

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 5832 of 2015
With
R/SPECIAL CIVIL APPLICATION NO. 5833 of 2015
With
R/SPECIAL CIVIL APPLICATION NO. 15383 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 17934 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 3068 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 5625 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 7328 of 2018
With
R/SPECIAL CIVIL APPLICATION NO. 17940 of 2016
With
CIVIL APPLICATION (FIXING DATE OF EARLY HEARING) NO. 1 of 2023
In R/SPECIAL CIVIL APPLICATION NO. 17940 of 2016
With
R/SPECIAL CIVIL APPLICATION NO. 9612 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK Sd/~

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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PATEL GAJENDRABHAI CHHAGANBHAI & ORS.
Versus

STATE OF GUJARAT & ORS.

Appearance:**IN SPECIAL CIVIL APPLICATION NO.5832 OF 2015**

MR KB PUJARA(680) for the Petitioner(s) No.1-48

MR JAY TRIVEDI AGP for the Respondent(s) No. 1

RULE SERVED BY DS for the Respondent(s) No. 2,3,4,5,6

IN SPECIAL CIVIL APPLICATION NO.5833 OF 2015

MR KB PUJARA(680) for the Petitioner(s) No.1-22

MR JAY TRIVEDI AGP for the Respondent(s) No.1

RULE SERVED BY DS 2 - 5 , 6

IN SPECIAL CIVIL APPLICATION NO.15383 OF 2016

MR AS ASTHAVADI for the Petitioner(s) No.1

MR JAPAN DAVE for the Respondent(s) No.1

MR JAY TRIVEDI AGP for the Respondent(s)

IN SPECIAL CIVIL APPLICATION NO.17934 OF 2016

MR KB PUJARA(680) for the Petitioner(s) No.1-59

MS MEGHA CHITALIA AGP for the Respondent(s) No.1

MR DEEPAK KHANCHANDANI for the Respondent(s) No.3

RULE SERVED 2 - 5 , 6

IN SPECIAL CIVIL APPLICATION NO.3068 OF 2018

MR MB PARIKH for the Petitioner(s) No.1-46

MS MEGHA CHITALIA AGP for the Respondent(s) No.1

MR HM MUNSHAW for the Respondent(s) No.2

NOTICE SERVED BY DS 1 RULE SERVED 3

IN SPECIAL CIVIL APPLICATION NO.5625 OF 2018

MR DK CHAUDHARY for the Petitioner(s) No.1-11

MS MEGHA CHITALIA AGP for the Respondent

IN SPECIAL CIVIL APPLICATION NO.7328 OF 2018

MR MB PARIKH for the Petitioner(s) No.1-44

MS DHARITRI PANCHOLI AGP for the Respondent(s) No.1

MR MP PRAJAPATI for the Respondent(s) No.2

RULE SERVED 3

IN SPECIAL CIVIL APPLICATION NO.17940 OF 2016

MR KB PUJARA(680) for the Petitioner(s) No.1-59

MS DHARITRI PANCHOLI AGP for the Respondent(s) No.1

MR MP PRAJAPATI for the Respondent(s) No.3

NOTICE SERVED BY DS 1 , 2 - 5 , 6

IN CIVIL APPLICATION NO.1 OF 2023

MR KB PUJARA(680) for the Applicant(s) No.1-59

MS DHARITRI PANCHOLI AGP for the Respondent(s) No.1
MR MP PRAJAPATI for the Respondent(s) No.3

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IN SPECIAL CIVIL APPLICATION NO.9612 OF 2010

MS MAMTA VYAS for the Petitioner(s) No.1
MR JAY TRIVEDI AGP for the Respondent(s) No.1,2
RULE SERVED BY DS 1 - 3 , 4

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CORAM:HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Date : 29/04/2024
COMMON ORAL JUDGMENT

- (1)** Since the issues raised in all the captioned writ petitions are same they were heard together and are being decided and disposed of by this common judgment.
- (2)** In the present petitions, the petitioners have challenged the action of the respondents in withdrawing/reducing the benefit of the higher pay-scale of Rs.5000-8000 to Rs.4500-7000.
- (3)** The facts giving rise to present petitions are as under:-
- (4)** 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 Service 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.

- (5)** 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.
- (6)** It appears that the order dated 14.06.2005, which is impugned in the present petitions, refers to the common judgement 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 judgement. The observations are incorporated as under:

“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

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(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.”

- (7) Pursuant to the aforesaid judgement of this Court, the State Government passed the impugned 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.
- (8) I have heard learned Counsel appearing for the respective parties.
- (9) An *affidavit-in-reply* filed by Mr. Chauhan, learned Counsel on behalf respondent No.2 in Special Civil Application No.3068 of 2018 is taken on record.
- (10) Mr. Asthavadi, learned Counsel appearing for the petitioner in Special Civil Application No.15383 of 2016 has submitted that the petitioner of said petition being Special Civil Application No.15383 of 2016 was not extended the benefit and was paid the

pay scale of Rs.4500- Rs.7000 only till date and was not getting any benefits as prayed for in the petition which is extended in favour of other petitioners.

- (11)** Mr. Pujara, learned Senior Counsel appearing for some of the petitioners has vehemently submitted that the impugned orders passed by the respondent authorities is contrary to the policy and to the Rules. Mr. Pujara, learned Senior Counsel for the petitioners has submitted that the teachers-petitioners working in different Municipal School Board cannot be discriminated to the Primary Teachers working in the District Education Committees, as both are governed by the same set of Rules of Recruitments, they are *inter se* transferable. The recruitment and the appointing authorities are the same. Mr. Pujara, learned Senior Counsel for the petitioners has referred to the orders granted to the other similarly situated Primary Teachers working under the respondent-Municipal School Board wherein the same would indicate that there exists a post of supervisor. Mr. Pujara, learned Senior Counsel for the petitioners has submitted that the Primary Teachers working under the District Education Committees are promoted as Kelavni Nirikshaks (Education Inspectors) whereas the Primary Teachers working under the Municipal School Board are promoted as

Supervisors. The Primary Teachers are transferred from the Municipal School Boards to the Primary Education Committee and vice versa. Thus, Mr. Pujara, learned Senior Counsel for the petitioners has submitted that the Primary Teachers working under the Municipal School Board cannot be discriminated and the benefit of the higher pay-scale of Rs.5000-8000 cannot be denied to them.

- (12)** Mr. Pujara, learned Senior Counsel for the petitioners has asserted that under Section 23 of the Bombay Primary Education Act, 1947 the District Education Committees as well as the Municipal School Boards are required to maintain adequate staff of Supervisors/ Education Inspectors and, therefore, even if at a given point of time Municipal School Board does not have Supervisors/ Education Inspectors, that by itself does not mean that the promotional post of Education Inspector/Supervisor is not available to the Primary Teachers. Mr. Pujara, learned Senior Counsel for the petitioners placed reliance on Government Resolution dated 11.12.1986, which states that such posts of Education Inspectors/Supervisors are to be filled in by way of promotion and by direct recruitment in the ratio of 75:25. Mr. Pujara, learned Senior Counsel for the petitioners has submitted that the first higher pay-scale of the

promotional post of Education Inspectors / Supervisors is Rs.1400-2600, which was subsequently revised to Rs.5000-8000 and hence, the petitioners, who were working as Primary Teachers are entitled to the first higher pay-scale of the said promotional post of Education Inspectors/Supervisor as per Government Resolution dated 16.08.1994. Mr. Pujara, learned Senior Counsel for the petitioners has submitted that the respondent authorities cannot fix the higher pay-scale of the petitioners relying upon Appendix-I of Government Resolution dated 16.08.1994 as the petitioners are having the promotional pay-scale of Education Inspectors. Mr. Pujara, learned Senior Counsel for the petitioners has also referred to Government Resolution 31.07.1982, by which the State Government has prescribed Rules of recruitment for the post of Education Inspector/Supervisors under section 23(4) of the Bombay Primary Education Act, 1947 which prescribes that the aforesaid posts are to be filled in by way of promotion and direct recruitment in the ratio of 75:25. Reliance is also placed by Mr. Pujara, learned Senior Counsel for the petitioners on Government Resolution dated 11.12.1986, which clarifies that all Government Resolutions, Circular and Orders, etc. passed in respect of government

employees shall automatically be applicable to the Primary Teachers of the Municipal Corporations/Municipalities with effect from the same date and on the same basis and, therefore, Government Resolution dated 31.07.1982 is equally applicable in respect of the Primary Teachers of the District Education Committees and the Municipal School Boards, including the Primary Teachers working under the respondent-School Board.

- (13)** Mr. Pujara, learned Senior Counsel for the petitioners has emphasized on the Notification dated 26.02.1998 by which the pay scales of Primary Teachers and Education Inspectors in the Education Department were revised. Mr. Pujara, learned Senior Counsel for the petitioners has submitted that in the earlier writ petition being Special Civil Application No.11267 of 2004, the said Notification was never pointed out to this Court, and had it been pointed out, this Court would have restrained itself from issuing such directions.
- (14)** In view of the aforesaid submissions, Mr. Pujara, learned Senior Counsel for the petitioners has urged that the present petitions deserve to be allowed and the respondents may be directed to confer the benefits of the higher pay-scale of Rs.5000-8000 to the petitioners.

- (15)** Ms. Mamta Vyas, learned Counsel, Mr. A.S. Asthavadi, learned Counsel, Mr. M.B. Parikh, learned Counsel and Mr. D.K. Chaudhary, learned Counsel appearing on behalf of other petitioners in the connected writ petitions have adopted the arguments of Mr. Pujara, learned Senior Counsel for the petitioners.
- (16)** Per contra, learned Assistant Government Pleaders as well as learned advocates appearing on behalf of the respondents have submitted that the impugned orders do not require any interference of this Court. They have submitted that the petitioners are not entitled to the pay-scale of Rs.5000-8000, and they are entitled to the next higher pay-scale of Rs.4500-7000 as there are no promotional posts available in the respondent-Municipal School Board. They have placed reliance on Clause 3(2) of Government Resolution dated 16.08.1994. They have submitted that as per said clause, if there are no promotional post available, then in that case, the higher pay-scale benefits is to be fixed as per Appendix-I attached to Government Resolution dated 16.08.1994.
- (17)** So far as the contention of the learned Senior Counsel for the petitioners about conferring the benefits of the higher pay-scale of Rs.5000-8000 to

the other employees is concerned, learned Assistant Government Pleaders as well as learned advocates appearing on behalf of the respondents have stated that the same was a mistake. They have also stated that the reliance placed on the orders filling up of the post of the Supervisors in the respondent-Municipal Board is also misconceived, as at the relevant time such orders were passed due to mistake of the authorities. They have also stated that the appointment of those persons to the post of Supervisors was done by the concerned authorities at the relevant time due to error on their parts.

(18) Learned Assistant Government Pleaders as well as learned advocates appearing on behalf of the respondents have submitted that since the Local Fund has taken objection to the grant of the higher pay-scale of Rs.5000-8000, the same was cancelled and instead the petitioners were held to be eligible to the higher pay-scale of Rs.4500-7000.

(19) Learned Assistant Governments pleaders have referred to and relied upon the *affidavit-in-reply* filed by the respondent in Special Civil Application Nos. 5832 of 2015, 5833 of 2015, 17934 of 2016, 3068 of 2018, 5625 of 2018, 7328 of 2018 and 17940 of 2016 dated 7.3.2024. They have emphasized on following paragraphs:-

"5. The principal policy for grant of higher pay scale was propounded vide Resolution dated 16.08.1994 passed by the Finance Department, Government of Gujarat. There were two government resolutions of the same date, G.R. No. PGR-1194-45-M covers the higher pay scale issue of teachers i.e. academic staff of Education Department while G.R. No. PGR-1194- 44-M covers the higher pay scale issue of all the other government employees. Although the provisions of the said policy relevant for the purpose of adjudication of the present petition are discussed at length in the forth coming paragraphs, at this stage it is pertinent to mention that amongst other provisions for grant of higher pay envisaged in the said resolution, one of the provision prescribes that higher pay scale shall be granted for the next promotional post. In the event if there exists no promotional post, higher pay shall be granted as prescribed in the Appendix I to the said resolution. A copy of both the resolutions dated 16.8.1994 are annexed hereto and marked as Annexure-R1.

7. Adverting further, the primary teachers, upon their appointment to the said post at various districts or municipal areas are governed by District Primary Education Committee or Municipal Primary Education Committee, as the case may be. Earlier, insofar as primary teachers working in districts were concerned, they would be entitled for promotion to the post of Education Inspector. Whereas in some municipal areas, there was no promotional post to Education Inspector/ Supervisor for primary teachers.

8. Hence, those primary teachers who worked in schools under the District Primary Education Committees as well as the Municipal Primary Education Committee, where Education Inspector was the promotional post would get higher pay scale of such post. Whereas, those primary teachers who worked in schools under Municipal Primary Education Committee where there was no

promotional post of Education Inspector/ Supervisor would be granted higher pay scale in accordance with the Appendix I of the resolution dated 16.08.1994 passed by the Finance Department, Government of Gujarat. Before coming in to force of the Gujarat Civil Service(Revision of Pay)Rules, 1998, there existed no controversy since the higher pay scale available to both sets of primary teachers, i.e., whether scale of promotional post of Education Inspector or scale granted as per Appendix I, were identical.

9. However, upon coming into force of the Gujarat Civil Service (Revision of Pay) Rules, 1998, all the primary teachers were placed in revised timescale of pay of Rs. 4,000 - 6,000. The primary teachers working in a setup having promotional post became eligible for higher pay scale in the time scale of pay Rs. 5,000 - 8,000 corresponding to the promotional post, where such posts existed. Whereas, the setup where no such promotional post existed, Appendix I appended to resolution dated 16.08.1994, as amended vide resolution dated 14.08.1998 passed by the Finance Department, Government of Gujarat, came into play. A copy of resolution dated 14.08.1998 is annexed at ANNEXURE-R3. The amended Appendix I prescribed for higher pay scale in time scale of pay at Rs. 4,500 - 7,000. Thus, the primary teachers where no promotional post existed would be entitled to higher pay scale of Rs.4,500- 7,000.

12. Apparently, those set of primary teachers working in municipal committees who were entitled for higher pay scale before 12.01.2021 would get higher pay scale in accordance with Appendix I, whereas those of the primary teachers under the municipal committee who are entitled for higher pay scale after 12.01.2021 would get higher pay scale corresponding to the promotional post of Head Teacher, Class III. In other words, juniors would be entitled to pay scale appertaining to Head Teacher, Class III and seniors would be entitled to

a comparatively lower higher pay scale as per the Appendix I. Hence, it is with respect to curb such anomalous situation whereby there was difference in pay amongst the primary teachers under the same setup, the Education Department, Government of Gujarat passed resolution dated 12.10.2022, a copy of which is annexed and marked as Annexure R 5. By virtue of the said resolution, the primary teachers who were granted or were entitled to higher pay scale as per Appendix I would be granted higher pay scale of Head Teacher, Class III in light of terms and conditions set in the said resolution.

13. It is pertinent to note that as per resolution dated 12.10.2022, more particularly Clause 12 thereof, the revised scale was made applicable on notional basis from the date of eligibility to the date of resolution i.e. 12.10.2022 and it is specified that benefits would be granted on an actual basis from 12.10.2022. It is further worthwhile to note that the resolution dated 12.10.2022 further resolves to curb the anomaly prevailing between the teachers working under the setup of schools at district panchayats and at municipal corporations or municipalities.

16. The petitioners have ventilated their claim for higher pay scale in the present petition. It is noteworthy to mention that higher pay scale is a benevolent policy decision of the state, hence, there exists no fundamental or legal right for grant of higher pay scale. Further, higher pay scale is granted in lieu of promotion, where an employee is stagnant on a particular post and on a particular pay scale. Settled legal principles suggest that there exists no absolute right for promotion and concomitantly, higher pay scale would also not be a matter which can be claimed as a matter of such right. Hence, on this sole ground, the present petition deserves to be dismissed. Delay and latches

17. The petitioners in some petitions, have ventilated their grievance for grant of higher pay scale after a lapse of considerable time. Settled it is that delay and latches would negate the claim of the petitioners, howsoever strong be their case. Thus, once having accepted the pay scale of Rs. 4,500 - 7,000 in its totality, the petitioners cannot now approach this Hon'ble Court claiming such benefits. Petitioners are fence sitters

18. A bare perusal at the memo of petition would suggest that the petitioners have ventilated their claim on strength of the judgment and order passed in Special Civil Application No.13687 of 2009 and allied matters by this Hon'ble Court. Apparently, the petitioners woke from slumber and have approached this Hon'ble Court only after adjudication of the said petitions, which necessarily suggests that the petitioners are fence sitters and hence, do not deserve reliefs under extraordinary original jurisdiction of this Hon'ble Court."

(20) In view of the aforesaid submissions, learned Assistant Government Pleaders as well as learned advocates appearing on behalf of the respondents have urged that the present petitions do not merit any acceptance, since the petitioners are not entitled to the higher pay-scale of Rs.5000-8000 but they are entitled to the higher pay-scale of Rs.4500-7000 in view of Appendix-I attached with Government Resolution dated 16.08.1994, more particularly Paragraph No.3(2) thereof, which states that if there are no promotional post available then the employees are to be granted the higher pay-scale as indicated in Appendix-I of Government

Resolution dated 16.08.1984.

- (21) I have considered the rival contentions made by the learned advocates appearing on behalf of the respective parties. I have also perused the documents on record.
- (22) It appears by order dated 26.9.2017 passed by coordinate bench of this Court in 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 therefore, the petitioners have filed Misc. Civil Application No.844 of 2018 for contempt before this Court, wherein this Court passed order dated 7.12.2021 which reads as under:-

"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."

(23) Then the respondents have passed order on 12.10.2022 wherein resolution was passed and more particularly condition No.2 of the said resolution dated 12.10.2022 which reads as under:-

"(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.

- (24)** By the said resolution 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.
- (25)** Thereafter, this Court in similar set of facts has passed order dated 20.2.2024 in Special Civil Application No. 4368 of 2020. Relevant part of the said order reads as under:-

"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."

- (26)** The core issue which fastens 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.
- (27)** 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.

- (28)** 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 judgement dated 26.07.2016 passed by this Court in Special Civil Application No.15307 of 2003 and allied matters. The same pertained 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.

- (29)** The Government Resolution dated 31.07.1982 issued under the powers conferred to the State Government under section 23(4) of the Bombay Primary Education Act, 1947 provides 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 is 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. Rule 2(a) postulates that the appointment to the said post shall be made by promotion of a person of the proved merit and efficiency from amongst the persons who have

worked for not less than five years as primary teachers.

(30) 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 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.

(31) The upshot of the preceding 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 in Articles 14 and 16 of the Constitution of India.

- (32)** The learned advocates for the rival parties have premised their respective submissions on Clause 3(2) of Government Resolution dated 16.08.1994.
- (33)** 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 ascertaining 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.”

(34) A careful scrutiny, of Clause 3(2), reveals that three categories are prescribed therein- **(1)** for different promotional posts available for employees, **(2)** if there is no promotional pay-scale prescribed; and, **(3)** where there are feeder cadres having different pay-scales.

(35) 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 refers 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.

- (36)** Thus, the higher pay-scale of the petitioners is reduced on the ground that since there are no “*promotional posts*” available in the setup of Municipal School Board, they are entitled to the same as per the Appendix-I. In my considered opinion, 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-1” of the Resolution. Category (3) 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 (2), which mentions about “if there is no promotional pay-scale prescribed”. Indubitably, 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 canvassed 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, may lead to anomalous situations, 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, which would lead to an incongruent situation 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.

(37) 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. At this juncture it will be apposite to refer to the judgement of the Apex Court on the said principle.

(38) 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.”

(39) 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 has 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.

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

(41) The Supreme 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:

"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.

- (42)** 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.
- (43)** In view of the foregoing observations and analysis, and bearing in mind the law explicated by the Supreme Court and the order dated 20.2.2024 passed in Special Civil Application No.4368 of 2020 and order dated 26.9.2017 passed in Special Civil Application No.13687 of 2009, in my opinion, the impugned orders in each of the petition are quashed and set aside.
- (44)** 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 on or before **31.7.2024**. 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.

- (45)** 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. Rule made absolute. Direct service is permitted.
- (46)** In view of the order passed in the petitions, the connected civil application does not survive and the same stands disposed of accordingly.
- (47)** Registry to place a copy of this order in each of the connected matters.

SURESH SOLANKI

Sd/-
(HEMANT M. PRACHCHAK,J)