

Gujarat High Court
Suo Muto vs For on 22 March, 2013

SUO MUTO....Petitioner(s)V/STHE CHIEF SECRETARY

C/SCA/33/2005

CAV JUDGEMNT

IN

THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL
APPLICATION NO. 33 of 2005

With

SPECIAL CIVIL
APPLICATION NO. 824 of 2010

TO

SPECIAL CIVIL
APPLICATION NO. 839 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 2088 of 2010

TO

SPECIAL CIVIL
APPLICATION NO. 2115 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 13849 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 6219 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 1323 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8287 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8693 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 1077 of 2010

With

CIVIL APPLICATION NO.
3245 of 2011

In

SPECIAL CIVIL
APPLICATION NO. 838 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8690 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 1152 of 2011

With

CIVIL APPLICATION NO.
8001 of 2010

In

SPECIAL CIVIL
APPLICATION NO. 6219 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 938 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8708 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8683 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 365 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8634 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8633 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8691 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8681 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 5963 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8684 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 2051 of 2012

With

SPECIAL CIVIL
APPLICATION NO. 1219 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 1145 of 2011

With

SPECIAL CIVIL
APPLICATION NO. 8680 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8682 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8696 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8694 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 2062 of 2012

With

SPECIAL CIVIL
APPLICATION NO. 6162 of 2010

With

CIVIL APPLICATION NO.
9978 of 2011

In

SPECIAL CIVIL
APPLICATION NO. 365 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 1324 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 936 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 16993 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8844 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 8688 of 2010

With

SPECIAL CIVIL
APPLICATION NO. 14647 of 2011

With

SPECIAL CIVIL
APPLICATION NO. 10762 of 2012

FOR
APPROVAL AND SIGNATURE:

HONOURABLE
THE CHIEF JUSTICE

MR. BHASKAR
BHATTACHARYA

and

HONOURABLE

MR. JUSTICE J. B. PARDIWALA

=====

1

Whether Reporters of Local Papers may be allowed to see the judgment ?

2

To be referred to the Reporter or not ?` 3 Whether their Lordships wish to see the fair copy of the judgment ?

4

Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5

Whether it is to be circulated to the civil judge ?

===== SUO MUTO &
OTHERS Versus THE CHIEF SECRETARY & OTHERS
=====

Appearance:

FOR PETITIONERS:

SPL.

C.A. NO. 33 OF 2005 SUO MOTU .

MR G.M. JOSHI, MR. MP SHAH WITH MS KRUTI SHAH, MR. VIRAL K SHAH AND MR JAPAN DAVE for petitioners FOR RESPONDENTS:

MR PK JANI, GOVERNMENT PLEADER WITH MS KRINA CALLA, ASST. GOVT PLEADER for State-Respondents.

MR ANSHIN H DESAI, MR K.B. PUJARA, MR MK VAKHARIA, MR. AS SUPEHIA, MR. HRIDAY BUCH, MS MITA S PANCHAL AND MR VIJAY NAGESH for other respondents.

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CORAM:

HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA and HONOURABLE MR. JUSTICE J. B. PARDIWALA Date : 22/03/2013 CAV JUDGEMENT (PER : HONOURABLE THE CHIEF JUSTICE MR. BHASKAR BHATTACHARYA)

1. All these Special Civil Applications were heard together as the subject-matters are all interlinked.
2. It appears that Special Civil Application No. 33 of 2005 was initiated suo motu by the then the Chief Justice of this court by his order dated 24th December 2004 in office submissions dated 24th December 2004 on the basis of a news item appearing in a vernacular newspaper.
3. The sum and substance of the news item was the problems faced by the teachers of handicapped children. According to the said news-item, in the year 1981, the Government of Gujarat had introduced Integrated Education Scheme in each District of Gujarat State. It appears that in view of the said Scheme, about 800 Teachers of 50 various institutions of handicapped students engaged in teaching 32,000 such students were facing injustice. Blind, deaf and dumb, handicapped and mentally retarded students were taught in these Schools by the said teachers. Those teachers used to get salary and other allowances from the Education Department, the Government of Gujarat, but there was no rule and regulation prescribed for them. Though they were getting salary regularly, the benefits like Provident Fund, Pension and Allowances were not given to them. The female teachers were not getting the Maternity Leave, and thus, they were exploited by the school managements. Those teachers made frequent requests to the Chief Minister ventilating their grievances but in vain.
4. A Division Bench of this Court by its order dated 17th January 2005 issued Notice and ordered to file reply / statement within three weeks there from.
5. Pursuant to such notice, the Under Secretary, Education Department, Gandhinagar, affirmed an affidavit. A request was made in the said affidavit to join the Secretary, Ministry of Human Resources Development, New Delhi, as party-respondent since the whole scheme was financially assisted as well as administratively controlled by the Central Government. The defence taken by the State Government in the said affidavit [dated 7th February 2005] may be summed up thus:
 - 5.1 A scheme known as The Integrated Education for the disabled students Scheme was introduced in the year 1974 by the Welfare Department of the Central Government. Different States of India accepted the scheme in different years, and the Scheme was adopted by the State of Gujarat in the year 1981. The Scheme was revised in the year 1987 by the Ministry of Human Resources Development.
 - 5.2 For the implementation of the scheme, it was advised by the Ministry that the Non-Government Organizations [NGOs] shall be brought into picture and their role shall be controlled as per the scheme.

5.3 The procedure for implementation was prescribed under clause 6(1) of the Scheme. The State Government has set up administrative cell which is working under the Gujarat Council of Educational Research and Training. There are other conditions of the scheme which are to be followed for the education of the disabled children. There are provisions for appointment of special teachers through NGOs which were supervised by the administrative cell. Condition No. 11.3 provides for the scale of the Teachers, which reads as under:

Scale of Pay: The same scales of pay as available to the teachers of the corresponding category in that State/UT will be given to special teachers. Considering the special type of duties, these teachers will be given a special pay of Rs.150/- p.m in urban areas and Rs.200/- p.m. in rural areas. The State Education Department may recruit such teachers for this purchase following the normal recruitment procedures .

5.4 Clause 19 of the Scheme provides for the procedure for grant of salary etc., which was required to be paid to the teachers. According to clause 19, the Human Resources Development was releasing grant of salary which was to be distributed amongst teachers through NGOs which were controlled by Administrative Cell under clause 6.1.

5.5 The Ministry of Human Resources Development, vide letter 18th August 1984 made a formal request and directed the State Government to pay the salary for the special teachers who were appointed prior to 31st March 1990. In view of the same, 28 teachers were paid salary from the State budget. For the other teachers who were appointed after 31st March 1990, the salary was being paid by the Central Government.

5.6 The Scheme was revised in the year 1992 by the Ministry of Human Resources Development and the scheme was thus modified.

5.7 Thus, the scheme for teaching the disabled children was introduced by the Central Government which was financially assisted by the Central Government. Guidelines were also issued by the Central Government and the State Government has no say in the matter with regard to the benefits like Provident Fund, Pension, allowance, leave etc. 5.8 The teachers who were teaching the disabled students were not attending the schools full-time but they were visiting the schools as a periodical teacher. These special teachers also help the parents of the disabled students and help them in further studies. The special teachers also help the regular teachers and guide them how to tackle the disabled students.

The special teachers were appointed by NGOs and at the time of selection, only an officer of the Government supervised the same. There were no permanent posts created by the State of Gujarat for these special teachers. As per the Scheme, the teachers were to be appointed by NGOs. These teachers were not permanently appointed by the NGOs and in view of this aspect of the matter, though the teachers were paid salary as well as allowances like house rent, medical expenses and dearness allowance at par with the regular teachers, they were not paid pension, provident fund etc. since their posts were of temporary nature and were covered under the scheme established by the Central Government. After selecting the teachers and in accordance with the Scheme, when the

NGOs supply details as required under clause 22 of the revised scheme of 1992, the funds were released by the Central Government after scrutiny in administrative cell and the same are paid to the NGOs through the administrative cell. The Scheme provides for payment of salary equivalent to the teachers who were getting salary in State Government and only the salary and the allowances [like HRA, CLA, Medical allowance and Dearness Allowance) were paid to the teachers and accordingly, the Central Government release grant for the same.

5.9 The pay-scale of the special teachers is Rs.4000 - Rs.6000 and in addition to this salary, they were paid dearness allowance, medical expenses, house allowances etc. These teachers were not full-time teachers and they were not to attend the schools for eight hours like the other teachers who were treated as permanent teachers, and, therefore, they were not paid provident fund, pension, etc.

6. Subsequently, Akhil Gujarat Sankalit Shikshan Yojana Shikshak Mandal was joined as respondent No.5 by order dated 8th April 2005 in CA No. 2989 of 2005, and the relevant stance taken by the said respondent No.5 [in their affidavit dated 15th April 2005] is as under:-

Initially, the IEDC scheme in Gujarat started in the year 1981. The Scheme was revised in the year 1986-87 by the Ministry of Human Resources Development and it was subsequently revised in the year 1992.

As stated in the scheme itself, the Government of India brought education of the disabled children for special education to achieve the goal of education for all. The objective of the policy is to integrate handicapped children with general community at all levels as equal partners to prepare them for normal growth and to enable them to face life with courage and confidence.

The aims and objectives stated in the scheme are to provide educational opportunities for the disabled children in the common schools to facilitate their retention in the school system.

The Scheme is the centrally sponsored one. Under the Scheme, the Central Government assists the State/Union territory in its implementation on the basis of criteria laid down. The assistance for all items covered under the scheme is on 100 % basis but the assistance for the programme is conditional based on professionally qualified staffs. The implementing agency is the State Government/Union Territory administration/Autonomous Organization of the State having experience in the field of education and/or rehabilitation of the disabled, because this scheme has to be implemented in the schools. The Education Department of the State Government is the Implementing Agency. However it has been stated in the scheme that the State Government may also take the assistance of voluntary organization for this purpose as may be feasible.

As provided in the scheme, the Government of Gujarat has set up an administrative cell for implementing the scheme under the supervision of the Deputy Director of

GCERT.

The special teachers were appointed under the scheme for the education of disabled children. The teacher-pupil-ratio for special education which was envisaged under the scheme is 1:8. The special teachers also provide counselling the parents about the disabled children. In accordance with the said ratio, the requisite numbers of special teachers are to be appointed in schools for the disabled children. The qualifications prescribed for special teachers to teach at the primary level were the same as prevalent in the State and Union Territory with one year course in special education of disabled children. For secondary level, the special teachers are required to be a graduate with B.Ed (Special Education) or any other qualifications, professional training in special education.

6.7 The following provision has been made in Clause 12.3 with regard to scales of pay to be paid to special teachers.

12.3 Scales of Pay: - The same scale of pay as available to teachers of corresponding category in that State/U.T. will be given to special teachers. Considering the special type of duties, these teachers will be given a special pay of Rs. 150/- a month in urban areas and Rs. 200/- a month in rural areas. The State Education Department may recruit such teachers for this purpose following normal recruitment procedure.

The scheme also lays down in clause 20, the procedure for grant to State Government/U.T. Administration and in clause 21, the procedure for grant to voluntary organization has been provided.

In compliance with the aforesaid direction of the scheme, the Government of Gujarat has set up an administrative cell under the GCERT which has laid down elaborate guidelines for the special teachers.

In accordance with the aforesaid provisions of IEDC scheme and the guidelines issued by GCERT, the special teachers were imparting education to the disabled children, particularly, the hearing impaired, visually impaired and mentally retarded children.

6.11 It is pertinent that in the meanwhile, a new legislation viz. The Persons with Disabilities (Equal Opportunities), Protection of Rights and Full Participation) Act, 1995 has come into force with a view to creating barrier-free environment for the persons with disabilities and to make special provisions for the integration of the persons with disabilities into social main stream. The said Act, inter alia, makes special provisions for education of disabled children in Chapter V, Section 26 to 31, which particularly provide for appropriate Government (State Government in the present case) and local authorities to provide for the education of the disabled children up to the age of 18 years.

In accordance with the mandate of the said Act, the State Government has issued several circulars in respect of education of the disabled children.

The Government of Gujarat has laid down qualifications and pay scales by G.R. dated 29th March 2000. According to the said G.R, the special teachers are required to have special qualifications as against the qualifications required by normal teachers at primary and secondary level. Still however, the pay scale has been fixed at the same rate viz. Rs. 4000-6000 for special teachers of primary education and Rs. 5000-8000 for special teachers of secondary education. Recruitment is under the direct supervision and approval of the GCERT as per the marking system decided by GCERT.

6.14 It is significant that though the special teachers of IEDC Scheme are discharging much onerous duties for much longer hours than the normal teachers of primary and secondary education, it is very strange that the special teachers serving under IEDC scheme are being given discriminatory and inferior treatment as against their counter part, viz. the ordinary teachers of primary and secondary education. As stated earlier, the special teachers under IEDC scheme are given the pay scale of Rs. 4000-6000 and D.A., Medical Allowance, House Rent Allowance and Special Allowance of Rs. 150/- or Rs. 200/- a month depending upon the urban area or rural area. However, some special teachers under the IEDC scheme are not being paid large number of other important benefits under the service conditions which have been granted by the State Government to teachers of primary and secondary education, both in the Government run schools and the Grant-in-Aid schools as under :-

(1) Direct Payment of Salary (DPS) (2) Higher Grade Pay Scale (3) Pension (4) G.P.F.

(5) Maternity Leave for Female Teachers (6) Privilege Leave (7) Sick Leave (8) Seniority and Continuity of Service in the event of change of institution (9) Bonus (10) Compassionate appointment in the event of untimely death (11) Protection of Service Conditions and Redressal Forum for disputes arising there from viz. Tribunal.

(12) L.T.C.

Group Insurance.

In the State of Gujarat, the IEDC Scheme is implemented entirely through NGOs, and therefore, the special teachers serving under the said scheme are suffering agonies of exploitation by such organizations in several cases, such as, obtaining of bonds in unauthorized manner, highly irregular payment of salaries, and in many cases, the actual payment of salaries being much less than the amount acknowledged, etc.

In a recent incident, one special teacher viz. Patel Dakshaben Maheshbhai of Satlasana, Taluka Kherulu, District Mehsana, who was selected for the appointment by one such NGO (Blind Welfare Council, Dahod, Panchmahal District) and was issued appointment order dated 11th December 2003, was forced to execute a service bond of 3 years for the sum of RS. 1,00,000/- toward discharge of bond to the previous institution over and above, the notice pay of Rs. 71889/-. Similarly, several special teachers employed by another NGO (Development Activity Social Service and Research Trust, Paldi, Ahmedabad) were penalized with a causal leave for 18th September 2004 a Saturday, which was declared as a public holiday of Jain Samvatsari and Ganesh Chaturthi by the

Government of Gujarat. The said teachers have large number of other grievances against the said NGO for which they have also made representation to the Director of GCERT. These are only some of the instances of large scale exploitations going on on the special teachers by NGOs under IEDC Scheme.

It is also relevant that the special teachers are not being considered as primary teachers for the purposes of protection given by Gujarat Primary Education Tribunal under the Bombay Primary Education Act. The learned Tribunal has passed such orders from time to time. Moreover, one Special Teacher approached this High Court and she was relegated to Labour Court, but the Labour Court held that such special teacher cannot be said to be a workman under the Industrial Disputes Act. In another case, 5 teachers of one NGO (National Association for Blind, Valsad District Branch, Civil Hospital Road, Valsad) were illegally and wrongfully terminated by the said NGO. They preferred Special Civil Application Nos. 11520/2001, 13027/2000, 13028/2000, 2881/2002, and 2882/2002. The said teachers had made complaint against the said NGO for non-payment of full salary as they were being paid only Rs. 600 to Rs. 700/- a month and Rs. 1500/- a month later on. The said teachers had approached the Gujarat Primary Education Tribunal but their applications were dismissed. Thereafter, they had preferred aforesaid writ petition in the High Court of Gujarat. The Gujarat High Court passed an order dated 23rd July 2003 directing the State Government to give hearing to the aggrieved petitioners and to pass reasoned order within 3 months. The GCERT thereupon heard the said special teachers and the NGO and passed a very strange order dated 26th July 2004 whereby the recognition of the NGO was cancelled but the prayer for reinstatement of special teachers were declined.

In the aforesaid premises, the respondent-Association has made dozens of representations to the various authorities during the last 10 years requesting for redressing the grievances of the special teachers of disabled children serving under IEDC scheme. However, all such representations have not given any fruit as is evident from communications received by the Association from time to time from various authorities and therefore, the special teachers of disabled children are continuing to suffer agonies of exploitation and discrimination.

The special teachers of disabled children are in fact entitled to better service conditions than the ordinary teachers of primary education serving under the State Government and Grant-in-Aid schools as the special teachers are required to visit one or two disabled children in different schools of the area every day of the week and he has to impart education and training to the disabled children during the same school-hours which are the school-hours for the other teachers. Therefore, the duties discharged by the special teachers are much onerous and more time consuming than those performed by the ordinary teachers. The authorities, therefore, cannot discriminate against the special teachers by depriving them of large number of benefits and service-conditions which are being granted to the ordinary teachers by the authorities in the Government-run-schools or Grant in Aid-schools. The treatment which is being given to the special teachers of the disabled children are therefore clearly arbitrary, discriminatory, bad in law, null and void, unjust, unreasonable, unfair, inequitable, and violative of Article 14, 16, 19 and 21 of the Constitution of India.

Under the Social Defence of the Directorate of Government of Gujarat, there are recognized Grant-in-Aid institutions for physically handicapped children. The special teachers in those schools possess the same qualification as are being required by special teachers under IEDC scheme. About 1200 such special teachers under the Directorate of Social Defence were also not getting similar benefits and service-conditions as were being provided to the ordinary teachers in the Government-run or grant-in-aid schools. Therefore, their Association, viz. Akhil Gujarat Samaj Surakasha Karmachari Sangh, Ahmedabad, had preferred a writ-petition being SCA No. 6638/1992 in this High Court praying for Direct Payment of Salary and Superannuation benefit at the end of the academic term, selection grade, constitution of separate Tribunal, GPF, Bonus, Leave Encashment, Continuity of Service etc, those which were being given to other teachers in Government and grant-in-aid schools. Their petition came to be allowed by this Court by the judgment and order dated 22nd April 1994. As a matter of fact, thereafter, the State Government granted to the said teachers the benefit of direct payment of salary by G.R. dated 14th October 1995. It is pertinent that those teachers have also been given benefit of pension scheme by G.R. Dated 14th August 1994. The special teachers under IEDC scheme are thus also required to be granted all the benefits and service-conditions which are being granted to the ordinary teachers in a Government-run or Grant-in-Aid schools.

Though the scheme is clearly sponsored, it is, in effect and substance, a scheme of permanent nature run with the assistance of special teachers on full-time employment basis. The number of disabled children goes on increasing from year to year and the grants under IEDC scheme are also increasing from year to year. There are more than 10 lakh disabled persons in the Gujarat State at present according to the news item published in the news paper. Moreover, the right to primary education is a fundamental right and therefore, the State is under constitutional obligation to provide free education to children till they complete the age of 14 years and in accordance with the provisions of Act of 1995 for disabled children, the State's obligation to provide free education is up to 18 years. The State Government is, accordingly, bound to meet the entire expenditure of special teachers whether they are discharging duties in the Government school or aided schools or under the NGOs and they are also entitled to parity in the matters of salary, allowances and other service-conditions with their counterpart in the Government School. Similarly when the Court finds discrimination, unconsciously indulged into by inadvertence or oversight on the part of a Governmental agency, the Court can rectify the same by taking a constructive approach by removing the discrimination by passing order for payment to the aggrieved person in the same class as those who have enjoyed the favourable treatment by inadvertence on the part of the State Government, as held by the Apex Court in the case of Vishundas Hundumal v/s State of M.P., AIR 1981 SC 1636.

Though the special teachers are being given discriminatory, arbitrary and unfair treatment at the hands of the authorities and their grievances are not being redressed since many years despite several representations and therefore, when this Court has initiated suo-motu petition in this regard, the authorities, particularly, the State Government is expected not to contest the suo-motu petition but straight away it ought to have agreed to redress the grievance of the special teachers of the disabled children. Instead, it is very unfortunate that the State Government is contesting the present suo-motu petition by filing an affidavit and by not putting the correct picture before this Court. It is absolutely false and incorrect on the part of the State Government to say that these

special teachers are not full-time teachers and they are not required to attend the school for 8 hours like the other teachers. As a matter of fact, when other teachers are not required to attend school even for 8 hours, the special teachers of disabled children are required to move from school to school and to educate and train the disabled children during the school hours and thereby, the special teachers are devoting longer hours and more time on their duties as against hours attended by the teachers of normal children. There is also no point in saying that these posts of special teachers are of temporary nature merely because it is covered under the project established by Central Government. As a matter of fact, the project of Central Government has been going on for more than two decades. Now there is a bill of legislation for the disabled persons and the number of disabled children is increasing from year to year. The project is, therefore, going to continue for all times to come, because, it cannot be contemplated that the disabled children will disappear and therefore, the scheme will have to be abandoned. Thus, the special teachers are required to be treated as regular and permanent teachers with all benefits and service conditions like other teachers of normal children in primary and secondary school.

6.23 The present suo motu petition initiated by this Court is the only hope for redressal of the grievances of special teachers of handicapped children who are being exploited by the NGOs and who are being given highly discriminatory treatment in the matters of their service-conditions and the benefits as compared to their counterpart teachers for normal students in the Government-run and grant-in-aid schools. As the representations made to the authorities have fallen on deaf ears, this Court may be pleased to issue clear and definite instructions at the earliest directing the concerned authorities to give benefits of all service conditions to the special teachers of disabled children as are being given to other teachers in the Government run or grant-in-aid primary and secondary schools which are mentioned in paragraph 6.14 hereinabove.

7. On behalf of the Central Government, a counter affidavit was filed, which was sworn by the Under Secretary, Ministry of Human Resources Development, D/o School Education & Literacy, New Delhi, and the stance taken by the Central Government may be summed up thus:

7.1. The subject-matter of the petition i.e. service-conditions of the special education teachers employed by the NGOs relating to their salary, GPF, medical allowances, leaves etc. do not come within the control of Central Govt. This relates entirely to the concerned State Govt. and NGOs who employ them as the scheme is being implemented by them under the centrally sponsored scheme known as IEDC Scheme. Therefore, the name of the Secretary, Ministry of Human Resource Development, Department of School Education & Literacy, New Delhi, may be deleted from the list of Respondents in this case.

7.2. The suo motu application was filed against the Chief Secretary, the Government of Gujarat, the Secretary, Education Department and the Director of Education, the State of Gujarat. Subsequently, the Secretary, Ministry of Human Resource Development was also impleaded as respondent No. 4 due to similarity of subject-matter of the education of disabled children and terms and service conditions of the teachers between the State Govt. and Central Govt.

7.3. The Centrally Sponsored IEDC Scheme was launched in the year 1974 by the then Department of Social Welfare and was later transferred to the Department of Education in the year 1982-83. The Scheme was last revised in the year 1992. The Scheme provides educational opportunities for the disabled children in common schools to facilitate their integration and retention in the general school system. Paragraph 4 of the guidelines of the Scheme identifies the Partners who shall implement this scheme which is as under:-

The Scheme shall be implemented through the State Governments/U.T. Administrations/Autonomous Organizations of stature having experience in the field of education and/or rehabilitation of the disabled. Because the scheme has to be implemented in the schools, the Education Department would be the implementing agency. The State Governments may take the assistance of the voluntary organizations also for this purpose, as may be feasible.

7.4 The Government provides 100% assistance for the various components for education of children suffering from mild to moderate disabilities in common schools. The components include the educational aids, assistive equipments, salaries for special teachers and facilities for children with disability.

7.5 The averments made about paragraph 19 of the guidelines are factually not correct. Actual provision contain in paragraph 19 is as under: -

19. Pre-school and ECCE Facilities Preparation of disabled children for education being essential, preference should be given to the blocks where the schemes of integrated child development (ICD) and Early Childhood Centres of Educations (ECCE) exist while selecting blocks for implementing of the scheme. Support for Services for disabled children will be available for instructional materials and training of teachers.

7.6 The condition regarding teachers appointment, their salary, remuneration is stated at paragraph 12 of the guidelines are reproduced below :-

12 . Appointment of Special Teachers 12.1 The teacher-pupil ratio for special education teachers envisaged under this scheme is 1:8. This ratio will be the same for normal classes as well as for preparatory pre-school classes. The same teachers will provide counseling to the parents. In accordance with this ratio the requisite number of special teachers may be appointed in schools (or for a cluster of schools) for children requiring special teacher support.

12.2 Qualifications Special teachers so appointed should possess the following qualifications:-

(a) Primary : Academic qualifications as prevalent in the states and Union Territories with one year course, preferably multi-category, in special education or with specialization in teaching any type of disabled children depending upon the category of children enrolled in the IEDC Units. Such teachers can be oriented subsequently in the education of other categories of disability.

(b) Secondary : Graduates with B.Ed (Special Education) or any other equivalent professional training in special education.

Prescribed qualifications should be adhered to. In case qualified special teachers are not available, teachers with short training course may be appointed with the condition that they will complete the full course within three years of appointment. Special allowance for these teachers will be admissible only after completion of the full course. Teachers with single disability professional course will be encouraged to take courses in other disabilities to improve viability in rural areas.

Since teachers with experience in Non-Formal Education (NFE) and Adult Education (AE) are likely to have a better understanding of local environment and need, they could also be identified for training under the scheme and appointed as special teachers.

12.3 Scale of Pay: The same scales of pay as available to the teachers of the corresponding category in that State/UT will be given to special teachers. Considering the special type of duties, these teachers will be given a special pay of Rs. 150 per month in urban areas and Rs. 200 per month in rural areas. The State Education Department may recruit such teachers for this purpose following the normal recruitment procedures .

7.7 From the above, it may be seen that the Government of India guidelines have left matters relating to recruitment, service conditions etc. to be individually governed under the rules framed by the respective State Governments. In this regard, the Govt. of Gujarat has already clarified the position in their additional Affidavit dated 3.5.2005.

7.8 The Petition itself admits that the teachers engaged for the purpose are not permanent. Government of India cannot force any State Government /NGO to appoint teachers on permanent basis, as that is within the jurisdiction of the State Government. The Government of India can only interfere in cases where the State Government does not implement the program as per parameters and conditions as laid down in the guidelines.

7.9 The Petition has admitted the fact that the teachers are not fulltime teachers and they are not to attend the school on fulltime basis like the regular teachers though the State Government has endorsed the facility of a regular teacher s scale of pay and allowances to such special teachers. However, it is reiterated that the matter for consideration of such demands strictly fall within the jurisdiction of State Government. The other averments contained in the paragraph do not constitute to be part of the guidelines.

7.10 The Secretary to the Government of India, Department of School Education & Literacy, Ministry of Human Resource Development has been wrongly impleaded as a necessary party in the petition which is uncalled for.

8. The respondent No.5, Akhil Gujarat Sankalit Shikshan Yojana Shikshak Mandal filed two additional affidavits. The contention in the additional affidavit dated 1st January 2009 may be summed up thus:

8.1. The first and foremost order that the High Court may be pleased to pass is to direct the respondents to pay the outstanding salaries to the 1248 special teachers for disabled students as most of them have not been paid their salaries since 1st January 2009 and all of them have not been paid their salaries from 1st April 2009 though they are discharging their duties as usual as they were doing prior to 11st January 2009. It has become impossible for the said special teachers and their families to survive.

8.2. That the IEDC Scheme under GCERT cover a total of 49775 disabled students in the age group of 6-18 years in Primary, Secondary and Higher Secondary Schools in 2008-09. A total of 1248 itinerant teachers (special teachers) have been recruited for providing education to the disabled students under the scheme. All the said Teachers have been recruited in accordance with the established selection and recruitment procedure and they have been serving since about 25 years. This Court has initiated the present Suo Motu petition on the basis of a news item appearing in vernacular newspaper relating to problems being faced by the special teachers of disabled students . In response to the representation made by the Respondent No. 5-Association with regard to the problem of discrimination and exploitation being faced by the special teachers and for putting them at par in all respects with the teachers under the State Government and in the Grant-in-Aid Primary and Secondary and Higher Secondary Schools in the State, the GCERT has already addressed a letter dated 27th August 2001/4th September 2001 stating that the special teachers can be granted such benefit. However, the issue has remained unresolved until this date.

8.3. Now the Government of India, Ministry of Human Resource Development, the Department of School Education and Literacy (IE Section) has addressed a letter dated 21st October 2008 to the Secretary (Education), the Government of Gujarat, regarding launching of the new Centrally Sponsored Scheme of Inclusive Education of the Disabled at the Secondary Stage (IEDSS). Pursuant to the said communication, the Government of Gujarat has taken up the matter with the Government of India, MHRD, by letter dated 15th April 2009 for continuation of the IEDC Scheme under the GCERT in the larger interest of the disabled students and itinerant teachers.

8.4. In response to the said letter of the Government of Gujarat dated 15th April 2009, the Government of India by a letter dated 1st May 2009 has called for specific information about the number of disabled students and the Teachers deployed for them. The Government of India has also addressed another letter to the Government of Gujarat dated 9th July 2009.

8.5. The respondent no. 5 has made several representations to the Chief Minister, Gujarat, and has taken out processions and rallies for ventilating the grievances of the special teachers of disabled students . The Chief Minister s Office has acknowledged the receipt of the representation by letter dated 27th July 2009. Moreover, in the information disclosed under the Right to Information Act, 2005, the State Government has disclosed that the grievances of the special teachers of disabled students are under consideration and that necessary provisions are being made in the State Budget also. In response to the representation to the Chief Minister as well as to the Education Minister, the respondent No. 5 is provided with a copy of the note regarding the particulars provided to the State Legislative Assembly at the time of discussion of the budgetary provisions of Education Department.

8.6. The State Government has already accepted the full responsibility of 58 special teachers of disabled students who were appointed prior to 31st March 1990 under the IEDC Scheme by way of G.R. Dated 5th July 1996. Therefore, there cannot be any objection in accepting similar responsibility with regard to remaining teachers appointed under the said Scheme.

8.7. The Delhi High Court while dealing with a PIL has directed the concerned State Government to appoint special teachers in each School to cater to their needs. The Bench stated that every school must have Special Educator and as many regular teachers as needed must be appointed and that such teachers should be appointed on a permanent basis and their salaries must be at par with the regular teachers. This High Court may also kindly be pleased to direct the respondents to place the special teachers of disabled students at par with all other regular teachers under the State Government and in the Grant-in-Aid School in the interest of justice.

8.8. The newly inserted Article 21 A in the Constitution provides as under:-

21 A. Right to Education The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State, may, by law, determine 8.9. Section 26 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 also imposes an obligation on the Government to provide free education to every child with disability till he attains the age of 18 years, in the following terms :

26. Appropriate Governments and local authorities to provide children with disabilities free education etc. - The appropriate Governments and the local authorities shall -

(a). ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years;

(b). endeavour to promote the integration of students with disabilities in the normal school;

(c). promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools;

endeavour to equip the special schools for children with disabilities with vocational training facilities.

8.10 In view of the above stated constitutional provision as well as the statutory provision, the respondents are required to be directed to put all the 1248 special teachers of 49775 disabled students in the Gujarat State at par with other teachers under the State Government and in the Grant-in-Aid Schools in respect of their salaries, allowances and all other service conditions.

8.11 The Office of the Chief Minister and the Education Minister have appreciated the problems of the special teachers of disabled students and the issues are under active consideration of the State Government and the respondent no. 5 is given to understand that the issues would be resolved and

grievances of the special teachers would be redressed by 15th September 2009. In the interest of justice, the present petition may please be adjourned to a date after 15th September 2009, though the direction for payment of unpaid salaries of the special teachers since 1st January 2009 may kindly be issued as the special teachers are continuing to discharge their duties and functions as usual as they were doing prior to 1st January 2009.

9. In the additional affidavit of the respondent No.5 [dated 9th August 2012], it has taken up the following contentions:

9.1. This Court had passed order dated 21st April 2009 in the present petition (Coram: K.S. Radhakrishnan, CJ and Akil Kureshi, J) directing the State Government to examine the matter and submit its response on the next date for extending the benefit of the Judgment of this Hon ble Court in SCA No.6638/1992 to the teachers appointed under the IEDC Scheme implemented at the behest of the Central Government. The said SCA No.6638/1992 was preferred by Akhil Gujarat Samaj Suraksha Karmachari Sangh, an Association of the employees serving in various educational institutions meant for physically handicapped students in the State of Gujarat. The petitioners of the said petition were the Teachers of disabled students of the grant-in-aid educational institutions which were under the Social Defence Department whereas the Teachers represented by the respondent No.5 herein are the Teachers of disabled students of the grant-in-aid educational institutions which were under the Education Department. However, till the date of filing the said affidavit, the State Government has not submitted any such response to this Court.

9.2. That, admittedly, in the year 2004-2005 the number of disabled students was 31377 and the Number of special teachers was 842 under the IEDC Scheme in the State Government (Page Nos.287 to 290 of the paper-book). However, as per the letter of the Government of Gujarat, Education Department dated 15th April, 2009 addressed to the Joint Secretary, MHRD, New Delhi (Page No.375-376 of the paper book), in the year 2008-2009, the IEDC Scheme covered a total of 49775 disabled children in the age-group of 6-18 years in Primary, Secondary and Higher Secondary Schools and a total of 1248 itinerant Teachers were recruited by NGOs for providing education to the disabled children under the Scheme.

9.3. The IEDC Scheme has now been replaced by the new scheme called IEDSS w.e.f. 1st April 2009. The existing special teachers working under IEDC Scheme have been absorbed in the said new IEDSS Scheme, as per the State Government s communication dated 15th September 2009.

9.4. However, their working conditions and problems have remained the same as they were under the old IEDC Scheme. At present, since April 2012, hundreds of special teachers have not been paid their salaries.

9.5. Though the duties being discharged by the special teachers of disabled students are far more onerous than the teachers of normal children in the primary, secondary and higher secondary schools, the special teachers of disabled students are not being granted large number of benefit and service conditions which are being granted to the teachers of normal children in the Government run schools and in the grant-in-aid schools as stated at Page no.63 and Page 75 of the paper-book.

9.6. Moreover, in the Gujarat State, as the scheme is being implemented entirely through voluntary organizations, popularly known as NGOs, the special teachers serving under the said scheme are suffering the agonies of exploitation, highly irregular payment of salaries and payment of less salaries than the salaries payable as per rules as even the procedure of Direct Payment of Salaries (DPS) in the Bank Account of the concerned teachers has also not been introduced.

9.7. It is very unfortunate that even after Article 21-A for Right to Education having been introduced in the Constitution of India and even after the Right of Children to Free and Compulsory Education Act, 2009 is brought into force on 1st April 2010 which contains specific provision for free and compulsory education for disabled children in proviso to Section 3(2) of the Act and the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 making special provisions for education of the disabled children in Chapter-V, Sections 26 to 31 the respondent authorities are giving step-motherly treatment to the special teachers for disabled students, and consequently, adversely affecting the education of such children. The Supreme Court has held in State of H.P. vs. Recognised & Aided Schools Managing Committees, 1995 (4) SCC 507 that the Right to education being a fundamental right, the State is under a constitutional obligation to provide free education to children and the contention of financial constraints is wholly untenable and that the schools are entitled to full grant-in-aid.

10. On behalf of the respondent No.2, the Under Secretary, Education Department, Gandhinagar, filed a further additional affidavit [dated 12th October 2012] and their stance may be summed up thus:

10.1 The Central Government had floated the IEDC Scheme being Integrated Education for the disabled Children which came into existence in the year 1974 and the said scheme was adopted by the State Government in 1981 which was thereafter revised in the year 1987 by the Minister Human Resources Development. Broadly, the scheme was that the Central Government would give 100% financial assistance to the State Government for payment of salary and other expenses to the teachers who will be appointed under the same.

10.2 The responsibility for appointing teachers for the disabled students is with the NGOs as per the Scheme. The scheme mainly states that the NGOs will provide the salary and other expenses to the teachers who will be employed by them which will be reimbursed by the State Government as the State is receiving assistance from Central Government. In the year 1986, IEDC Integrated Education for disabled students standard 1 to 12 age group 6 to 18 for (1). Visually Impaired (VI), (2). Hearing impaired (HI), (3). Mentally Retarded (MR), (4). Orthopedically Handicapped (OH). There are 390 Teachers for Visually Impaired, 234 Teachers Hearing Impaired, and 624 Teachers for the Mentally Retarded. Thus there are total 1248 teachers for Standards 1 to 12 in 19781 schools spread over 218 talukas of 26 Districts. There are 7593 Visually Impaired, 5595 Hearing Impaired, 19776 Mentally Retarded and 1638 Orthopedically Handicapped students, and thus, the total number of physically challenged students are 49775 and one teacher is allotted to ten students.

10.3 The physically and mentally challenged students are permitted to get admission in main stream school concerned. A teacher of a particular category goes to main stream school once in a week or

twice in a week. The child is to get regular education by the teachers of the main stream school. This is an additional skilled teacher s facility provided to that particular category of children.

10.4 The qualification prescribed for appointment as special teachers is Standard 12 + D.S.E (Diploma in Special Education) and Graduation + Special B.Ed. The method for recruitment is NGOs working in these fields show that they are working for such category of children. The NGO who show desire to work in this scheme will appoint the teacher and the concerned NGO will demand approval of teachers from the GCERT, a Government of Gujarat Agency.

10.5 The GCERT will send the proposal of the entire state to the Central Government. The Central Government grants approval to GCERT as per the sanction granted by it. The NGO gives advertisements in news papers for recruitment of the teachers. The NGO prepare the merit list as per the post sanctioned. The process of selection is made in the presence of the NGOs and GCERT and appointment orders are issued by the NGOs with a bond of appointee that it is a project appointment. The NGO makes the appointment and allocates the work to the appointee. The Appointee gets salary as per the State Government rules. Funds are released by Central Government (MHRD) to the State Government and the State Government transfers the funds to GCERT, which in turn gives the funds to the NGOs and the NGOs give it to the appointee.

10.6 The Central Government releases the total funds twice in a year and funds consist of salary component and standard facilities component. There are 64 NGOs who are working under this scheme. This scheme of Central Government changed from 1st April 2009.

10.7 The main purpose of the scheme is that any teacher who wants to be a teacher under this Scheme will have the responsibility to find out students from their areas and to see that such students are identified, and thereafter, to motivate the students for getting education and also to motivate parents of the said children so that they join the school with normal children and are imparted with education. The main responsibility is on the teachers to identify the students and to bring them to the schools. Therefore, the scheme provides that for every 8 students, there should be one teacher. The scheme further provides for fixed salary to such teachers and also provides financial assistance with regard to any equipments for such children such as hearing aid, tricycle etc. for which teachers put the vouchers and the same will be reimbursed to the NGO under whom the teachers are appointed.

10.8 These teachers are not the regularly appointed teachers as are from other such schools for disabled e.g. Blind People Association, Schools for Deaf and Dumb etc. where the whole school is for the purpose of these special students, whereas in the present case, the teachers bring the students to the schools wherein the schools are not of special category for those disabled students but it is for normal students wherein these students are adjusted. Therefore, the pay and other benefits to those special teachers are totally on different footing than that of the teachers who are regularly appointed either in the normal schools or in such special schools like Blind Peoples Association etc. 10.9 The earlier scheme known as IEDC Scheme has been discontinued w.e.f. 31st March 2009 and the new scheme known as IEDSS was introduced from 1st April 2009 for the students of 9th to 12th. Standard.

The salient features of the scheme is 100% funding of central government and from 1st April 2009, it started operating for 9th to 12 standard for Visually Impaired, Hearing impaired and Mentally Retarded category of students. The total number of students in all the categories is 10470 and the total number of teachers in all the categories is 1191. The student-teacher ratio is 5:1.

10.10 According to the guidelines of this scheme, whoever were eligible and qualified as per the eligibility of the new scheme are taken. In the new scheme SP. B.Ed is the requirement. 966 teachers are the same teachers who were working in old scheme on the higher eligibility criteria.

10.11 In the meanwhile in the year 1995, certain teachers who were appointed under the old scheme were regularized as per the directions of Central Government vide letter dated 18th August 1994. In paragraph 3, the Central Government had stated that any teachers, who are appointed prior to 31st March 1990 pursuant to the implementation of the IEDC scheme, should be regularized and the liability for their salary etc. should be borne by the State Government from its own budget and therefore, upon the letter of the Central Government, those were regularized. The controversy in the present suo motu as well as the other petitions which are tagged along with this suo motu petition is whether the teachers appointed under the Scheme are doing the same work as done by the other teachers who are appointed in other schools and consequently, all the benefits regarding the pay scale, pension etc. should also be given to those teachers.

10.12 When the initial scheme, IEDC, was discontinued, which was for all the children from 1st to 12th standard, the same was substituted by the IEDSS where the children of 9 to 12th standard were included and for other students from 1st to 8th standard, the government had floated another scheme known as Sarva Shikshan Abhiyan Mission, IED, wherein the students from 1st to 8th standard were accommodated and the same is adopted by the State Government and is in force. Therefore, no students are affected by the substitution of these schemes.

10.13 The Central Government had floated the earlier scheme being IEDC Scheme wherein 100% grant was given by the Central Government for teachers under the scheme. This was for students from 1st to 12th std. Thereafter, from the 2009, a new scheme, IEDSS has been introduced w.e.f. 1st April 2009. The new scheme is for the teachers (special) teaching in standard 9th to 12th.

10.14 So far as the students & teachers of the standards 1st to 8th are concerned, the Central Government had came up with a scheme known as Sarva Shikshan Abhiyan, wherein the teachers, teaching in standards 1st to 8th as special teachers are also taken care of.

10.15 Therefore, the students are not at all the sufferer in any manner. There is no relationship of employee-employer in between the teacher and the State. The teachers while given appointment had also executed bonds and affidavits that their appointment is only on contractual basis. The schemes herein are operative by the Central Government and therefore, the said scheme is uniformly implemented in the whole of the country.

10.16 Looking at the over all view of the case, it is clear that there is only a change in the scheme from time to time, but the students, in no way, are the sufferers. Therefore, the present matter will

not be in any way causing any prejudice to the students.

10.17 The differences between the two types of teachers are as follows:

Regular Teachers Special Teachers They are regularly appointed by way of advertisement in the news papers etc.

They are appointed under the scheme where teachers who will bring 8 students of such disabled character of particular disability will be considered.

Timings of such teachers is fixed, pay of work and salary and other benefits are fixed Timings are not fixed as such teachers might have to go to one school on one day and another school on second day i.e. wherever such students which they have brought are given admission. For example, if a teacher brought disabled students of second category i.e. eye disability, hearing impediment then those two students will be placed in different schools.

Working hours are fixed Working hours are not fixed as the special students might require more or less time on that day.

The general ratio of student to teacher is 60 : 1 Student-Teacher ratio for the old scheme was 8 : 1 and in the new scheme 5 : 1 Fixed salary and other consequential benefits are given.

Those pay is given so far as the other expenses of those students are concerned the teachers have put up voucher and same reimbursement by the NGO.

10.18 In view of the aforesaid, this court should drop the suo motu Proceedings.

11. The respondent No.5, Akhil Gujarat Sankalit Shikshan Yojana Shikshak Mandal gave another affidavit-in-reply [dated 22nd October 2012] thereby praying for transposing it as the petitioner No.2 in the present suo motu petition. The sum and substance of the said affidavit-in-reply are as follows:-

11.1 The stand taken by the respondent-State Government as well as the respondent-Union of India is highly unjustified and contrary to and inconsistent with the letter and spirit of Article 21-A of the Constitution of India, provisions of the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 and the Right of Children to Free and Compulsory Education Act, 2009 and Rules made there under.

11.2 The Article 21-A of the Constitution and the Right to Education, inserted by the Constitution (86th Amendment) Act, 2002 mandates that the State shall provide free and compulsory education to children of age of six to fourteen years in such manner as the State may, by law, determine.

11.3 In order to implement the provisions of Article 21-A of the Constitution, the Parliament has enacted the Right of Children to Free and Compulsory Education Act, 2009 which cast an obligation

on the appropriate Government to provide free and compulsory education and to ensure admission, attendance and completion of elementary education of every child of the age of 6 to 14 years. Moreover, the proviso to section 3(2) of the said Act provides that a child suffering from disability, as defined in clause (I) of section 2 of the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1955 shall have a right to peruse free and compulsory elementary education in accordance with the provisions of Chapter V of the said Act.

11.4 Rule 20 of the Right of Children to Free and Compulsory Education Rules, 2010 reads as under:-

20. Salary and allowances and conditions of service of teachers.-

(1). The Central Government or the appropriate Government or the local authority, as the case may be, shall notify terms and conditions of service and salary and allowances of teachers of schools owned and managed by them in order to create a professional and permanent cadre of teachers.

(2). In particular and without prejudice to sub-rule (1), the terms and conditions of service shall take into account the following, namely:-

(a). accountability of teachers to the School Management Committee;

(b). Provisions enabling long-term stake of teachers in the teaching profession.

(3). The scales of pay and allowances, medical facilities, pension, gratuity, provident fund, and other prescribed benefits of teachers shall be at par for similar qualification, work and experience.

11.5 Chapter V, Section 26 of the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1955 casts an obligation on the appropriate Government and the local authorities to ensure that every child with a disability gets access to free education in an appropriate environment till he attains the age of 18 years. Section 26 of the said Act, inter alia further provides that the Appropriate Government and Local Authorities shall endeavour to promote the integration of students with Disabilities in the normal schools, promote setting up of special schools in Government and Private Sector for those in need of special education in such a manner that the children with disabilities living in any part of the country have access to such schools and that they shall endeavour to equip special schools for children with disabilities with vocational training facilities. Section 29 of the Act mandates that the appropriate Government shall set up adequate number of Teachers Training Institutions to develop trained manpower for schools for children with disabilities.

11.6 Thus, the obligation of the State to provide free and compulsory education for the normal children is from age 6 to 14 years, whereas the obligation of the State with regard to disabled children is for the age up to 18 years which would include not only elementary education but also secondary and higher secondary education as well. Therefore, the State cannot escape from its obligation to engage sufficient number of teachers to provide special education to disabled children

and to pay the salaries and allowances and all other benefits to them at par with other general teachers teaching the normal children in primary schools, secondary schools and higher secondary schools in the State.

11.7 It is pertinent that even when the aforesaid constitutional and statutory provisions were not enacted, the IEDC Scheme (as revised in 1987), inter alia, provided that the scheme shall be financed 100% by the Central Government on condition of creating technically qualified staff as per the scheme, the scheme shall be implemented through the State Government, the Education Department would be the implementing agency, the appointment of special teachers shall be made in the Teacher-Pupil ratio of 1:8, and the teachers shall be possessing qualification in special education as stated therein and with regard to the scale of pay. It was clearly stated that same scale of pay as available to the teachers of the corresponding category in that State/U.T will be given to special teachers. Considering the special type of duties these teachers were given special pay of Rs.150/- per month in urban areas and Rs.200/- per month in rural areas. The State Education Department may recruit such teachers for this purpose following normal recruitment procedure. In the revised IEDC Scheme of 1992 also, the same provisions were made.

11.8 The respondent-State authorities are now contending that the earlier IEDC scheme has been replaced with effect from 1st April 2009 by the new scheme-centrally sponsored scheme known as IEDSS. However, even in the said IEDSS scheme, the implementing agency is the Educational Department of the State Government/U.T. administration and it also contemplates appointment of special educational teachers, to be paid salaries as applicable for general teachers and in addition, a sum of Rs.400/- per mensem. In Appendix-III of the said scheme, it has been categorically laid down that any school where the number of children with disabilities is more than five, should appoint one special teacher. Qualifications of the special teachers are also laid down therein. With regard to remuneration, it is stated that Salary of special teachers will be as applicable to general school teachers of the corresponding category in that State / U.T. considering the special type of duties these teachers will also be given a special allowance. The State Government may recruit teachers for this purpose following normal recruitment procedure .

11.9 The 1248 special teachers whose cause it is espousing were employed in the IEDC Scheme and they are possessing requisite qualification in special education obtained from the institutions and courses recognized by the Rehabilitation Council of India (RCI) which is a statutory body established under the Rehabilitation Council of India Act, 1972. They were duly selected and appointed by the State Government through its administrative cell in the GCERT under the Education Department. Most of the said special teachers have by now rendered service of teaching the disabled children for about 20 to 25 years and though they were entitled to be treated at par with the teachers of normal children of the corresponding category in the State in the matter of pay and pay scales and allowances and benefits, the said teachers were deprived of most of the benefits which were being given to the general school teachers of the corresponding categories in the State, despite large number of representations and agitations by them for several years, in the background of which the present suo motu petition was initiated by the High Court.

11.10 It is all the more shocking and surprising that prior to IEDSS Scheme came to be introduced on 1st April 2009, the said special teachers of disabled students were being paid pay scale of primary teachers of Rs.4000-6000 as per the 5th Pay Commission and some other allowances w.e.f. 1st January 1996, but after the IEDSS Scheme came into force w.e.f. 1st April 2009, the said special teachers are engaged on contractual basis and on fixed salary as under:

For the year 2009-10 Rs.17,000 + 400 For the year 2010-11 Rs.19,000 + 400 For the year 2011-12 Rs.22,000 + 400 For the year 2012-13 Rs.22,000 + 400 11.10.1 On the other hand, the general school teachers in the State of Gujarat in primary schools, secondary schools and higher Secondary schools were being paid the following pay scales under the 5th Pay Commission w.e.f. 1st January 1996 and they are being paid the following pay scale under the 6th Pay Commission w.e.f. 1st January 2006.

Type of teachers	5th pay Commission	6th Pay Commission	Primary	4000-100-6000
	5200-2400-20200	Secondary	5000-150-8000	9300-4200-34800
		Higher Secondary	5500-175-9000	9300-4400-34800

11.11 As stated in the Scheme itself, the special teachers of disabled children are also entitled to be paid salaries and pay scale and all other allowances and benefits at par with the teachers of secondary and higher secondary schools as above because special teachers for disabled children under IEDSS scheme are providing education to disabled children of secondary school and higher secondary school. The strength of such special teachers engaged in IEDSS scheme is 966.

11.12 So far as the special teachers of disabled children imparting education to disabled children in primary school are concerned, according to the respondents, they are covered under Sarva Shiksha Abhiyan [SSA]. The said special teachers for disabled children of primary schools are also entitled to be treated at par with the primary school teachers of the normal children in the State in the matter of pay and pay scale and allowances and all other benefits. However, the respondent-State authorities are giving highly arbitrary and discriminatory treatment to the said special teachers by engaging them on contract basis and by paying them a fixed salary of Rs.900 + 900 per month. By covering or considering the special teachers for disabled children in primary schools in Sarva Shiksha Abhiyan, the respondents State authorities cannot escape their constitutional and statutory obligations towards the disabled children and towards their special teachers.

11.13 It is pertinent that when the State Government introduced the scheme of appointing Class-3 and Class-4 employees on fixed pay for the initial period of 5 years by G.R. Dated 16th February 2006, the said G.R. was also made applicable to the special teachers of disabled children serving under IEDC scheme as is revealed from communication of GCERT dated 2nd May 2006. Thus, the employment under IEDC scheme was treated as an employment under the State Government and not under private NGOs. Therefore, the State Government cannot give discriminatory treatment in the matter of regular pay and pay scales and allowances and all other benefits to the special teachers of disabled children.

11.14 The respondent-State authorities are contending that the special teachers for disabled children are engaged in the project or scheme and therefore, they cannot be treated at par with the teachers

of normal children.

11.14.1 However, the respondents-State authorities have themselves relied upon the Report of Public Study Group of Central Advisory Board for Education Committee [CABE committee] dated 8th December 2004 which is annexed with the additional affidavit of Mr. R.J. Gameti, Secretary, GCERT. In the said report, the said committee has observed that IEDC scheme is continuing on the false assumption that education of the disabled needs to be viewed as a project or scheme rather than organic responsibility of the education/school system. This scheme based approach also negates the possibility of looking at the issue of education of disabled as an opportunity for undertaking systematic reforms in the formal education system .

11.15 In the light of the statutory provisions which have now been brought on the statute book, the education of the disabled children cannot be a matter of a project or a scheme but it has to be treated as a part and parcel of the regular education process/school system governed by the statutory provisions., Therefore, it is now not open to the respondent-State authorities to give discriminatory treatment to the special teachers of disabled children vis-À-vis the general teachers of normal children of the corresponding category viz. Primary, secondary or higher secondary, as the case may be.

11.16 In the aforesaid premises the respondent authorities are required to be directed to forthwith give the benefit of the same pay and pay scale and allowances and all other benefits as are given to the teachers of primary schools, secondary schools and higher secondary schools of normal children which are mentioned in paragraph 6.14 hereinabove.

12. In the other Special Civil Application being SCA No. 1219 of 2010, the grievance made by the writ-petitioners are as follows:-

12.1 The Central Government sponsored a scheme known as IEDC with an object of imparting education to disabled children. The Scheme receives 100% grant from the Central Government and is implemented in the State of Gujarat through the GCERT. The petitioners were appointed in the post of special teachers for the disabled children. In spite of the fact that the petitioners were working regularly, the petitioners were not paid their monthly salary from April 2009. The petitioners have made several representations, however, till date, the petitioners were not paid their salary. Their further grievances was that the State Government issued a resolution purportedly on the basis of a letter of the Central Government dated 21st October 2008 by which the said IEDC scheme has been discontinued by the Central Government and the petitioners were ordered to be taken afresh on contractual basis on fixed pay. From the perusal of the above referred letter dated 21st October 2008, it is clearly evidenced that the Central Government has merely replaced the IEDC Scheme with a scheme known as IEDSS. Thus, the say of the State Government that the IEDC scheme is discontinued by the Central Government does not get fortified. There is no dispute with regard to the fact that the State Government has already decided to continue the services of the petitioners in the new scheme and thus, the action of the State Government of passing the resolution dated 7th January 2010 whereby the services of the petitioners were ordered to be taken afresh on contractual basis in fixed pay is illegal, arbitrary and mala fide.

13. Similar are the grievances of the other writ-petitioners in the other writ-petitions.

14. Therefore, the question that falls for determination in these applications is whether the special teachers for disabled children are entitled to the relief claimed in these applications. In other words, whether the special teachers involved in these applications have been deprived of their right conferred under Articles 14 and 16 of the Constitution of India and whether they should be given the same benefit as given to the regular teachers doing similar type of job in the teaching of the normal students.

15. It is now well settled that a writ-court can grant appropriate relief to a person who complains violation of fundamental rights or any other legal rights at the instance of a State within the meaning of Article 12 of the Constitution of India.

16. We, therefore, first propose to consider whether by the appointment of the petitioners in the post of special teachers, any right has been accrued in their favour and secondly, whether there is any violation of fundamental or other legal right of the special teachers at the instance of the State.

17. We find that by virtue of the newly inserted Article 21-A of the Constitution of India, a duty has been cast upon the State to provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

18. It further appears that Section 26 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 also imposes an obligation on the Government to provide free education to every child with disability till he attains the age of 18 years, and such duty includes :

(a). to ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years;

(b). to endeavour to promote the integration of students with disabilities in the normal school;

(c). to promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools;

(d). to endeavour to equip the special schools for children with disabilities with vocational training facilities.

19. There is no dispute that in the State of Gujarat 1248 special teachers are appointed for 49775 disabled children in the schools run by the State Government or in the Grant-in-Aid Schools. Accordingly, the State Government has laid down guidelines for appointment of special teachers thereby fixing qualifications and the scale of pay. It appears that the qualification of the special teachers are equivalent to that of other teachers who are being appointed for teaching normal children and in addition to that, a special teacher teaching in the primary schools must have

additional qualification of one year course in special education or specialization in teaching any type of disabled children and for the secondary schools, Graduates with B.Ed (Special Education) or any other equivalent professional training in special education. So far as the scale of pay is concerned, according to the guidelines, the same scale of pay as available to the teachers of the corresponding category in that State should be given to special teachers and over and above it, considering the special type of duties, such special teachers should also be given a special pay of Rs.150/- per mensem in urban areas and Rs.200/- per mensem in rural areas. It was further provided that the State Education Department may recruit such teachers for this purpose following the normal recruitment procedures.

20. It further appears that the Government of India has issued guidelines and left the matters relating to recruitment, service conditions etc. to be individually governed under the rules framed by the respective State Governments.

21. It may be mentioned here that in the year 2004-2005, the number of disabled children was 31377 and the number of special teachers was 842 under the IEDC Scheme. However, in the year 2008-2009, the IEDC Scheme covered a total of 49775 disabled children in the age-group of 6-18 years in Primary, Secondary and Higher Secondary Schools and a total number of 1248 special teachers were recruited by NGOs for providing education to the disabled children under the Scheme. The IEDC Scheme has now been replaced by the new scheme known as IEDSS w.e.f. 1st April 2009 and the existing special teachers working under IEDC Scheme have been absorbed in the said new IEDSS Scheme, as per the State Government's communication dated 15th September 2009.

22. It, thus, appears that a duty is cast upon the State Government to appoint teachers for education of the disabled children in the age group of 6-18 years in Primary, Secondary and Higher Secondary Schools and for the said purpose, the petitioners have been appointed as special teachers having requisite qualifications. There is no dispute about their mode of recruitment nor is there any dispute about their qualification fixed by the Government. We have already pointed out that the scale of pay under the Scheme has been fixed to be the same as given to the ordinary teachers teaching normal children.

23. As pointed out earlier, the grievances of the special teachers in these writ-applications is that they are not given the following benefits which are given to the teachers of Primary, Secondary and Higher Secondary Schools:

(i). Pay and Pay scale as per 6th Pay Commission

(ii). Direct payment of salary (DPS)

(iii) Higher Grade Pay scale

(iv). Pension

(v) GPF

- (vi) Maternity Leave for Female employee
- (vii) Privilege Leave
- (viii) Sick leave
- (ix) Seniority and continuity of service in the event of change of institution
- (x) Bonus
- (xi) Compassionate appointment to one member of the family in the event of untimely death of the employee.
- (xii) Protection of service condition and redressal forum for the disputes arising therefore, viz. Tribunal.
- (xiv) Group Insurance, etc.

24. According to the State Government, there is no relationship of employee and employer between the special teachers and the State and while giving appointment to the special teachers, they have also executed bonds and affidavits that their appointment was only on contractual basis. The State has further highlighted that the special teachers are appointed under the Scheme where the teachers who will bring eight students of such disabled categories will be considered whereas the regular teachers are appointed by advertisement in the newspapers. The State further contends that the timings of the teachers who are employed in the schools for normal children is fixed whereas the timings of special teachers are not fixed as they might have to go to one school on one day and another school on another day. The State further contends that the student-teacher ratio in the general school is 60 : 1 whereas the student-teacher ratio under the IEDC Scheme was 8 : 1 and under the IEDSS Scheme is 5 : 1. Therefore, according to the State Government, it cannot be legitimately contended that special teachers are doing similar job as done by the ordinary teachers or that they are deprived of rule of equal pay for equal work.

25. At this stage, we may profitably refer to the following observations of the Supreme Court in the case of State of Karnataka vs, Umadevi reported in AIR 2006 SC 1806 where the Apex Court pointed out the difference between ad hoc, temporary, daily wages and permanent employee employed by the State in the following way:-

Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.

If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as 'litigious employment' in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required.

The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates.

The concept of 'equal pay for equal work' is different from the concept of conferring permanency on those who have been appointed on ad hoc basis, temporary basis, or based on no process of selection as envisaged by the Rules. This Court has in various decisions applied the principle of equal pay for equal work and has laid down the parameters for the application of that principle. The decisions are rested on the concept of equality enshrined in our Constitution in the light of the directive principles in that behalf. But the acceptance of that principle cannot lead to a position where the court could direct that appointments made without following the due procedure established by law, be deemed permanent or issue directions to treat them as permanent. Doing so, would be negation of the principle of equality of opportunity. The power to make an order as is necessary for doing complete justice in any cause or matter pending before this Court, would not normally be used for giving the go-by to the procedure established by law in the matter of public employment. Take the situation arising in the cases before us from the State of Karnataka. Therein, after the Dharwad decision, the Government had issued repeated directions and mandatory orders that no temporary or ad hoc employment or engagement be given. Some of the authorities and departments had ignored those directions or defied those directions and had continued to give employment, specifically interdicted by the orders issued by the executive. Some of the appointing officers have even been punished for their defiance. It would not be just or proper to pass an order in exercise of jurisdiction under Article 226 or 32 of the Constitution or in exercise of power under Article 142 of the Constitution of India permitting those persons engaged, to be absorbed or to be made permanent, based on their

appointments or engagements. Complete justice would be justice according to law and though it would be open to this Court to mould the relief, this Court would not grant a relief which would amount to perpetuating an illegality.

36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain - not at arms length - since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently.

(Emphasis supplied by us).

26. Bearing in mind the aforesaid principles, we now propose to consider whether the teachers involved herein are appointed on contractual basis or temporarily and whether they were appointed without following the regular process of selection prescribed by the Government.

27. The conditions regarding teachers appointment, their salary, remuneration is stated at paragraph 12 of the guidelines are reproduced below :-

12 . Appointment of Special Teachers 12.1 The teacher-pupil ratio for special education teachers envisaged under this scheme is 1:8. This ratio will be the same for normal classes as well as for preparatory pre-school classes. The same teachers will provide counseling to the parents. In accordance with this ratio the requisite number of special teachers may be appointed in schools (or for a cluster of schools) for children requiring special teacher support.

12.2 Qualifications special teachers so appointed should possess the following qualifications:-

(a) Primary : Academic qualifications as prevalent in the states and Union Territories with one year course, preferably multi-category, in special education or with specialization in teaching any type of disabled children depending upon the category of children enrolled in the IEDC Units. Such teachers can be oriented subsequently in the education of other categories of disability.

(b) Secondary : Graduates with B.Ed (Special Education) or any other equivalent professional training in special education.

Prescribed qualifications should be adhered to. In case qualified special teachers are not available, teachers with short training course may be appointed with the condition that they will complete the full course within three years of appointment. Special allowance for these teachers will be admissible only after completion of the full course. Teachers with single disability professional course will be encouraged to take courses in other disabilities to improve viability in rural areas.

Since teachers with experience in Non-Formal Education (NFE) and Adult Education (AE) are likely to have a better understanding of local environment and need, they could also be identified for training under the scheme and appointed as special teachers.

12.3 Scale of Pay: The same scales of pay as available to the teachers of the corresponding category in that State/UT will be given to special teachers. Considering the special type of duties, these teachers will be given a special pay of Rs. 150 per month in urban areas and Rs. 200 per month in rural areas.

The State Education Department may recruit such teachers for this purpose following the normal recruitment procedures .

28. From the materials placed before us, it is apparent that the scheme under which the petitioners have been appointed is one which is approved by the Central Government and it is permanent in nature. There is no trace of any indication in the scheme that the same is for a specified period or that the appointment is to be made based on contract for specified period. The Central Government has framed the guidelines and has also fixed the scale of pay of those teachers which is similar to one available to the teachers of the corresponding category in the State with additional amount of special pay of Rs. 150/- per mensem in urban area and Rs. 200/- per mensem in the rural area and the mode of appointment of teachers has been left to the State Government to frame.

29. Therefore, in the cases before us, the appointments made are not for a temporary period, but the need of appointment is perpetual in nature for the advancement of disabled children and we find that some of the petitioners are even working for about 20 years.

30. When the scale of pay has been fixed by the Central Government by specifying that in addition to the regular scale of pay available to the other teachers of the same category, these special teachers should be entitled to some additional special pay, there is no dispute about fixation of the remuneration to those teachers and the State has no authority to deviate from the above guidelines.

31. Regarding the mode of appointment also, according to the scheme framed by the Central Government, the special teachers should be appointed by regular mode of appointment that will be fixed by the State Government. Regarding the mode of appointment, there is no dispute about the fact that appointment of the teachers concerned were made with full approval of the State Government. We have also pointed out that there is also no dispute that all these teachers have the requisite qualifications fixed under the scheme. Merely because in the guidelines issued by the Central Government, the State Government was given liberty to take assistance of the experienced NGOs in the field for the purpose of selecting the teachers, such fact does not mean that the teachers can be appointed by the NGOs without adhering to the qualification according to their own choice. The process of selection must be under direct supervision of the State Government. Moreover, taking assistance of the experienced NGOs in the field is not even mandatory for the State Government. Therefore, the plea of the State Government that there is no relationship of employer and employee between the State and the special teachers and that the teachers are the contractual employees of the NGOs is not tenable. These are not the cases of appointment based on no process

of selection as envisaged by the Rules as pointed out in the case of the State of Karnataka vs. Umadevi and others (supra).

32. Such being the position, in our opinion, there is no justification of depriving these teachers, who are having slightly higher qualification than those appointed for teaching the ordinary students, of the benefits of the direct payment of salary, pension, GPF, maternity leave for female teachers, privilege leave, sick leave, seniority and continuity of service in the event of change of institution, bonus, compassionate appointment or monetary benefit in lieu thereof in the event of untimely death, protection of service conditions and redressal forum for disputes arising there from, L.T.C. and Group Insurance, which are available to the other teachers. We are unable to accept the contention of the State Government and the Central Government that the duties performed by these special teachers are lighter than those of other teachers who teach ordinary children. It is the Central Government itself which has prescribed the qualifications of the teachers which is higher than those who teach the ordinary students, inasmuch as, in addition to their educational qualifications, they are also required to have special qualification for teaching the disabled students.

33. By depriving the special teachers of the regular benefits that are given to the other teachers, in our opinion, the State Government has violated Articles 14 and 16 of the Constitution of India. From the nature of the duty performed by these teachers, we find that their duty is more onerous than that of the ordinary teachers and they are also required to visit more than one school for the purpose of performing their duty. From the materials placed before us, we find that number of disabled students which was in existence earlier, has increased a lot and may go on increasing.

34. We, therefore, find that after framing a scheme fixing the educational qualifications and other qualifications, the scales of pay, special teachers ratio, mode of recruitment and also the nature of duties to be performed by them, there is no justification of depriving the petitioners of their benefits other than the regular scale of pay which are enjoyed by the ordinary teachers by describing the job as a temporary one. It is not the case of the State that the number of disabled students are on the decrease; on the other hand, figures for the last ten years suggest that the number has gradually increased and in view of enactment of the right of the disabled students in the Constitution and after enactment of specific laws on the field, there is no scope of withholding of the scheme in question in future.

35. We, therefore, find that it is a fit case where we should allow these writ-applications by holding that the petitioners are entitled to get other benefits available to the ordinary teachers, when these special teachers are required to be placed in the same scale of pay with additional special pay. It is for the State Government to decide whether the mode of appointment will be left to the NGOs or not, but the salary should be paid by the State Government just like other ordinary teachers who are performing similar type of duty for teaching the ordinary students. We do not find any reason to leave the fate of these special teachers in the hands of the NGOs when they are really doing the job for the State and the duty of the NGOs is merely to assist the State in the process of selection. But as the Scheme goes, the selection should be made by following the normal recruitment procedures.

By allowing the NGOs to demand a bond or to give appointment letters with imposition of some conditions, although the selection was under the active supervision of the Department of Education, Government of Gujarat, the State Government cannot deprive the selected teachers of the right accrued out of the normal recruitment procedure under the control of the State.

36. All the applications are, thus, allowed with the above directions and with further direction that all the petitioners will be entitled to the benefits declared by us in these applications notionally from the date of their regular appointment, but the actual benefit should be given to them from the date of passing of this order.

36.1 The Union of India is directed to go on releasing the funds to the State Government for payment of the benefits declared by us in these applications to the special teachers appointed under the Scheme.

37. Rule is made absolute in each of the writ-applications accordingly.

37.1 In view of the above order passed in the main writ-applications, the Civil Applications do not survive and are disposed of accordingly. Rule/Notice wherever issued stands discharged.

37.2 In the facts and circumstances of the case, there will be no order as to costs in all these matters.

(BHASKAR BHATTACHARYA, C.J.) (J.B.PARDIWALA, J.) mathew Page 71 of 71