision, the fact remains that the appointment of the petitioner was an illegal one. The petitioner has also misconstrued the order dated 02.05.1989 passed by respondent No.1 in the matter of Sarasvati Vidhyalaya, inasmuch as, the NOC was issued by DEO for only peon but school management had appointed 2 Teachers - one full time and another part-time, and upon the request of the concerned school management, one appointment given to a teacher was approved by Commissioner, Higher Education and another appointment was ordered to be accepted subject to the outcome of the proceedings instituted before the Tribunal by the

concerned teacher. Whereas, at no point of time either respondent No.3 – School or the petitioner prior to his termination, requested the concerned authority to give his nod to the appointment of the petitioner. It is settled law that equality cannot be claimed on the basis of an illegal order.

5.6 To buttress his arguments, he has relied upon the following judgments: -

> ***i. Government of Andhra Pradesh & Ors. Vs. K. Brahmanandam & Ors. reported in (2008) 5 SCC 241;***
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> ii. ***State of U.P. And Ors vs Ram Sukhi Devi reported in (2005) 9 SCC 733***; and
>
> ***iii. State Of Odisha & Ors. vs Sulekh Chandra Pradhan & Ors. reported in (2022) 7 SCC 482***

5.7 Mr. Siddharth Rami, learned AGP, would request this Court to reject the present petition.

6. No other and further submissions are made by the learned advocates appearing for the respective parties.

ANALYSIS AND DISCUSSION

7. Having heard the learned advocates for the respective parties and upon perusal of the pleadings and documents submitted by the respective parties, the issue germane in the present case revolves around the direction issued by the coordinate Bench of this Court vide its judgement dated

19.10.2000 passed in SCA No.3285 of 1991, whereby the petitioner is claiming that DEO has to consider him as supernumerary teacher and that the benefits given to other teachers of respondent No.3- School should be granted to him.

8. I have minutely gone through the observations and directions which were issued by this Court in the said judgement, and for better understanding, I would like to reproduce the same as follows:-

> *"7. The question which arises for the determination of the Court is whether the appointment is ineffective or void appointment or whether in case of ineffective appointment procedure as provided u/s 36 is required to be followed or not. It is not in dispute that the concerned teacher was appointed by the school though the representative of the DEO was not present and therefore it cannot be said that the provisions of Section 35 of the Act were followed by the school. Nonetheless, so far as salary of the teacher is concerned, the same is required to be borne by the Government under the provisions of Grant in Aid Code and therefore as far as the State Government is concerned, when the question of payment of salary of* ***such teacher*** *arises the Government may refuse to pay the salary of* ***such teacher*** *as his appointment is not valid appointment.....XXXXXX....XXXXXXXX.....*
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> *13. The respondent-management is directed to pay all the aforesaid benefits to the petitioner up to the date of closure of the institution and whatever benefit is given to* ***other teachers*** *who were continuing in the school up to the closure of the institution should also be given to the petitioner. If the D.E.O. has considered* ***other such teachers*** *as supernumerary teachers and if such benefit is given, the said benefit also should be given to the*

> *petitioner. The respondent-management is also directed to pay arrears of salary of the concerned teacher forthwith for the period for which he has served in the institution and for which no salary was given to him. Rule is accordingly made absolute to the aforesaid extent with no order as to costs."*
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> *(emphasis Supplied)*

9. Thus, as per the said decision, this Court has categorically held that the appointment of the petitioner by the School is not as per the provisions of Section 35 of the Act, 1972. There is no dispute between the parties that the appointment of the petitioner is not as per the said provisions. Sub clause (7) of Section 35 of the Act, 1972 clearly states that any appointment of a teacher made in contravention of the provisions of this Section shall be ineffective. It is trite that any appointment of a teacher made in contravention of the said provisions is void *ab initio* and, in such circumstances, it cannot be regularized.

10. It is the core submission of Mr. Dave, learned advocate for the petitioner that as per the said decision, DEO ought to have considered the case of the petitioner like other teachers who were treated as supernumerary teachers due to closure of the school. Mr. Dave, learned advocate for the petitioner, is not correct in his submission that any such direction was ever issued by this Court in the said judgement. There is a visible distinction made by this Court when it used "***other teachers***" and "***such teachers***" in para-13 of the said decision. In fact, this Court has specifically directed only the school management

to pay all the benefits to the petitioner as paid to other teachers, till the date of closure of the school. Whereas, while directing DEO to consider the benefits of a supernumerary teacher, it only observed that it should be given to the petitioner, if other such teachers are given such benefits. There is nothing on record to show that any other such teachers like petitioner who were appointed by school management in contravention of Section 35 of the Act, 1972 were considered as supernumerary teachers. The other teachers who were regularly selected by school management unlike the petitioner, might have been considered as supernumerary teachers but since the appointment of the petitioner held to be in violation of statutory provisions of said law, no equality can be claimed by the petitioner with other teachers. It would be apt to observe here that vide its said judgement; this Court never directed the respondent – State to pay any salary to the petitioner for intervening period. This itself suggests that this Court has not approved the initial appointment of the petitioner; rather held that the appointment of the petitioner is not valid.

11. At this stage, it is apposite to refer the decision of the Hon'ble Apex Court in the case of **K. Brahmanandam & Ors. (supra),** wherein observed and held thus:

> *"6. It is stated that the management of the institution, before the recruitment of the respondents, neither obtained any prior permission from the District Education Officer nor made advertisement in two newspapers nor notified the vacancies to the*

employment exchange. Even no order of approval as regards the said appointments was obtained from the District Education Officer.

14. The liability of the State to pay salary to a teacher appointed in the recognised schools would arise provided the provisions of the statutory rules are complied with, subject to just exception. The right to claim salary must arise under a contract or under a statute. If such a right arises under a contract between the appointee and the institution, only the latter would be liable therefor. Its right in certain situation to claim reimbursement of such salary from the State would only arise in terms of the law as was prevailing at the relevant time. ***If the State in terms of the statute is not liable to pay the salary to the teachers, no legal right accrues in favour of those who had been appointed in violation of mandatory provisions of the statute or statutory rules.***

15. The equality clause contained in Articles 14 and 16 of the Constitution of India, it is trite, must be scrupulously followed. The court ordinarily would not issue a writ of or in the nature of mandamus for regularisation of the service of the employee which would be violative of the constitutional scheme.

16. ***Appointments made in violation of the mandatory provisions of a statute would be illegal and, thus, void****. Illegality cannot be ratified. Illegality cannot be regularised, only an irregularity can be."*

(Emphasis Supplied)

11.1 Likewise, in the case of ***Sulekh Chandra Pradhan & Ors. (supra)***, in somewhat similar factual situation, it held thus:-

"34. ***It is not in dispute that the appointment of all the applicants/respondents/teachers have been***

> ***made directly by the respective Management without following the procedure as prescribed under the Rules/statute. It is a trite law that the appointments made in contravention of the statutory provisions are void ab initio****. Reference in this respect could be made to the judgments of this Court in* ***Ayurvidya Prasarak Mandal v. Geeta Bhaskar Pendse*** *[****Ayurvidya Prasarak Mandal v. Geeta Bhaskar Pendse****, (1991) 3 SCC 246 : 1991 SCC (L&S) 900] ,* ***J&K Public Service Commission v. Narinder Mohan*** *[****J&K Public Service Commission v. Narinder Mohan****, (1994) 2 SCC 630 : 1994 SCC (L&S) 723] ,* ***Official Liquidator v. Dayanand*** *[****Official Liquidator v. Dayanand****, (2008) 10 SCC 1 : (2009) 1 SCC (L&S) 943] and* ***Union of India v. Raghuwar Pal Singh*** *[****Union of India v. Raghuwar Pal Singh****, (2018) 15 SCC 463 : (2018) 2 SCC (L&S) 823]*
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> *35. We are unable to accept the contention raised by Shri Gaurav Agrawal and Shri R. Balasubramanian that since the applicants/teachers were appointed on posts which were not on grant-in-aid basis, the said Rules are not applicable. The said Rules would clearly show that they are applicable to aided educational institution. Undisputedly, the institutions in which the applicants/teachers were appointed, were recognised as aided M.E. Schools vide G.O. dated 12-9-1980. It is also not in dispute that the appointments so made were subsequent to the schools being recognised as aided schools. As such, the contention in that regard deserves to be rejected."*
>
> *(Emphasis Supplied)*

12. Thus, in view of the aforesaid facts and position of law as it stands as on date, it cannot be gainsaid that the appointment of the petitioner is in consonance with the provisions of the law. If that be so, as a matter of course and right, the petitioner

cannot be permitted to claim that he should have been considered as a supernumerary teacher. Accordingly, I do not find any error in the impugned order dated 10.12.2013 passed by the DEO, Nadiad, District – Kheda, while rejecting the claim of the petitioner to grant him the benefits as granted to other regularly selected teachers of respondent No.3 – School.

13. Furthermore, Mr. Rami, learned AGP would also correct in his submission that the petitioner had hardly worked for three years from the date of his appointment and even if his period of absence from duty due to termination would not be considered (between 1990 and 1995), still his tenure as teacher would be from 1987 to 1995; then also, he has not completed qualifying pensionable service.

14. Apart from this, Mr. Dave, learned advocate for the petitioner has emphasized on the order dated 02.05.1989 passed by Dy. Secretary, Education Department of respondent – State, whereby it has not disturbed the approval granted by the Commissioner of higher Education in connection with the appointment of teacher by concerned school, wherein also, no prior NOC was obtained from DEO at the time of appointing the concerned teacher. A close look of the said order would indicate that such appointment of the teacher concerned was accepted by Commissioner, Higher Education on the request made by the concerned School management and in those circumstances, the said authority (State) has not disturbed the order of the Commissioner, Higher Education.

14.1 So far as, in the present case, no such steps were taken by the school management before terminating the service of the petitioner. It is settled law that there is no concept of negative equality; thus, an illegal order cannot be a ground for claiming parity. It cannot be pressed into service for perpetuating any illegality. Accordingly, the aforesaid decision of the State does not come to the rescue of the petitioner.

15. It was also emphasized, during the course of argument by Mr. Dave, learned advocate for the petitioner that this Court, vide its order dated 23.04.2024, has directed the respondent to prepare pension paper of the petitioner and thereafter consider the case of the petitioner to pay all his consequential retiral dues; thereby, he would submit that the respondent cannot be absolved from its liability to pay pension and other benefits. *Per contra*, Mr. Rami, learned AGP has placed reliance upon the stance taken by respondent No.2- DEO in its affidavit dated 06.02.2026 filed in this matter and would submit that at no point of time, this Court has either directed payment of retiral dues to the petitioner or held that the petitioner is entitled to receive such benefits.

16. Having analyzed the said submissions and after going through the said orders dated 23.4.2024 and 23.08.2024 passed by this Court in this matter, in none of the orders, this Court at any time, either intended to direct respondent to pay retiral dues to the petitioner or held that the petitioner is entitled to receive the pensionary benefits; rather it has only directed the

respondent to prepare the pension papers and thereafter, considered the case of the petitioner to pay all his consequential retiral dues. It is true that as per the said directions, the respondent has prepared petitioner's pension papers and service book. However, upon noticing that the petitioner's initial appointment was illegal and void, it has declined to grant any retiral benefits to the petitioner. In such circumstances, and in view of the aforesaid, no fault can be found with respondent when it has not released the retiral dues of the petitioner in his favour.

CONCLUSION

17. In view of the foregoing observations, discussion and reasons, I am of the view that, since the appointment of the petitioner was in contravention of the provisions of Section 35 of the Act, 1972, thus, it is held to be illegal and void *ab initio*, the petitioner is correctly not considered as a supernumerary teacher by respondent No.2 – DEO. Consequently, the petitioner is not entitled to receive any retiral benefits, including pension as claimed.

18. In view of the foregoing conclusion, the present writ petition, being sans merit, is liable to be dismissed; it is accordingly dismissed. Rule is discharged. No order as to costs.

(MAULIK J.SHELAT,J)

Lalji Desai