

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 3647 of 2010**

With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 3647 of 2010

With
R/SPECIAL CIVIL APPLICATION NO. 13924 of 2009

With
R/SPECIAL CIVIL APPLICATION NO. 179 of 2010

With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2018
In R/SPECIAL CIVIL APPLICATION NO. 179 of 2010

With
R/SPECIAL CIVIL APPLICATION NO. 180 of 2010

With
CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2018
In R/SPECIAL CIVIL APPLICATION NO. 180 of 2010

With
R/SPECIAL CIVIL APPLICATION NO. 9033 of 2017

With
R/SPECIAL CIVIL APPLICATION NO. 22061 of 2017

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SAIYED MEHJABIN MOHD RAZAULHAQ & ORS.

Versus

STATE OF GUJARAT & ORS.

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Appearance:

ADVOCATE NOTICE SERVED for the Petitioner(s) No. 11,13,19,3,4,5,8,9

ADVOCATE NOTICE UNSERVED for the Petitioner(s) No. 17

MR AJ YAGNIK(1372) for the Petitioner(s) No. 1,10,12,14,15,16,18,2,20,6,7

MS FORUM SUKHADWALA, ASST. GOVERNMENT PLEADER for the Respondent(s) No. 1,2

MR KAUSHAL D PANDYA(2905) for the Respondent(s) No. 3

RULE SERVED BY DS for the Respondent(s) No. 1,2

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CORAM:HONOURABLE MR. JUSTICE MAULIK J.SHELAT

Date : 25/02/2026

ORAL ORDER

ORDER IN R/SPECIAL CIVIL APPLICATION NO. 179 of 2010.

[1] Heard Mr. K.B.Pujara, learned advocate for the petitioners, Mr.

Kaushal D. Pandya, learned advocate for respondent No.3 as also Ms. Forum Sukhadwala, learned AGP for the respondent Nos.1 & 2.

[2] Having heard the learned advocates for the respective parties and after going through the pleadings and documents on record, *prima facie*, it appears that the petitioners herein are candidates belonged to SEBC category possessing HSC and PTC in Marathi medium.

[3] The respondent No.3 appears to have published the advertisement for appointment of Primary Teacher. There are in all 6 SEBC posts published in the advertisement in question, out of which, 3 posts earmarked for PTC General and 3 posts for Science. Apart from the SEBC, there were seats earmarked for candidates belonged to ST category, i.e., 11 in number, out of which, 6 seats earmarked for general and 5 for Science stream candidates. It appears that during the pendency of this petition, 3 seats of SEBC and 5 seats of ST (in all 8 in number), have been denotified and thereby, general category candidates are given appointment (Petitioners of SCA No.3647 of 2010, i.e., 7 in number).

[4] It has been informed by Mr. Kaushal D. Pandya, learned advocate for respondent No.3 that, so far as PTC general stream is concerned, 6 notified posts belonged to ST category were filled through other available ST candidates, albeit, of English medium and not the Marathi medium. So far as SEBC - PTC general stream candidates are concerned, as they are available and more meritorious than the present petitioners, they were appointed. Thus, all the posts reserved for aforesaid class were filled-in by respondent No.3.

[5] As per the oral direction issued by this Court, Ms. Sukhadwala, learned AGP has tendered the current situation, so far as vacant posts if any available in the reserved category, through one Ajmerwala Soeb Salauddin, Trained Graduate Supervisor, Municipal School Board, Surat under the instructions of Mehulkumar Shantilal Patel, I/c Administrative Office, Surat. Ms. Sukhadwala, learned AGP has tendered the current situation as on date prevailing wherefrom it can be seen that 19 posts belonged to ST category are carry-forward and one is available, in all 20 posts. So far as SEBC category is concerned, 2 seats carry-forward which are available and 2 seats belonged to Economically Weaker Section is available. Thus, as on date, so far as Std. 1 to 5 is concerned, there are in all 24 seats which are vacant belonged to reserved category, Marathi medium.

[6] At this stage, it is apt to refer the Government Resolution dated 16.03.1996 whereby in a case where the reserved category candidate is not available, then such seat can be filled through non-reserved category candidate. The State, through its Education Department, vide its letter dated 8.12.2015, by taking note of the aforesaid resolution, advised the Director of Primary Education, State of Gujarat, Gandhinagar to act as per the said resolution.

[7] There is a clear assertion made by the petitioners in this petition that as such, there are no candidates of ST category, Marathi medium, available in the market, without justifying such statement as it is, it can only be said that when advertisement in question published and no ST candidates of Marathi medium available, it was filled through ST candidates belonged to different medium, i.e., English.

[8] At this stage, whether such recourse could have been undertaken by the authority and such approach is correct or not, I would like to direct the State to step into the matter and to see that no prejudice may cause to any of the appointed candidates pursuant to the order passed by this Court and at the same time, present petitioners may also be accommodated pursuant to the said advertisement.

[9] In view of the aforesaid, I pass the following order:-

- I. Respondent No.1 herein – State is directed to look into the matter and if so advised, appropriate decision may be taken by the competent Authority to denotify the post reserved for ST category, Marathi Medium and without making any precedent for future, such denotified seats may be filled by appointing the petitioners.
- II. Let the aforesaid exercise may be undertaken by the competent Officials of the State before the next date of hearing and its final decision may be placed on record of this matter.

[10] It goes without saying that the rights and contentions of the respective parties are hereby kept open and if need be, this Court will examine and decide it in accordance with law.

[11] S. O. to **18th March, 2026**. Rest of the matters shall also be listed on **18th March, 2026**.

(MAULIK J.SHELAT,J)

Lalji Desai