

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 4685 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 10402 of 2023****With****R/SPECIAL CIVIL APPLICATION NO. 15290 of 2019****With****R/SPECIAL CIVIL APPLICATION NO. 3438 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 3437 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 20268 of 2019****With****R/SPECIAL CIVIL APPLICATION NO. 15533 of 2018**

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BHARAT KANYALAL MEENA & ORS.**Versus****STATE OF GUJARAT & ORS.**

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Appearance:**MR SAMIR B GOHIL(5718) for the Petitioner(s) No.****1,10,100,101,102,103,104,105,106,107,108,109,11,110,111,112,113,114,115,116,117,118,119,12,120,121,122,123,124,125,126,127,128,129,13,130,131,132,133,134,135,136,137,138,139,14,140,141,142,143,144,145,146,147,148,149,15,150,151,152,153,154,155,156,157,158,159,16,160,161,162,163,164,165,166,167,168,169,17,170,171,172,173,174,175,176,177,178,179,18,180,181,182,183,184,185,186,187,188,189,19,190,191,192,193,194,195,196,197,198,199,2,20,200,201,202,203,204,205,206,207,208,209,21,210,211,212,213,214,215,216,217,218,219,22,220,221,222,223,224,225,226,227,228,229,23,230,231,232,233,234,235,236,237,238,239,24,240,241,242,243,244,245,246,247,248,249,25,250,251,252,253,254,255,256,257,258,259,26,260,261,262,263,264,265,266,267,268,269,27,270,271,272,273,274,275,276,277,278,279,28,280,281,282,283,284,285,286,287,288,29,3,30,31,32,33,34,35,36,37,38,39,4,40,41,42,43,44,45,46,47,48,49,5,50,51,52,53,54,55,56,57,58,59,6,60,61,62,63,64,65,66,67,68,69,7,70,71,72,73,74,75,76,77,78,79,8,80,81,82,83,84,85,86,**

87,88,89,9,90,91,92,93,94,95,96,97,98,99

MR NILESH A PANDYA(549) for the Respondent(s) No. 3

MS. NIDHI VYAS, AGP for the Respondent(s) No. 1,2,4

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R/SPECIAL CIVIL APPLICATION NO. 10402 of 2023

MAHETA KOKILABEN CHUNILAL & ANR.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR DHARMESH V SHAH(1050) for the Petitioner(s) No. 1,2

MS DRASHTI D SHAH(11443) for the Petitioner(s) No. 1,2

MR UM SHASTRI(830) for the Respondent(s) No. 4

MS. NIDHI VYAS, AGP for the Respondent(s) No. 1,2,3

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R/SPECIAL CIVIL APPLICATION NO. 15290 of 2019

AJAYKUMAR NANUBHAI SOLANKI & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR DHARMESH V SHAH(1050) for the Petitioner(s) No.

1,10,100,101,102,103,104,105,106,107,108,109,11,110,111,112,11
3,114,115,116,117,118,119,12,120,121,122,123,124,125,126,127,1
28,129,13,130,131,132,133,134,135,136,137,138,139,14,140,141,1
42,143,144,145,146,147,148,149,15,150,16,17,18,19,2,20,21,22,23
,24,25,26,27,28,29,3,30,31,32,33,34,35,36,37,38,39,4,40,41,42,43,
44,45,46,47,48,49,5,50,51,52,53,54,55,56,57,58,59,6,60,61,62,63,6
4,65,66,67,68,69,7,70,71,72,73,74,75,76,77,78,79,8,80,81,82,83,84
,85,86,87,88,89,9,90,91,92,93,94,95,96,97,98,99

MS. NIDHI VYAS, AGP for the Respondent(s) No. 1,2,3

MR UM SHASTRI(830) for the Respondent(s) No. 4

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R/SPECIAL CIVIL APPLICATION NO. 3438 of 2020

RITABEN ANANTRAI BHATT & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR MB PARIKH(576) for the Petitioner(s) No.

1,10,11,12,13,14,2,3,4,5,6,7,8,9

for the Respondent(s) No. 3

MS. SUMAN MOTLA, AGP for the Respondent(s) No. 1

MR HS MUNSHAW(495) for the Respondent(s) No. 2

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R/SPECIAL CIVIL APPLICATION NO. 3437 of 2020

MANISHABEN RAMESHCHANDRA SHUKLA & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR MB PARIKH(576) for the Petitioner(s) No.

1,10,11,12,13,14,15,16,17,18,19,2,20,3,4,5,6,7,8,9

MS. SUMAN MOTLA, AGP for the Respondent(s) No. 1,

for the Respondent No.2,3

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R/SPECIAL CIVIL APPLICATION NO. 20268 of 2019

SHARMILABEN VADILAL SHAH

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR DHARMESH V SHAH(1050) for the Petitioner(s) No. 1

MR UM SHASTRI(830) for the Respondent(s) No. 4

MS. SUMAN MOTLA, AGP for the Respondent(s) No. 1,2,3

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R/SPECIAL CIVIL APPLICATION NO. 15533 of 2018

AMRISHBHAI HARSURBHAI VICHIYA & ORS.

Versus
STATE OF GUJARAT & ORS.

Appearance:

MR MB PARIKH(576) for the Petitioner(s) No.

1,10,11,12,13,14,15,16,17,18,19,20,21,3,4,5,6,7,8,9

MS. SUMAN MOTLA, AGP for the Respondent(s) No. 1,3

MR UM SHASTRI(830) for the Respondent(s) No. 2

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CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 02/07/2024

COMMON ORAL ORDER

1. Issue ***RULE***, returnable forthwith. Learned advocates appearing for the respective parties waive service of Rule.
2. With the consent of the learned advocates appearing for the respective parties, the present group of petitions are taken up for final hearing.
3. Since the issue involved in the present group of petitions are common, are heard together and are being decided and disposed of by this common order.
4. Heard the learned advocates appearing for the respective parties.
5. By way of the present petitions, the petitioners have

challenged the action of the respondents in withdrawing / reducing and/ or not granting the benefit of the 1st higher pay scale, from Rs.5000-8000 to Rs.4500-7000 and thereafter as per the 6th Pay Commission revised from Rs.5000-8000 to Rs. 9300-34800, whereas, the petitioners having not been paid the revised higher pay scale, therefore, the petitioners have approached this Court by way of these group of petitions.

FACTS OF SPECIAL CIVIL APPLICATION NO. 4685/ 2020:

1. Leave to amend in cause-title qua respondent no.4 is permitted. The same be carried-out forthwith.
2. Heard learned advocates appearing for the respective parties.
- 3.1. Briefly stated that, by way of the present petition, petitioners herein have challenged the inaction of the respondents authorities in not granting the benefit of 2nd and 3rd higher pay scale of the promotional post of Education Inspector from the date, they completed 20 and 31 years of service respectively. The petitioner nos. 1 to 128 were granted 1st higher pay scale and

they have already become entitled for 2nd higher pay scale, after completion of total 20 years of service and petitioner nos. 129 to 288 have become entitled for 3rd higher pay scale, after completion of total 31 years of service. It is the grievance of the petitioners that the petitioners were not extended the said benefits.

3.2. The petitioners filed the present petition, seeking the benefits of the Government Resolution dated 16.08.1994, wherein, the State Government had framed the scheme for granting benefit of higher pay scales to the teachers. All the petitioners have been serving as Primary Teachers in various government schools-Nagar Primary Education Committee, Vadodara under the respondents and they have already completed 20 and 31 years of services respectively; some of the petitioners have retired from services. The petitioners made representation on 25.11.2019 through union requesting for the benefit of higher pay scale, as per the government resolution dated 16.08.1994. However, in absence of any response from the respondents, the petitioners have constrained to approach this Court by way of the present

petition and had prayed for the following reliefs:

“(A) Directing the respondents to grant 2nd and 3rd higher pay scale of the post Education Inspector to the petitioners from the date they completed 20 and 31 years of total service respectively and further directing them to pay all consequential benefits with 9% interest.

(AA) To expunge the condition no.3 and 4 of the GR dated 12.10.2022 qua not granting the arrears of higher pay scale as per 6th pay revision to the petitioners and further directing the respondents to pay arrears of 2nd and 3rd higher pay scale as per 6th pay revision with 8% interest to the petitioners.

(B) During the pendency and final disposal of this petition, respondents may be directed to grant 2nd and 3rd higher pay scale to the petitioners and revise their pay scale accordingly.

(C) To grant such other and further relief as may be deemed fit.”

3.3. Pending the present Petition, the respondent State Government passed a resolution dated 12.10.2022, whereby, it has been decided to grant benefit of higher pay scale of Rs.5000-8000 (Rs.9300-34800 + grade pay of Rs.4200) as per 6th Pay Commission, to the teachers working under Nagar Prathmik Sikshan Samiti. However, the condition nos.3 and 4 of the above Government Resolution say that such teachers will not be entitled to any benefit of arrears of higher pay scale as per the 6th pay Commission.

FACTS OF SPECIAL CIVIL APPLICATION NO. 15290/2019, SPECIAL CIVIL APPLICATION NO.10402/2023 & SPECIAL CIVIL

APPLICATION NO. 20268/2019:

1. By way of the present petitions, petitioners herein have challenged the inaction on the part of the respondents for withdrawal of higher grade pay scale of promotional post (5000-8000) on 01.06.2002. Initially, it was granted vide order dated 10.11.1998. The resultant effect is that the benefit of 5th Pay Commission would not be extended to the petitioners, though similarly situated employees have already been received the said benefits. The petitioners herein are the Primary Teachers employed by the respondent no.4 and have been working with various schools run by the respondent no.4 since last many years. At the time of their appointment, under the Revision of Pay Rules, 1987, the pay scale for Primary Teachers was Rs.1200-2040. The petitioners' pay was accordingly fixed in the said pay scale, however, upon coming into force of the Revision of Pay Rules, 1997, w.e.f. 01.01.1996, the petitioners' pay scale was revised to Rs.4000-6000. The petitioners came to be appointed as Primary Teachers and they are entitled to get the first higher grade pay scale of promotional post of Rs.5000-8000, upon

completion of 9 years of service and accordingly, the respondent no.4 had considered the aspect of granting higher grade pay scale to each of the petitioners on completion of 9 years as per the government resolution dated 16.08.1994 and had been granted the same, on different dates as mentioned in the statement at Annexure-B.

FACTS OF SPECIAL CIVIL APPLICATION NO. 3437/2020 & SPECIAL CIVIL APPLICATION NO.3438/2020:

1. Leave to amend in cause-title qua petitioner no.7 in Special Civil Application No. 3437 of 2020 is permitted. The same be carried-out forthwith.

2.1. Briefly stated that, the petitioners are the primary teachers and they are regularly appointed by the present respondent authority. At the time of their appointment they were in the pay scale of Rs. 1200-2400. Thereafter they were promoted in the pay scale of Rs. 1400-2600. As they were in the pay scale of Rs. 1400-2600 as per the Government Resolution - Notification dated 14/8/1998, they have been given higher pay scale at the rate of Rs. 5000-150-8000 with effect from 1/1/1996. That on

21/3/1998 the Nagarpalika Shala Mandal, Surendranagar passed an order that the teachers who have completed nine years of service in the department, they are entitled for the higher pay scale at the rate of Rs. 5000-150-8000 with effect from 1/1/1996. At that time the petitioners were serving with the Nagarpalika. At the time of granting higher pay scale to the petitioners, the post of Education Inspector i.e. promotional post was available in the Education Committee, Surendranagar, schools run by the Nagarpalika. However, subsequently on 23/4/2009, without considering the Government Resolution – Notification, the said resolution was withdrawn and order of recovery was also passed as well as order for reduction in pay scale was passed without hearing the petitioners, which is against the principles of natural justice. However, order of recovery as well as reduction in the pay scale i.e. at the rate of Rs. 4500-125-7000 was affected.

2.2. That on 29/9/1998 the Director of Primary Education Department, Gandhinagar had also issued notification stating that primary teachers are entitled for the higher pay scale at the rate of Rs. 5000-150-8000 and the authority had without considering

the various Government Resolutions, passed an order for recovery. That on 1/3/2002, the Director of Municipality had issued a letter considering the Government Resolution dated 28/2/2002 that as per the Section 20(2) of Bombay Primary Education Act, the wages for the primary teachers run by Nagarpalika was to be paid from Primary Education Fund and only 5% of the wages is required to be paid by the Nagarpalika and rest of the 95% is to be paid from the State Government. However, it was found that that 5% of wages were also not paid by them and therefore direction was issued.

2.3. That in view of the order dated 23/4/2009, passed by the then Shashnadhikari, Nagarpalika Shala Mandal, Surendranagar for reduction of pay scale and order of recovery came to be challenged by the petitioners herein by way of preferring a writ petition being S.C.A. No 424/2010. In the said petition, at the time of admission, the Court was pleased to grant stay against the impugned order. Thereafter, on 26/7/2016 the said petition came up for final hearing and the Court was pleased to allow the same. Against which, the present

respondents preferred an Appeal being L.P.A. No 240/2017, wherein, after hearing all the parties, the Court was pleased to reject the same on 14/2/2017.

2.4. On 10/7/2018, the respondent authority had fixed the first higher pay scale of the petitioners w.e.f. 1/5/2003, however it was also ordered for recovery of the amount fixed with the attached order. The Court while dealing with the said writ petition of the petitioners, very specifically ordered that impugned order dated 23/4/2009 passed by the authority for recovery of excess amount paid to the petitioners-applicants is quashed and set aside. However, for the reasons best known to the present respondents and / or with a view to harass the petitioners, the respondents – Authorities deliberately and willfully disobeyed the orders, directions passed by this Court. In view of the aforementioned situation, the petitioners have again approached the Court by way of filing contempt petition being M.C.A. No. 986/2018. On 4/12/2018, the Court was pleased to dispose of the aforesaid application with direction. That despite the several efforts made by the petitioners herein, the

respondents have not paid any benefits to the petitioners. Therefore, on 19/2/2019 on behalf of the petitioners registered notice came to be issued to the present respondents. However, till date nothing is done and there is no reply from the respondent authority and therefore the petitioners herein have approached this Court by filing the present Petition.

FACTS OF SPECIAL CIVIL APPLICATION NO. 15533/ 2018:

1. Leave to amend in cause-title qua petitioner no.12 is permitted. The same be carried-out forthwith.
2. Briefly stated that the petitioners are the primary teachers and they are regularly appointed by the present respondent authority. At the time of their appointment, they were in the pay scale of Rs. 1200-2400. Thereafter they were promoted in the pay scale of Rs. 1400-2600. As they were in the pay scale of Rs. 1400-2600 as per the Government Resolution / Notification dated 14/8/1998, they have been given higher pay scale at the rate of Rs. 5000-150-8000 immediately on completion of Nine (9) years in the department. On 1/3/2002, Director of

Municipality had issued a letter considering the Government Resolution dated 28/2/2002 that as per the Section 20(2) of Bombay Primary Education Act, the wages for the primary teachers run by Nagarpalika is to be paid from the Primary Education Fund and only 5% of the wages is required to be paid by the Nagarpalika and rest of the 95% is to be paid from the State Government. However, at that point of time, it was found that 5% of wages were also not paid by them and therefore direction was issued, now at present 100% wages are to be paid by the State Government. It is the case of the petitioners that the senior teachers to the petitioners, were getting higher pay scale at the rate of Rs. 5000-150-8000/-, who have completed nine years of service in the department w.e.f. 1996. At the time of granting higher pay scale to the senior teachers to the petitioners, the post of Education Inspector i.e. promotional post was available in the Education Committee, Amreli run by the Nagarpalika. However, subsequently, without considering the Government Resolution - Notification, the respondent no. 2 had withdrawn the first higher pay scale and order of recovery was issued. Therefore, they have filed petition being S.C.A. No. 15307

of 2003. The said petition came to be allowed vide an order dated 26.07.2016. Against the said order, the respondent no.2 preferred Letters Patent Appeal No. 1191 of 2016, which came to be rejected on 17.11.2017. Despite the several efforts, the respondents have not granted the first higher pay scale at the rate of Rs.5000-150-8000/- and had also not granted the grade pay at the rate of Rs.4200/- to the petitioners. Therefore, being aggrieved by the aforesaid decision, the petitioners have approached this Court by way of filing the present petition.

3. Mr. U.M. Shastri, learned advocate appearing for the respondent No.2, on instructions, submits that the promotional post is available.

ANALYSIS:

1.1. The question is with respect to whether the State Government was justified in restricting the grant of benefits of higher pay-scale in the pay-scale of Rs.5,000- 8,000 revised to Rs.9,300 – 34,800, by directing the period from the date of entitlement to the date of the Government Resolution dated 16.08.1994 as being treated notionally.

1.2. On perusal of the government resolution, more particularly, on perusal of the explanation rendered, it appears that the respondent – State was conscious of the fact that there exists serious anomaly in the matter of grant of first higher grade to Primary Teachers in various Municipal School Boards and in view thereof, the respondent – State Government came up with the government resolution dated 16.08.1994.

1.3. The government resolution dated 12.10.2022 holds that from 01.01.1996 to ensure equality amongst the Primary Teachers in Municipal School Boards, the benefit of 1st higher grade pay would be in the pay-scale of Rs.5,000-8,000 revised to Rs.9,300 – 34,800 subject to certain conditions and whereas while the condition No.2 states about the period from the date of entitlement to the date of Government Resolution to be treated as notionally. The said Government Resolution does not lay any condition in case post of Education Inspector which is available in the set up of the concerned Municipal School Board. Under such circumstances, the Primary Teacher would be entitled for the arrears from date of entitlement to the date of said

Government Resolution.

1.4. The petitioners herein are identically placed to the petitioners of Special Civil Application No. 4368 of 2020 and allied matters decided on 20.02.2024, as also Special Civil Application No. 5832 of 2015 and allied matters, decided on 29.04.2024.

1.5. In view of the above, petitioners herein are entitled to the arrears, in view thereof, the government resolution dated 12.10.2022 restricting the payment of arrears is required to be interfered with, to the extent that it treats the period of entitlement till the date of the government resolution to be treated notionally.

1.6. The petitioners are the Primary Teachers employed by the respondent-Municipal School Board, in different districts since last many years. The petitioners were appointed in the pay-scale of Rs.1200-2040 under the Gujarat Civil Services (Revision of Pay) Rules, 1987. Upon coming into force of the Revision of Pay Rules, 1997 w.e.f. 01.01.1996 the petitioners were placed in the

pay-scale of Rs.4000-6000.

1.7. The State Government introduced a scheme of Higher Pay-Scale vide Government Resolution dated 05.07.1991, which was subsequently modified by Government Resolution dated 16.08.1994. Since the petitioners became eligible for the Higher Pay-Scale as envisaged in Government Resolution dated 16.08.1994, their cases were accordingly considered and the higher pay-scale of Rs.5000-8000 was granted to them. The said grant of the higher pay-scale was sent for approval to Director of Primary Education, but since no decision was taken, the association of the Primary Teachers made various representations to the authorities to grant such approval.

1.8. It appears that the order dated 14.06.2005, refers to the common judgment passed by this Court on 20.12.2004 in Special Civil Application No.11267 of 2004 and allied matters. Thus, the genesis of the entire dispute of fixing and reduction of the pay-scale of the petitioners is the order dated 14.06.2005. After analyzing the entire controversy and considering the different pay fixation, including the revision of pay, this Court

directed the State Government to examine the issue in light of the observations made in the judgment, which reads thus:

“28. The petitions are accordingly partly allowed. The State Government shall examine the controversies which are subject matter of these petitions afresh in light of the observations made in this judgment and particularly as to -

(i) what should be the pay-scale payable to the school inspectors/education inspectors/supervisors for primary schools managed and controlled by Municipal Corporations/Municipalities / District Panchayats;

(ii) when the pay-scale of primary teachers employed by the Municipal Corporations/Municipalities and of those employed by the district panchayats is the same, whether it is necessary to provide different first/second/third higher grade pay-scales for primary teachers employed by Municipal Corporations/Municipalities.”

1.9. Pursuant to the aforesaid judgment, the State Government passed the order dated 14.06.2005 prescribing that the Primary Teachers who do not have any promotional posts, will be entitled to the Higher Pay-Scale as per Appendix-I to the Government Resolution dated 16.08.1994.

1.10. By order dated 26.9.2017 passed in Special Civil Application No. 13687 of 2009, the order granting the higher pay-scale of Rs.5000-8000 to the petitioner was restored. However, the aforesaid direction issued vide order dated 26.9.2017 was not complied with and therefore, the petitioners

preferred Misc. Civil Application No.844 of 2018 for contempt, wherein, the order dated 07.12.2021 came to be passed, which read thus:

"1. These contempt proceedings have been initiated against the respondent contemnors alleging violation of the order dated 26.9.2017 passed by the learned Single Judge in Special Civil Application No.1485 of 2010.

2. The affidavits filed by the respondent contemnors which are on record would disclose that 1st and 2nd higher grade pay scale which was ordered to be granted to the petitioners by the respondents has been granted and insofar as the 3rd higher grade pay scale is concerned, it is said to be under contemplation or under process. Said issue namely, grant of 3rd Higher Grade Pay Scale was not the subject matter of the lis or any such direction had been issued by the learned Single Judge.

3. Though Mr. Pujara, learned counsel appearing for the complainants would vehemently submit that there has been delay in implementing the directions issued by the learned Single Judge, we do not find any explanation whatsoever having been offered for such delay, except stating in the compliance affidavit that they were pushing the file from table to table or there was exchange of communication between Officers and prevalent pandemic. Unexplained delay of 20 months cannot be countenanced by this Court. However, on account of the respondents having purged in the contempt, we do not propose to proceed further in this contempt petition. There being no explanation whatsoever offered for the delay at least by narrating the facts which led to the delay, we are of the considered view that respondents are required to be mulcted with costs for such unexplained delay. Accordingly, we direct the contemnors to pay Rs.500/- (Rupees Five Hundred only) to each of the 131 petitioners. It is made clear that State would be at liberty to recover the said amount from the concerned officials who are responsible for such delay by proceeding against them in the departmental proceedings, if they so desire, this Misc. Civil Application stands dismissed and proceedings are dropped. Notice is discharged."

1.11. In view of the aforesaid backdrop and factual aspect of the matter, the respondent State Government has accepted the judgment and order passed by the coordinate bench in Special Civil Application No. 13687 of 2009 and granted the benefits of the higher pay scales.

1.12. Now coming to the government resolution dated 12.10.2022, the State Government has in fact accepted the anomaly that the Primary Teachers, who are serving under Municipal School Board are also entitled to the higher grade in the scale of Rs.5,000-8,000/-. However, with a view to deprive certain class of Primary Teachers serving under the Municipal School Board, the State Government put certain conditions, more particularly, the condition No.2 of the said resolution dated 12.10.2022, which reads thus:-

"(2) Out of the teachers of the Government Primary Schools being run by the Urban Primary Education Committee, henceforth, in the cases of the teachers who, at present, are entitled for the First Higher Grade Pay Scale of Rs.4500-7000 (Pay Scale of Rs.5200-20200, Grade Pay-2800 as per the Sixth Pay Commission) on the eligibility date thereof, the First Higher Grade Pay Scale of Rs.5000-8000 (Pay Scale of Rs.9300-34800, Grade Pay of Rs.4200 as per the Sixth Pay Commission) shall have to be granted and the amount of arrears of the First Higher Grade Pay Scale of Rs.5000-8000 (Pay Scale of Rs.9300-

34800, Grade Pay 4200 as per Sixth Pay Scale) shall have to be considered as notional for the period from their eligibility date till the date of Resolution and the actual payment shall have to be made with effect from 12/10/2022.”

1.13. By the said resolution, the First Higher Grade Pay Scale of Rs.5000-8000 was granted and the amount of arrears of the First Higher Grade Pay Scale of Rs.5000-8000 was to be considered as notional for the period from the eligibility date till the date of Resolution.

1.14. Thereafter, in similar set of facts, the Court has passed order dated 20.02.2024 in Special Civil Application No. 4368 of 2020, wherein, relevant part of the said order reads thus:

"7. The only question which arises for consideration of this Court is as to whether the respondent - State was justified in restricting the grant of benefits of higher pay-scale in the pay-scale of Rs.5,000- 8,000 revised to Rs.9,300 – 34,800, by directing the period from the date of entitlement to the date of the Government Resolution dated 16.8.1994 as being treated notionally. In this regard it would appear that the prayers made by the petitioners for grant of arrears are being opposed by the learned AGP on the following counts:-

(i) That there being no promotional post available in the Municipal School Board in which the petitioners are working.

(ii) That there being no averment in the petition and no confirmation by the concerned School Board that there existed a post of Education Inspector in the set up of the concerned School Board.

(iii) That the petitions are being delayed.

8. In the considered opinion of this Court, all the objections taken by learned AGP, are absolutely misconceived and goes beyond the decision of the State Government in the Government Resolution dated 12.10.2022. A perusal of the Government Resolution more particularly, the recital part of the Government Resolution clearly reveals the reason behind its formulation. It appears that the State Government was conscious of the fact that there existed a serious anomaly in the matter of grant of first higher grade to Primary Teachers in various Municipal School Boards. It would appear that on account of there being no promotional post of Education Inspector available; therefore, seniors working in a particular Municipal School Board would be drawing salary much less than the salary being drawing by the juniors working in a different Municipal School Board where there was a promotional post of Education Inspector available. In the considered opinion of this Court, being conscious of the anomaly, the State Government had come out with a Government Resolution and whereas the very purpose of the Government Resolution was to ensure that even if there were no post of Education Inspector in the set up of the Municipal School Board concerned then also, the Primary Teachers would be entitled to higher grade in the scale of Rs.5,000-8,000.

8.1 In the considered opinion of this Court, to state that the payment of higher grade in the scale of Rs.5,000-8,000 is inextricably linked to availability of promotional post, is completely fallacious. In the considered opinion of this Court, if there existed a promotional post of Education Inspector, which carried pay-scale of Rs.5,000-8,000, the petitioners and all other similarly situated persons would have been automatically entitled to revision in 1st higher grade in the payscale as carried by the post of Education Inspector and whereas there would not have been any issue with regard to the entitlement of the petitioners and such similarly situated Primary Teachers for revision in the higher grade in the pay-scale of Rs.5,000-8,000. The very reason for which the petitions have been filed from the year 2009 to the present petition was that on account of non-existence of post of Education Inspector in the set up of the concerned School Board, resulting in the Primary Teachers being discriminated in the matter of revision of salary in higher grade i.e. wherever a post of Education Inspector was available, revision would be in the pay-scale of Rs.5,000-8,000 and wherever such post was not available, then revision would be in the pay-scale of Rs.4,500-

7,000.

8.2 In the considered opinion of this Court, since it was to resolve the above anomaly that the State Government had passed the resolution, thereafter the learned AGP on behalf of the State cannot be heard to argue that the provision of arrears should be contingent upon the availability of the post of the Education Inspector with the concerned School Board.

9. As a matter of fact, a perusal of the Government Resolution dated 12.10.2022, while it holds that from 1.1.1996, to ensure equality amongst Primary Teachers in Municipal School Boards, benefit of 1st higher grade would be in the pay-scale of Rs.5,000-8,000 revised to Rs.9,300 – 34,800 subject to certain conditions and whereas while the condition No.2 states about the period from the date of entitlement to the date of Government Resolution to be treated as notionally yet, one does not find the Government Resolution laying down any condition that in case post of Education Inspector is available in the set up of the concerned Municipal School Board, then the Primary Teacher would be entitled for the arrears from date of entitlement to the date of Government Resolution.

9.1 In the considered opinion of this Court, to state that the arrears would be granted to only such School Boards where the post of Education Inspector was in existence, would be going against the grain of the Government Resolution itself and would result in a paradoxical situation same. To clarify on one hand the Government comes out with a resolution to rectify an anomaly in the payment of 1st higher grade between Primary Teachers in School Board where the post of Education Inspector was available and where such a post was not available. Having come out with a policy now to state that payment of arrears would be dependent on availability of the promotion post of Education Inspector would amount to perpetuating the same anomaly which was sought to be rectified. The paradox being too obvious to be misused.

10. As a matter of fact, it would appear that even the State has not implemented the Government Resolution in its true prospective more particularly, considering the fact that the State had passed an order dated 20.04.2023 i.e. after similarly situated Primary Teachers had preferred writ petitions before this Court being SCA No.5849 of 2023 and allied matters i.e. preferred by

the Primary Teachers in the Municipal School Board at Surat, who had raised similar grievance and whereas vide order dated 20.04.2023, the State had deemed it appropriate to hold that the said Primary Teachers working with the Municipal School Board, Surat would be entitled more particularly, since the promotional post of Education Inspector was available in the set up of the Municipal School Board, Surat. In the considered opinion of this Court having come out with the resolution, which granted benefit of higher grade in the pay-scale of Rs.5,000-8,000, from 1.1.1996, irrespective of availability of any post of Education Inspector, it was not open for the State to have restricted the grant of benefit of arrears to only such Primary Teachers where the post of Education Inspector existed. For the above reasons, the stand of the learned AGP cannot be countenanced and the same is rejected.

10.1 It would be required to be reiterated at this stage that the intent of the Government Resolution dated 12.10.2022, if read carefully, was to provide for exception to the general rule and whereas it would appear that the same was probably based on the observations of learned Co-ordinate Bench in the decision dated 26.9.2017 in SCA No. 13687 of 2009 and allied matters to ensure that there is no discrimination amongst Primary Teachers working in School Boards with different Municipalities, based upon availability of higher post, of Education Inspector, the Government Resolution, inter-alia, envisaged that after 1.1.1996, payment of salary in the higher grade, would be at the rate of Rs.5,000-8,000 and whereas the Government Resolution does not restrict the revision to only such School Boards where the post of Education Inspector was available.

11. Insofar as reliance on decision of the Hon'ble Division Bench in Letters Patent Appeal No.4339 of 2020 dated 16.09.2020 is concerned, while it is attempted to be stated that facts of the present case and facts of the case before the Hon'ble Division Bench were similar, to this Court it does not appear to be so. In the considered opinion of this Court and in the facts of the case before the Hon'ble Division Bench, it would appear that Junior Clerks, who had the post of Senior Clerks available in their establishment, were requesting for grant of higher grade scale in the cadre of Head Clerk and whereas the Hon'ble Division Bench had, inter-alia, observed that as per Clause 3(3) of the Government Resolution dated 16.08.1994, the higher grade would be available in the pay-scale of the post of Senior Clerk

i.e. the available higher post in the set up and not to that of Head Clerk. Thus, in the considered opinion of this Court, on account of the facts in the present case being different then the facts before the Hon'ble Division Bench, the observation of the Hon'ble Division Bench in the decision dated 16.9.2020 would not advance the cause of the State, as submitted by the learned AGP. Again the State having passed the Resolution dated 12.10.2022, accepting the entitlement of the petitioners, reliance placed upon the decision of the Division Bench appears to be absolutely misplaced.

11.1 Insofar as the aspect of delay as sought to be explained in the affidavit-in-reply filed by the Under Secretary is concerned, it requires to be mentioned i.e. the Government Resolution itself envisages the entitlement of the Primary Teachers to revision in the 1st higher grade with effect from 1.1.1996. The only grievance was with regard to the payment of arrears from the date of entitlement till the date of the issuance of the Government Resolution. While the respondent State may or may not be justified in raising objection with regard to delay in filing the petition before the GR dated 12.10.2022 came to be passed, yet in the considered opinion of this Court the contention with regard to delay cannot be countenanced after the State has passed the GR dated 12.10.2022. The said GR having accepted the entitlement of the petitioners for the benefit of first higher scale in the scale of Rs.5,000-8,000. The only challenge is with regard to the entitlement of the petitioners to the arrears which as per the GR would be available only notionally. Thus, in the considered opinion of this Court, upon the GR dated 12.10.2022 being issued and the grievance was being with regard to the arrears being treated notionally, the petition is not barred by delay given the cause of action would relate to the GR dated 12.10.2022 itself.

12. Reverting back to the substantive issue, perusal of the Government Resolution does not reveal any reason whatsoever as to the State taking a stand as regards non-payment of arrears to the beneficiaries. On the contrary, perusal of the recitals as noted hereinabove reveals that one of the primary reasons, which weigh with the State was the fact that on account of the anomaly, as explained hereinabove, Junior Teachers in a set up where the promotional post of Education Inspector was available upon revision were being paid salary in the higher pay-scale of Rs.5,000-8,000 whereas seniors in a set up where the

promotional posts were not available were being paid salary in the scale of Rs.4,500-7,000 i.e. lower than the scale in which the juniors were being paid. It was to ensure that such an anomaly is removed that Government Resolution had been promulgated by the State and in the considered opinion of this Court, when the State was conscious of the fact that on account of the anomaly, there would be dissatisfaction amongst seniors, who would not be entitled to payment of higher grade in the scale of Rs.5,000-8,000 only on account of the Municipal School Board not having the post of Education Inspector in its set up, then it was incumbent upon the State to have ensured that the Teachers like the present petitioners be paid arrears of salary.

12.1 Furthermore it clearly appears that the Government Resolution fails to provide any rationale for the withholding of arrears, and considering the lack of merit in the argument regarding delay as evidenced in the affidavit-in-reply, the submissions made by the learned AGP regarding delay are untenable and are thus dismissed.

13. In the considered opinion of this Court, based on the aforementioned discussion, observations, it would appear that the Government Resolution dated 12.10.2022 insofar as it restricts payment of arrears, is required to be interfered with. Hence, the following directions are passed:-

(i) The present petition is hereby allowed.

(ii) Government Resolution dated 12.10.2022 is interfered with insofar as it states about treating the period between the date of entitlement till the date of Government Resolution required to be treated notionally.

(iii) The petitioners are declared to be entitled for grant of arrears upon revision as per 1st higher grade in the pay-scale of Rs.5,000-8,000 i.e. from the date of their entitlement till the date of the Government Resolution. Arrears to be calculated and paid to the petitioners within a period of 12 weeks from today. In the facts of the present case, more particularly since it relates to a policy decision by the State, where an exception is made to the general rule, therefore, in the considered opinion of this Court, the petitioners are not entitled to any interest upon the arrears. The petition stands disposed as allowed. Rule made absolute to the above extent."

1.15. The core issue which is involved in the present petitions, is that whether the Primary Teachers working in the Municipal Primary Education Committees (known as 'Municipal School Boards') are entitled to the higher pay-scale equivalent to the Primary Teachers working in the District Education Committees.

1.16. Before making an endeavor to deal with the aforesaid issue, it will be apposite to take note of the fact that the Primary Teachers of both the Municipal School Boards and the District Education Committees are governed by same Recruitment Rules. They have similar educational qualifications. They can be transferred *inter-se* from the District Committee to the Municipal Boards and vice-versa. Their nature of work and working hours are also same. Their recruitment and appointment is also done by the same authorities. The respondents have also acknowledged the said facts. The Primary Teachers of the Municipal School Boards on their transfer/absorption in the District Primary Education Committees are granted the benefit of higher pay-scale of Rs.5000-8000, whereas the Primary Teachers, who remain in

the Municipal School Boards, are granted the lower pay-scale of Rs.4500-7000. The only difference is in the nomenclature when the Primary Teachers are transferred *inter se*. The promotional post of the Primary Teachers in the Municipal School Board is known as “Supervisor”, whereas in the District Primary Education Committee it is “Kelvani Nirikshak” (Education Inspector). The anomaly amongst the Primary Teachers can be justified from the judgment dated 26.07.2016 passed in Special Civil Application No.15307 of 2003 and allied matters. The same pertains to the Amreli Municipal School Board and Surendranagar District Panchayat School Committee. The Primary Teachers of Amreli Municipal School Board were granted the higher pay-scale of Rs.5000-8000 since there was a promotional post, whereas the Primary Teachers working in the Surendranagar Municipality were granted the higher pay-scale of Rs.4500-7000, and only on being absorbed in the Surendranagar District School Committee area they were conferred the benefit of the higher pay-scale of Rs.5000-8000. Thus, the facts enumerated in the said judgment enlighten the anomaly and discrimination between the two set of Primary Teachers.

1.17. Under the powers conferred to the State Government under section 23(4) of the Bombay Primary Education Act, 1947, the Government Resolution dated 31.07.1982 was issued which provided the cadre of primary teachers as feeder cadre for promotion to the post of Education Inspector/ Additional District Education Inspector, and the ratio of promotion and direct recruitment was fixed as 75:25. Thereafter, the State Government, Education Department vide Resolution dated 11.12.1986, clarified that all the Government Resolutions, Circulars and Orders etc. passed in respect of the employees of the State Government shall routinely apply to the primary teachers to the Municipal Corporations / Municipalities. The State Government framed the Assistant Education Inspector, Class-III Recruitment Rules, 2004, wherein, Rule 2(a) of the said Rules, postulate that the appointment to the said post shall be made by promotion of a person of the proved merit and from efficiency amongst the persons who have worked for not less than five years as primary teachers.

1.18. Under Section 20(3) of the Bombay Primary Education

Act, 1947, the rates of pay and allowances and the terms of employment of the Primary Teachers and other staff of the school Board are fixed by the Government. In exercise of the said powers, the State Government issued Notification dated 26.02.1998 revising the pay-scales of the Primary teachers and Education Inspectors/ Supervisor under the Gujarat Civil Services (Revision of Pay) Rules, 1998 w.e.f 01.01.1996. As per the Schedule of the said Notification, the pay-scale of the Primary Teachers was revised from Rs.1200-2040 to Rs.4000-6000, and the pay-scale of Education Inspector (Kelvani Nirikshak) / Supervisor was revised from Rs.1400-2600 to Rs.5000-8000. As per the Appendix(1) attached to the said Resolution dated 16.08.1994, the corresponding higher pay-scale of Rs.4000-6000 is Rs.5000-8000. Accordingly, the petitioners were granted the higher pay-scale of promotional post of Kelvani Nirikshak, i.e. Rs.5000-8000. The same was duly verified and approved by the Local Fund Account authorities.

1.19. The upshot of the proceedings observations is that there is no dissimilarity between the Primary Teachers working

under the Municipal School Boards and the District Primary Education Committees in terms of their recruitment, appointment, transfer, initial pay-scale, working hours and working conditions etc. Their service is intrinsically connected and *inter-se* transferable. The classification made by the respondent authorities of homogeneous class of Primary Teachers is invidious. Thus, the Primary Teachers working in the Municipal School Boards cannot be discriminated in grant of higher pay-scale only on the ground that there is no post available. The said action of the respondents is in infringement to the fundamental rights enshrined under Articles 14 and 16 of the Constitution of India.

1.20. The learned advocates for the rival parties have placed their respective submissions on Clause 3(2) of Government Resolution dated 16.08.1994.

1.21. The entire controversy of conferring the higher pay-scale in the case of the petitioner's rests on the interpretation of Clause 3(2) of the Government Resolution dated 16.08.1994. In order to appreciate the rival contentions, it will be necessary to

have a close look at Clause 3(2) with a view to ascertain its true nature and import. The same reads thus:

“3(2): First higher pay scale means the pay scale immediate next to the current post, but if there are different promotional posts available for the employees, then the lowest pay scale of such promotional post shall be considered as their first higher pay scale.

But, if there is no pay scale prescribed for promotional post, then first higher pay scale shall be granted corresponding to the present pay scale as per the appendix –(1) attached to the present resolution.

But, for the feeder cadres having different pay scales, instead of fixing the higher pay scale of their promotional post, the higher pay scale shall be fixed as specified in appendix(1) annexed to present resolution.”

1.22. A careful scrutiny, of Clause 3(2), reveals that three categories are prescribed therein– (i) for different promotional posts available for employees, (ii) if there is no promotional pay-scale prescribed; and, (iii) where there are feeder cadres having different pay-scales.

1.23. By the impugned orders, the pay-scale of the petitioners are revised and reduced from Rs.5000-150-8000 to Rs.4500-125-7000 applying the Appendix-I attached to the Government Resolution dated 16.08.1994. The higher pay-scale of the petitioners is reduced by stating that “as per Resolution

dated 16.08.1994, the pay-scale of promotional post shall be granted as higher pay scale, but if there are no promotional posts then the same is to be granted as per appendix attached to resolution. If the higher pay-scale of promotional post is granted, though there is no such promotional post, then the same is required to be cancelled.” The impugned orders also refer to the order dated 14.06.2005. The order dated 14.06.2005 is passed after interpreting Clause 3(2) of the Resolution dated 16.08.1994 in the above terms. It also states that only those primary teachers who are serving in the Municipal School Boards having the promotional post in the set up shall be granted benefit of higher pay-scale.

1.24. Thus, the higher pay-scale of the petitioners is reduced on the ground that since there are no “*promotional posts*” available in the set-up of Municipal School Board, they are entitled to the same as per the Appendix-I. In the opinion of this Court, the impugned orders are based on the incorrect reading of Clause 3(2) of the Government Resolution dated 16.08.1994. The benefit of higher pay-scale is denied to the

petitioners on the ground that there are “no promotional posts” available, whereas, Clause 3(2) of the Government Resolution dated 16.08.1994 does not prescribe such condition as envisaged in the impugned orders. Clause 3(2) only manifests the non-prescription of “the pay-scale” of promotional post and not “non-availability of promotional post”. The case of the petitioners will not fall in the first category of Clause 3(2) as the same refers to “different promotional posts”, which is not the case of the respondents. The same also does not refer to “Appendix-I” of the Resolution. Category (iii) will also not apply, as the same states about the promotional posts having different feeder cadres. Thus, the case of the petitioners will only fall under category (ii), which mentions about “if there is no promotional pay-scale prescribed”. Undoubtedly, the “promotional pay scale” of the petitioner, i.e Primary Teachers is that of the post of Education Inspector/ Supervisor. Thus, the grant of the higher pay-scale to the Primary Teachers will not depend on the actual existence of the post in a set-up, but the same has to be conferred considering the

“promotional pay scale”. There are different Municipal School Boards in the State, which may or may not have required set up of promotional post of Supervisor, but that does not mean that the “promotional pay-scale” of such post does not exist. The contention canvased by learned advocates for the respondents that the promotional pay-scale would depend on the availability of the promotional post, is misconceived, since promotional pay scale is not *sine qua non* to availability of post in a set up but in a cadre. In a Government set up the posts of particular cadre may not be available though there exists a promotional pay-scale for such posts, such principle, if applied, as one Municipal School Board might have a promotional post, and if the other Municipal School Board does not have the set-up, in that case the teachers of one school Board will have the benefit of the higher pay-scale of promotional post, whereas the teachers of the other school Board will be granted the benefit of the lower higher pay-scale as per Appendix-I of Government Resolution dated 16.08.1994. As observed in the foregoing paragraphs, the Supervisor of Amreli Municipal School Board are being paid the higher pay-

scale of Rs.5000-8000, whereas present petitioners are not conferred such benefits. The policy of the higher pay-scale does not discriminate amongst institutions/ authorities looking to different areas where they are situated. The policy has to be applied uniformly. The intention of the Government Resolution dated 16.08.1994 can never be construed in such a restricted manner and will be against the letter and spirit of the scheme. Hence, the impugned orders are liable to be quashed and set aside, as the same are based on the misreading of categories specified in Clause 3(2) of the Government Resolution dated 16.08.1994.

1.25. Though, the principle of “equal pay for equal work”, will not apply in the cases, where the higher pay-scale is prescribed in order to remove stagnation in service, in the present case, the petitioners will be entitled to the benefit by applying same, as there exists a promotional pay scale of the post of Education Inspector/Supervisor, and the same is only denied, due to lack of promotional post and not because of lack of promotional pay-scale.

1.26. At this juncture it will be apposite to refer to the judgments of the Apex Court on the said principle.

A. In the case of ***Randhir Singh Vs. Union of India***, reported in ***(1982) 1 SCC 618*** decided by a three-Judge bench, the Apex Court has observed thus:

“We cannot accept this view. If this view is to be stretched to its logical conclusion, the scales of pay of officers of the same rank in the Government of India may vary from department to department notwithstanding that their powers, duties and responsibilities are identical. We concede that equation of posts and equation of pay are matters primarily for the Executive Government and expert bodies like the Pay Commission and not for Courts but we must hasten to say that where all things are equal that is, where all relevant considerations are the same, persons holding identical posts may not be treated differentially in the matter of their pay merely because they belong to different departments. Of course, if officers of the same rank perform dissimilar functions and the powers, duties and responsibilities of the posts held by them vary, such officers may not be heard to complain of dissimilar pay merely because the posts are of the same rank and the nomenclature is the same.”

B. The Division Bench of this Court in the case of ***Gujarat State Govt. College Lab. Staff Association Vs. State of Gujarat***, reported in ***2011 (3) G.L.H. 376*** on the principle of “equal work and equal pay” it was observed that if there is no controversy or dispute about the parity of posts, functions and responsibilities of the Lab-Assistants in question being of higher

level or about the fact of the Lab-Assistants in P.T.T. colleges being paid the higher wages, the equality in the pay-scale cannot be denied only on the basis that the Lab-Assistants in the P.T.T. colleges were appointed in different colleges under the same Department and were offered the higher pay-scale from the start.

1.26.1. In view of the proposition of law elucidated by the Supreme Court and this Court, the petitioners are also entitled to the same pay-scale to that of the teachers working in the District School Boards.

C. The Hon'ble Apex Court in the case of ***Bhartiya Seva Samaj Trust Tr. Pres. and Anr. v. Yogeshbhai Ambalal Patel and Anr.***, reported in ***AIR 2012 S.C. 3285***, has held as under:

"21. A person alleging his own infamy cannot be heard at any forum, what to talk of a Writ Court, as explained by the legal maxim allegans suam turpitudinem non est audiendus'. If a party has committed a wrong, he cannot be permitted to take the benefit of his own wrong.... This concept is also explained by the legal maxims Commodum ex injuria sua non habere debet ; and 'nullus commodum capere potest de injuria sua propria'."

Thus, it is not open for the respondent authorities to contend that all the earlier orders passed by them were erroneous, in light of the fact that no efforts are made by them

to withdraw the same.

2. In the backdrop of the aforesaid factual and legal position, the submission canvassed by the respondents that there does not exist promotional post for Primary Teachers in Municipal Board does not deserve credence.

3. In light of the aforesaid observations and the position of law, as referred above as held by the Hon'ble Apex Court and the order dated 20.02.2024 passed in Special Civil Application No.4368 of 2020, order dated 26.09.2017 passed in Special Civil Application No.13687 of 2009 and order dated 29.04.2024 passed in Special Civil Application No. 5832 of 2015 and allied matters, the impugned orders passed by the respondent authorities in the captioned petitions are hereby quashed and set aside.

4. The petitioners are declared to be entitled for grant of arrears upon revision as per 1st higher grade in the pay-scale of Rs.5,000-8,000 i.e. from the date of their entitlement till the date of the Government Resolution. Consequentially, the petitioners are also entitled for the 2nd and 3rd higher pay scales (as the case

may be). Arrears to be calculated and paid to the petitioners within a period of **12 (twelve) weeks** from the date of the receipt of order. In the facts of the present case, more particularly, since it relates to a policy decision by the State, where an exception is made to the general rule, therefore, in view of this Court, the petitioners are not entitled to any interest upon the arrears.

5. If any benefits which are already paid to the petitioners, in view of the earlier orders passed in their favour conferring the higher pay-scale of Rs.5000-8000, the same shall be adjusted accordingly. The petitions are **allowed** accordingly. Rule made absolute. Direct service is permitted.

6. In view of the order passed in the petitions, the connected Civil Application/s, if any, does not survive and the same stands disposed of accordingly.

7. Registry to place a copy of this order in each of the connected matters.

(VAIBHAVI D. NANAVATI,J)

Pradhyuman