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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.88/2014

Date of Decision: 14.02.2020.

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N. SINGH, MEMBER (J)

1. Mukeshbhai Amrutbhai Palel,
Aged about 38 years,
Presently working as:
Assistant Teacher, Primary School,
Bonta, Kanbipada, Village- Randha,
Union Territory of Dadra & Nagar Haveli.
Residing at: At and Post - Athola,
School Fala, Silvassa 396 230.
2. Maheshbhai Naranbhai Patel,
Aged about 38 years,
Presently working as:
Assistant Teacher, Primary School,
Goratpada, Village-Khanvel,
Union Territory of Dadra & Nagar Haveli.
Residing at: At and Post - Masat,
Padarifalia, Silvassa 396 230.
3. Nayanaben Sumanbhai Patel,
Aged about 35 years,
Presently working as: Assistant Teacher,
Central Primary School, Vasona, Village
Vasona, Union Territory of Dadra &
Nagar Haveli. Residing at: Near Om
Hospital, Naroli Road, Silvassa - 396 230.
4. Mayuriben Bharatsinh Rathod,
Aged about 28 years,
Presently working as: Assistant Teach
Village Naroli, Union Territory of Dadra
& Nagar Haveli, R/at Post Naroli
Checkpoint, Silvassa 396 230.
5. Kanchanben Prabhalsinh Solanki,
Aged about 33 years,
Presently working as: Assistant Teacher,
Primary School, Dhapsa, Village Nraroll,
Unlon Territory of Dadra & Nagar Havel,
And Residing at: At and Post Naroll,

Opp, Havell Petroleum, Vadfalia,
Silvassa- 396 230.

6. Krupaben Arvindsinh Chauhan,
Aged about 28 years,
Presently working as: Assistant Teacher,
Primary School, Athal, Village Alhal,
Union Territory of Dadra & Nagar Haveli,
And Residing at: At and Post - Naroli,
Opp. Government High School, Naroli,
Silvassa - 396 230.

7. Pravinaben Bhagwansinh Thakor,
Aged about 39 years,
presently working as Assistant Teacher,
Central Primary School, Silvassa (Hindi
Medium), Village Silvassa, Union Territory
of Dadra and Nagar Haveli.
R/at Post – Naroli Morifalia, Silvassa 396 235.

8. Khyatiben Pravinsinh Solanki,
Aged about 28 years,
Presently working as Assistant Teacher,
Primary School, Kakadfalia, Village Naroli,
Union Territory of Dadra & Nagar Haveli,
R/at Gurukrupa, House No.85, Opp. Prithviraj
Hotel, Gohil Faliya, Naroli, Silvassa 396 230.

9. Hemantkumar Prabhubhai Valand,
Aged about 38 years,
Presently working as Assistant Teacher,
Primary School, Janathaiyapada, Village
Chikhali, Dapada, Union Territory of Dadra
& Nagar Haveli. R/at Post – Naroli, Brahmanfalia,
Silvassa 396 230.

10. Maheshbhai Budhiyabhai Patel,
Aged about 31 years,
Presently working as Assistant Teacher,
Primary School, Kivani, Silvassa
(Hindi Medium), Village Galonda Rautpaa,
Silvassa 396 230.

11. Kalpanaben Ukadbhai Patel,
Aged about 32 years,
Presently working as Assistant Teacher,
Central Primary School, Amboli,
Village Amboli, Union Territory of Dadra
& Nagar Haveli. R/at At & Post – Amli

Baldevi, Kuvafalia, Silvassa – 396 230.

12. Sohankumar Kiritbhai Desai,
Aged about 33 years,
Presently working as Assistant Teacher
Primary School, Ultanfalia, Village Silvassa,
Union Territory of Dadra & Nagar Haveli,
R/at: 103, Pali Enterprise,
Near Essar Petrol Pump, Dadra, Silvassa - 396 230.

13. Gulab Devu Tokre.
Aged about 29 years.
Presently working as Assistant Teacher,
Primary School, Chapapada, Village Sindoni.
Union Territory of Dadra & Nagar Haveli,
R/at: At & Post- Sindoni Tentmal,
Sivassa 396 290.

14. Kalpanaben Parsottambhai Prajapati.
Aged about 38 years,
Presently working as: Assistant Teacher,
Primary School, Dokmardi, Village Vaghchipa,
Union Territory of Dadra & Nagar Haveli,
R/ at: Plot No. 5. Sundarvan Society.
Silvassa 396 230.

15. Ushaben Mangubhai Patel,
Aged about 37 years,
Presently working as: Assistant Teacher,
Central Primary School, Vasona, Village Vasona,
Union Territory of Dadra & Nagar Haveli,
R/at: At & Post- Samarvarni, Patelpada,
Silvassa 396 230.

16. Parmilaben Kantibhai Patel.
Aged about 37 years,
Presently working as: Assistant Teacher,
Primary School, Nana Randha, Village Randha,
Union Territory of Dadra & Nagar Haveli,
R/ at: At & Post- Baldevi, Kuvafaliya,
Amli, Silvassa 396 230.

17. Hinaben Zinabhai Patel,
Aged about 29 years,
Presently working as: Assistant Teacher,
Primary School, Patelpada, Village Galonda,
Union Territory of Dadra & Nagar Haveli,
R/ at: At & Post- Amli Kakadiya, Faliya,
Umankui Road, Silvassa 396 230.

18. Heenaben Hasmukhbhai Rathod,
Aged about 29 years.
Presently working as: Assistant Teacher,
Central Primary School, Dadra, Village Dadra.
Union Territory of Dadra & Nagar Haveli,
R/at: At & Post – Dadra, Shree Krishna Apartment,
B/2, Room – 305, 3rd Floor, Silvassa - 396 230.

19. Yogitakumari Naginbhai Patel,
Aged about 27 years,
Presently working as: Assistant Teacher,
Central Primary School, Morkhal, Village Morkhal,
Union Territory of Dadra & Nagar Haveli,
R/ at: At & Post – Amli, Agriwad,
Silvassa 396 230.

20. Neetaben Mohanbhai Rohit.
Aged about 30 years,
Presently working as: Assistant Teacher,
Central Primary School, Dapada, Village Dapda,
Union Territory of Dadra & Nagar Haveli,
R/at: At & Post – Agriwad, Rohit Faliya,
Vaghchhipa, Silvassa 396 230.

... *Applicants*

Notices, if any, may be sent at the following address:
C/o S.R. Atre, Advocate,
8, Seema Apartment, Behind Rahul Cinema,
Shivajinagar, Pune 411 005.
(Advocate Shri S.R. Atre)

VERSUS

1. The Administrator, Union Territory of
Dadra & Nagar Haveli, Secretariat,
Silvassa 396 230.
2. The Development Commissioner,
(HOD, Education Department),
U.T. Administration of Dadra & Nagar
Haveli, Secretariat, Amli, Silvassa 396 230.
3. The Secretary (Education),
Administration of Union Territory of Dadra
& Nagar Haveli, Secretariat, Amli,
Silvassa 396 230.
4. The Secretary, Panchayati Raj Institution,
U.T. Administration of Dadra & Nagar Haveli,
Collectorate, Silvassa 396 230.

5. The Chief Executive Officer,
District Panchayat, Department of
Primary Education, Union Territory of
Dadra & Nagar Haveli, Silvassa 396 230.

6. The Education Officer, (District Panchayat),
Department of Primary Education,
Union Territory of Dadra & Nagar Haveli,
Silvassa 396 230.

(Advocate Shri V.S. Masurkar)

... Respondents

ORDER (Oral)

Per : R.N. Singh, Member (J)

The present OA has been filed by the applicants, 20 in number, under Section 19 of the Administrative Tribunals Act, 1985 to challenge the order dated 18.11.2013 (Annx. A-1), passed by Respondent No.6 whereby the services of the Assistant Teachers which were regularized vide order dated 26.10.2012 and 31.12.2012 have again been restored on contract basis in the Primary School under the Administrator of Union Territory of Dadra & Nagar Haveli, Silvassa. The Applicants have also challenged the order dated 22.07.2013 passed by the Respondent No.4 whereby the order(s) of regularization of the services of the applicants have been suspended with further directions to put the applicants again on contract basis.

2. The Applicants have prayed for the following reliefs;

"8.A) This Hon'ble Tribunal be pleased to call for the record and proceedings of the present case and after examining the legality and propriety thereof, quash and set aside the orders dated 18th of November, 2013 (Annex. A-1) and direct the respondents to continue the applicant as regularly appointed Assistant Teachers in Primary Schools along with all the consequential reliefs.

8.A-1) This Hon'ble Tribunal be pleased to call for the record and proceedings of the present case and after examining the legality and propriety thereof, quash and set aside the orders issued by the Respondent No.4 herein dated 22nd of July 2013 and accordingly direct the respondents to continue the applicants as Regularly Appointed Assistant Teachers in Primary Schools alongwith all the consequential reliefs which would flow from the orders dated 31st of December 2012.

8.B) This Hon'ble Tribunal be pleased to hold and declare that the applicants have been duly regularized by the respondents in the posts of Assistant Teachers in Primary Schools vide orders dated 31st of December, 2012 and they deserve to be continued on regular basis in the said posts along with all consequential benefits and further the impugned order dated 18th of November 2013 (Annex.A-1), is illegal and bad in law.

8.C) Pass any such order and/or orders as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case.

8.D) Costs of the application be provided for."

3. The Applicants have filed MA No.619/2014 seeking permission to file the present OA jointly. Learned counsel for the

applicants submits that the applicants are similarly placed and are aggrieved of the same impugned order(s) and in the present OA they have prayed for the similar reliefs and thus they are entitled for permission to file the present OA jointly. For the reasons recorded there in the MA and keeping in view no objection from the learned counsel for the respondents, **MA is allowed.**

4. The precise facts leading to the present OA are that an Advertisement dated 10.07.2006 (Annex. A-7) was issued by the District Panchayat (Department of Primary Education) Dadra & Nagar Haveli inviting applications from local eligible candidates for the posts of Assistant Teachers for Primary School on contract basis in the Pay Scale of Rs.4500-7000. It was incorporated in the said Advertisement that Recruitment to these advertised 139 posts of Primary School Teachers will not confer any right for regular appointment and this appointment may be terminated at any time without prior notice. As prescribed in the said advertisement itself, a provision was made for declaration from the candidates to the

following effect:

"I hereby declare on oath that the above information is correct and complete to the best of my knowledge and belief and nothing has been concealed distorted. If at any time I am found to have concealed/distorted any material information my appointment shall be liable to summary termination without notice/compensation."

5. In pursuance to the aforesaid Advertisement, the applicants have applied and they have undergone written test and other formalities for being considered for the said appointment and on being found successful in the said selection process, the applicants were issued appointment order(s) on 10.10.2006 and the applicants have joined as such on 06.11.2006. Office Memorandum dated 10.10.2006 (Annex.A-11) regarding appointment of applicants, issued by Sarva Shiksha Abhiyan, Union Territory of Dadra & Nagar Haveli, Mission Authority provided that the applicants were appointed as Assistant Teachers, Primary School on daily wages/contract basis for a period of 89 days w.e.f. 06.11.2006.

6. Besides other terms and conditions noted therein, the said OM also provided therein that "he/she shall have no right for

regular appointment on the post in future." Subsequently, vide order dated 26.10.2012 (Annex. A-23) with the approval of Vice President of District Panchayat, the applicants were offered the posts of Assistant Teacher, Primary School (Gujarati & Marathi Medium) on temporary basis with a condition that they will be on probation for two years from the date of appointment which may be extended at the discretion of the competent authority and they will be considered for confirmation after they have successfully completed the probation. Subsequent thereto, the District Panchayat of Primary Education, Dadra & Nagar Haveli, U.T., vide their order dated 31.12.2012 (Annex.A-25) appointed the applicants to the posts of Assistant Teacher (Primary School) w.e.f. 01.01.2013.

7. The grievance of the applicants in the present OA is that once the applicants have participated in the selection process in pursuance to the Advertisement and on being found successful they were appointed to the post(s) though on contract basis, however subsequently after due deliberation they

have been appointed as Assistant Teachers w.e.f. 01.01.2013, suspension of their regularization to the post(s) or to revert them to their original status of Assistant Teacher on contract basis, that too without notice is illegal and arbitrary.

8. Learned counsel for the applicants argues that the Assistant Vice President of the Panchayat is the competent authority and once as a conscious decision the competent authority has initially appointed the applicants on probation and after completion of their probation has approved their appointment on regular basis w.e.f. 01.01.2013, their reversion from the regular posts to their status on contract basis is illegal. He also argues that the authority who had issued the impugned orders is not the competent authority. To substantiate his such submission that regularization has been done by the competent authority i.e. the Vice President of the District Panchayat, learned counsel for the applicants has referred to various documents including the internal notings of the respondents, available on records.

9. In response to the notice issued from this Tribunal, the respondents have filed a detailed reply. Shri Masurkar, learned counsel for the respondent with the assistance of the reply affidavit filed on behalf of the respondents submits that in the advertisement as well as in the offer of appointment it was clearly mentioned that the recruitment is only under the Sarva Shiksha Abhiyan, Mission Authority and the same exclusively falls under the control and domain of the Administrator of Union Territory of Dadra & Nagar Haveli and the Vice President of the Panchayat is not the competent authority. He further argues that even if the Panchayat concerned is competent to make appointment of the Teachers against the regular vacancies under the Panchayat, the Panchayat concerned is not competent to make appointments or to regularize the persons appointed on contract or daily wage basis against the vacancies falling under the Sarva Shiksha Abhiyan, Mission Authority. He also argues that the Administrator of Union Territory or any competent authority of Sarva Shiksha

Abhiyan, Mission Authority is always competent to supervise and take corrective measure against the order(s) and decision(s) of the Panchayat under the said Union Territory and by invoking such jurisdiction, the authority concerned of the Union Territory has issued the impugned order(s) and there is no illegality or irregularity in the impugned order(s). He also argues that the present OA is *pre-mature* inasmuch as it is the admitted case of the applicants that aggrieved of impugned orders dated 18.11.2013 and 22.07.2013, the applicants have preferred representation through proper channel to the Administrator of the said Union Territory on 29.11.2013 (Annex. A-28) and even before consideration or disposal thereof by the Administrator of Union Territory, the applicants have rushed to this Tribunal on 14.02.2014 by way of the present OA. He further argues that the applicants have been continuing under the respondents in view of the interim order passed by this Tribunal.

10. We have perused the pleadings on record and we have also considered the

submissions made by the learned counsels for the parties.

11. Learned counsel for the applicants has though taken us to various documents on record to contend that the Vice President is the only competent authority for appointment to the posts of Assistant Teacher under the Panchayat and the said authority only has passed orders for regularization of the applicants, however, he has not been able to dispute that the applicants have themselves preferred representation dated 29.11.2013 or identical representations before the Administrator of the concerned Union Territory. Though on record, there is only one representation i.e. the representation dated 29.11.2013 of the Applicant No.1, however, the learned counsel for the applicants submits that identical representations were preferred by the other applicants as well. In the said representation dated 29.11.2013, the applicant has submitted that once the appointment of any employee is carried out by the employer with the prevailing Recruitment Procedure, the employee cannot

be held responsible for any fault for the procedure adopted by the District Panchayat or for its lacking competency for the same. The Applicant has himself asserted therein that due to publishing of new Panchayat Regulation 2012, the power regarding appointment etc to Group 'A' & 'B' posts is not within the power of District Panchayat as the post of Assistant Teacher now falls under Group 'B' non-gazetted for that being under the Grade Pay of Rs.4200/- which was earlier in Group 'C'.

12. In view of the above, it is evident that once the post of Assistant Teacher has become a Group 'B' post, the District Panchayat is not the competent authority for appointment or regularization of the contractual Teachers. The applicants have made representation(s) for suspension of the impugned orders dated 18.11.2013 and dated 22.07.2013 and the same are admittedly pending consideration of the Administrator.

13. At this stage, the learned counsel for the applicants submits that as in the aforesaid representation all the grounds could not be raised by the applicants, a

liberty may be accorded to the applicants to make a comprehensive supplementary/additional representation.

14. In view of the aforesaid facts and circumstances, without going into the merits of the claim of the applicants, we dispose of the OA with liberty to the applicants to make a comprehensive supplementary/additional representation. The applicants may prefer supplementary/additional representation, if they so desire, within a fortnight from today and with directions to Respondent No.1 to consider the applicants' representations and to dispose of the same by passing a reasoned and speaking order as expeditiously as possible and in any case within six weeks of receipt of additional/supplementary representation from the applicants, if the same is preferred within the time stipulated in the present order.

15. The OA is disposed of in the aforesaid terms. No order as to costs.

16. However, in the facts and circumstances, till the applicants' representations are decided by the

respondent no.1, the respondents are directed to maintain *status-quo* with regard to the services of the applicants as of today.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

dm.

JD
09/03/2014