

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 7441 of 2024**

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ATITKUMAR KIRITKUMAR PRAJAPATI

Versus

DISTRICT PRIMARY EDUCATION OFFICER & ORS.

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Appearance:

MR RR VAKIL(964) for the Petitioner(s) No. 1

MR ADITYA PATHAK, ASST. GOVERNMENT PLEADER for the
Respondent(s) No. 4,5

MR HS MUNSHAW(495) for the Respondent(s) No. 1

NOTICE SERVED for the Respondent(s) No. 2,3

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CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL**Date : 18/06/2025****ORAL ORDER**

1. Heard learned advocate Mr.R.R.Vakil appearing on behalf of the petitioner, learned Assistant Government Pleader Mr.Aditya Pathak appearing on behalf of respondent - State and learned advocate Mr.H.S.Munshaw appearing on behalf of the respondent no.1. Though served, none appears on behalf of respondent no.3 - Trust.

2. By way of this petition, the petitioner has prayed for the following reliefs:-

“(A) Be pleased to admit this Special Civil Application.

(B) Be pleased to issue a writ of mandamus or any other appropriate writ, order or direction by

directing respondents no.1 and 2 to place the petitioner in regular pay scale of primary teacher with effect from 29.12.2019 i.e. after completion of five years as Vidhya Sahayak with all consequential benefits along with 9% interest.

(C) Pending admission hearing and final disposal of this petition, be pleased to direct the respondents to start paying the petitioner regular pay scale of primary teacher with immediate effect.

(D) Be pleased to pass such other and further orders as may be deemed just and proper looking to the facts and circumstances of the case and in the interest of justice."

3. It is the case of the petitioner that the petitioner had appeared in a selection process initiated by the respondent no.3 - School more particularly by issuing an advertisement for interviews to be held for selection to the post of Vidhya Sahayak in Higher Primary School of the respondent no.3 - Trust.

3.1. It is the case of the petitioner that though the said selection had been conducted after No Objection Certificate (NOC) had been granted by the office of the District Education Officer concerned and the petitioner had been selected by a committee which also consisted of a representative of the District Education Office (DEO) and the District Primary Education Office (DPEO) both, yet, the petitioner, after

completion of five years from the date of appointment, has not been granted the benefit of regular pay scale.

4. Learned advocate Mr.Vakil appearing on behalf of the petitioner would submit more particularly taking this Court through the relevant documents that the petitioner had been selected after he had appeared in the regular interview process. It is submitted that the interview process consisted of the representatives of the office of both the DEO as well as DPEO. It is submitted by learned advocate that though the petitioner had been appointed w.e.f. 23.12.2014 and whereas the School i.e. respondent no.3 had sent proposal for placing the petitioner in the regular pay scale on 10.06.2020, till date, the respondent authorities have not taken any action thereupon.

4.1. Learned advocate would submit that this Court may therefore direct the respondents to place the petitioner in regular pay scale with effect from the date he completes five years from the post in question and it is further requested that arrears which would be available to the petitioner upon fixation, may also be granted.

5. This petition is vehemently opposed by learned AGP Mr.Pathak who would submit that the appointment of the petitioner in the respondent no.3 - School itself was questionable. It is submitted by learned AGP that the school in connivance with the then DEO, had ensured that the school is allotted one more teacher beyond their eligibility and entitlement. Learned AGP would pertinently draw the attention of this Court to an order dated 08.05.2025 whereby the then DEO who had been instrumental in granting NOC to the school, basis which the petitioner had been appointed, has been suspended pending a departmental proceedings.

5.1. Learned AGP would submit that under such circumstances, the petitioner may not be entitled to any reliefs and would request that this Court may not intervene.

6. Learned advocate Mr.Munshaw on behalf of respondent no.1 would adopt the submissions made by learned AGP and would submit that the circumstances which led to the appointment of the petitioner being questionable, the petitioner may not be entitled to the reliefs as sought for.

7. Heard learned advocates for the respective parties and

perused the documents on record.

7.1. Considering the submissions made, it would appear that while the case of the petitioner is that since the petitioner had been issued appointment order on 23.12.2014, upon completion of five years from that said date, as per the extant policy of the State Government, the petitioner would be entitled to regular pay scale, whereas it is the contention on behalf of the State as well as office of the DPEO that the circumstances which led to the appointment of the petitioner being questionable and whereas the State having taken action against the then DEO, this Court may not intervene. To this Court, it would appear that the submissions made by the State respondents i.e. on behalf of the State as well as the DPEO cannot be countenanced at this stage.

7.2. To this Court, it would appear that while there may be some lacuna more particularly whereby the NOC had been granted to respondent no.3 - School for the post on which the petitioner had been appointed, yet, it does not appear to be the case of the respondent authorities that the petitioner was in any manner concerned with the said process. It would also appear to this Court that the petitioner had appeared

pursuant to a public advertisement issued by the respondent no.3 - School and whereas, in the interview process, the representatives of both DEO as well as DPEO were present.

7.3. It would also appear that as of now, neither in the reply nor in the documents attached with the reply it appears to be the case of the respondents that the petitioner was also a party to the process whereby the NOC for appointing one more additional teacher had been granted to the respondent no.3 - School. That being the situation, while it is true that the petitioner has been the beneficiary of the lacuna, yet, at this stage, the petitioner should not be visited with any adverse orders on account of the lacuna in the selection process.

7.4. To this Court, it would appear that the qualifications of the petitioner being in order and the State or the DPEO not being able to state that the interview process itself was flawed, the petitioner cannot be denied the benefit of the policy of the State for being placed in regular pay scale upon completion of five years in service.

7.5. At this stage, learned AGP Mr.Pathak would submit that this Court may leave it open for the State to take appropriate

action against the petitioner in future in case any material is found by the office of the DEO or DPEO on the basis of which it could be alleged that the petitioner was also part of the larger conspiracy whereby the additional post came to be granted to the respondent no.3 though the respondent no.3 was not entitled for the same.

7.6. To this Court, it would appear that the present petition concerns a prayer by the petitioner for being placed in regular pay scale and whereas, at this stage, neither this Court can permit nor this Court can deny the State from taking any action upon receipt of any material whereby the State is of the opinion that the petitioner was part of the larger conspiracy whereby the additional post was sanctioned to respondent no.3, though respondent no.3 was not entitled for the same. To this Court, it would appear that in case in future if any tangible material is found by the State authorities, it is always open for the State to take appropriate action in accordance with law.

8. Having regard to the above observations and findings, to this Court, the following directions would meet with the ends of justice:-

(i) The respondent no.4 and respondent no.1 i.e. the DEO as well as the DPEO are directed to ensure that the petitioner is placed in the regular pay scale with effect from completion of five years of appointment in the school in question.

(ii) Necessary orders shall be passed by the competent authority in that regard within a period of two months from the date of receipt of this order.

(iii) Upon the necessary orders being passed, the petitioner would be paid salary in the regular pay scale forthwith. Arrears shall be paid to the petitioner within a period of three months thereafter.

(iv) It will be open for the State to shift the petitioner to any other school as per the extant policy of the State if the State is of the opinion that the sanction of the post to the respondent no.3 was not in order.

(v) The above order shall not preclude the State from taking any action against respondent no.3 or even the present petitioner in case if any material is available / found at a later date within a reasonable time by the respondent - State

Authorities.

9. With these observations and directions, the present petition stands disposed of as allowed.

Bhoomi

(NIKHIL S. KARIEL,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: BHOOMI YOGESHBHAI MISTRY(HC01557), PRIVATE SECRETARY, at High Court of Gujarat on 19/06/2025 15:02:52