IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9462 of 2017

With
R/SPECIAL CIVIL APPLICATION NO. 9463 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 9465 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 9466 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 9467 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 9468 of 2017
With
R/SPECIAL CIVIL APPLICATION NO. 9469 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

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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 or any order made thereunder ?	

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GHARSHALA SANSTHA
Versus
JAYSHRIBEN GHANSHYAMLAL BHATT & 5 other(s)

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Appearance:
SCA NOS. 9462/2017, 9463/2017, 9465/2017 & 9467/2017
MR YN RAVANI(718) for the Petitioner(s) No. 1
DEEPAK N KHANCHANDANI(7781) for the Respondent(s) No. 2
MR SHALIN MEHTA, SENIOR ADVOCATE FOR MS VIDHI J BHATT(6155) for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 4,5

SCA NO.9466/2017
MR YN RAVANI(718) for the Petitioner(s) No. 1
MR MAULIK NANAVATI FOR MR VISHAL S. AWTANI AND MR DEEPAK N KHANCHANDANI, for the Respondents.

SCA NO.9468/2017
MR YN RAVANI(718) for the Petitioner(s) No. 1
MR MAHENDRA U VORA, MR DEEPAK N KHANCHANDANI for the Respondents.

SCA NO.9469/2017
MR YN RAVANI(718) for the Petitioner(s) No. 1
MR DP KINARIWALA FOR MR JOY MATHEW AND MR DEEPAK N KHANCHANDANI for the Respondents.
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CORAM:**HONOURABLE MR. JUSTICE BHARGAV D. KARIA**

Date : 02/09/2022

CAV JUDGMENT

1. Heard learned Senior Advocate Mr. Y.N. Ravani for the petitioners and learned Senior Advocate Mr. Shalin Mehta assisted by learned advocate Ms. Vidhi Bhatt, learned advocate Mr. Deepak Khanchandani, learned advocate Mr. Mahendra U.Vora, learned advocate Mr.D.P. Kinariwala assisted by learned advocate Mr. Joy Matthew, learned advocate Mr. Maulik Nanavati for learned advocate Mr. Vishal S. Awtani for the respective private

respondents and learned Assistant Government Pleaders Mr. Dhawan Jayswal, Mr. Jayneel Parikh and Mr. Kurven Desai for the respondent-State.

2. Rule. Learned advocate Ms. Vidhi Bhatt, learned advocate Mr. Deepak Khanchandani, learned advocate Mr. Joy Matthew, learned advocate Mr. Vishal S. Awtani, learned advocate Mr. Mahendra U.Vora and learned Assistant Government Pleaders Mr. Dhawan Jayswal, Mr. Jayneel Parikh and Mr. Kurven Desai waives service of notice of rule on behalf of the respective respondents.

3. In this group of petitions, the petitioner has challenged the common order dated 17.03.2017 passed by the Gujarat Educational Institutions Services Tribunal (For short "the Tribunal") in Execution Application No. 383 of 2014 and allied

Applications.

4. For the sake of convenience, facts of Special Civil Application No. 9462/2017 are considered.

4.1) The petitioner is a public trust registered under the provisions of the Bombay Public Trust Act, 1950 and the main aim and object of the trust is to impart education in Bhavnagar City. The petitioner trust is running various educational institutions in Bhavnagar.

4.2) The Gharshala Buniyadi Sikshan Vibhag is a Private Primary School registered under the Bombay Primary Education Act, 1986 (For short "the Act, 1986") and the said school is not receiving any grant from the State Government.

4.3) Respondent no.1 in Special Civil Application No.9462/2017 along with other respondents in other petitions who were Primary Teachers in the school run by the petitioner trust, filed an application before the Tribunal in the year 2010 for payment of salary in the pay scale applicable for grand-in-aid school.

4.4) A settlement was arrived at on 1.05.2012 between the petitioner and the Primary Teachers of the school run by the petitioner trust and it was agreed to pay the salary as per the Government Rules and Regulations from 1.01.2012 along with other conditions of the settlement. The Tribunal disposed of the applications filed by the Primary Teachers in view of such settlement.

4.5) Respondent no.1 was appointed as an Assistant Teacher on 6.11.1995. It is the

case of the petitioner that her appointment was made without following the due process of law which is provided under Schedule-F of the Bombay Primary Education Rule, 1949 (For short "the Rules, 1949") and therefore, according to the petitioner, the appointment was illegal as held by this Court in similar cases.

4.6) It is the case of the petitioner that respondent no.1 and other similarly situated Primary Teachers were entitled to the benefit of 4th Pay Commission and as the respondent no.1 was untrained teacher, she was entitled to receive salary in the pay scale of Rs. 950-1400 and instead of that school management was paying salary in pay scale of Rs. 3050-4590.

4.7) Respondent no.1 along with other similarly situated Primary Teachers preferred

the Execution Application No. 383 of 2014 and other allied matters before the Tribunal for implementation of the settlement dated 1.05.2012 and for directing the petitioner trust to pay the outstanding dues as per the settlement together with interest and to pass necessary orders for implementation of the settlement which was part of the order passed by the Tribunal while disposing of the application filed by respondent no.1 and other Primary Teachers.

4.8) The petitioner trust filed reply on 13.02.2015 at Exh.10 raising preliminary objection that the Execution Petition is not maintainable before the Tribunal as the Tribunal has no jurisdiction.

4.9) The Tribunal thereafter considering the submissions, documents, and arguments of both the sides, passed an order on 21.09.2015

rejecting the preliminary objection raised by the petitioner holding that the Tribunal has jurisdiction to proceed with the Execution Application.

4.10) It appears that thereafter the petitioner trust again by application dated 28.01.2016 at Exh.18 filed under section 151 of the Code of Civil Procedure, 1908 (For short "the Code") prayed before the Tribunal to recall the order dated 21.09.2015 and to hear the objection that the Tribunal had no jurisdiction to proceed with the Execution Applications. The Tribunal by order dated 29.09.2016 rejected the application filed by the petitioner trust under section 151 of the Code holding that the Execution Applications are to be proceeded before the Tribunal.

4.11) The petitioner in its written arguments at Exh.33 again reiterated that

section 23 of the Gujarat Educational Institutions Services Tribunal Act, 2006 (For short "the Act, 2006") cannot be applied in the facts of the case and the Execution Applications are required to be dismissed for want of jurisdiction.

4.12) The Tribunal after considering the submissions made by the petitioner trust as well as the respondent Primary Teachers by the impugned order dated 17.03.2017 allowed each Execution Application by directing the respondent Primary Teachers to submit the statement of calculation of outstanding dues from 1.01.2012 till the date of the order of the Tribunal and the petitioner trust was directed to get it verified from the Administrative Officer of Nagar Prathmik Sikhshan Samiti, Navapara, opponent no.3 before the Tribunal and to make the payment within two months thereafter and for delayed

payment, interest at the rate of 6% was awarded.

4.13) Being aggrieved by the aforesaid order dated 17.03.2017, these petitions are filed.

5. The petitioner has raised the following questions of law for deciding these petitions:

> "(i) Whether the decision of the Tribunal is erroneous and contrary to law in entertaining the Execution Application in absence of decree of the previous proceeding, which has been disposed of on a compromise purshis filed by the parties?
>
> (ii) Whether the Tribunal has committed a serious error in entertaining the Execution Application in absence of availability of provisions of execution under the provisions of the Gujarat Educational Institutions Services Tribunal Act, 2006, more particularly after deletion of the provisions of Section 40F of Bombay Primary Education (Gujarat Amendment) Act, 1984 with effect from 06.02.2014?

(iii) Whether the Tribunal has seriously misinterpreted the provisions of Rule 106(4)(v) of Bombay Primary Education Rules, 1949 to the school run by the petitioner trust which is non-grant recognized primary school and having application of pay-rules made applicable by the State Government published by notification dated 26.02.1998 applying the fifth pay commission only?

(iv) Whether the Tribunal has committed a serious error in not appreciating the aspect that the petitioner being non-grant government recognized school, as per Government recognized pay-scale also it would be applicable to fifth pay commission only and will not have application of 6th and 7th pay commission?

(v) Whether the Tribunal has committed an error in entertaining the Execution Proceeding u/s 23 of the Act of 2006?"

6. Learned Senior Advocate Mr. Y.N.Ravani for the petitioner trust submitted that Rule 106 of the Rules, 1949 provides for application for recognition and also with regard to the salary which is to be paid to the teachers of

recognised Private Primary School. It was submitted that under Rule 106(4)(iii) of the Rules, 1949 there is a provision that the managing body of the trust or society shall give an undertaking in writing to abide by the orders or instructions which may be issued by the School Board from time to time for regulating the working of the Private Primary School. Reference to Rule 106(4)(iv) was made to submit that the admission and promotion in the Private Primary Schools shall be regulated in accordance with the Rules approved by the School Board and Rule 106(4)(v) provides that the rates of tuition fees, the pay scales and allowances of the teaching staff shall be such as may be approved by the Government from time to time.

6.1) It was therefore, submitted that recognised Private Primary School are under an obligation to pay the salary and

allowances to the teaching staff as approved by the Government from time to time. It was submitted that with effect from 27.09.2006, Rule 106(4)(v) of the Rules, 1949 is amended to the effect that only grant-in-aid recognised Private Primary School is under statutory obligation to pay salary and allowances of the teaching staff as approved by the Government from time to time and not the recognized Private Primary Schools who are not getting grant-in-aid.

6.2) It was submitted that on 21.09.1987, the Government of Gujarat has decided to accept the recommendations made by the 4th Pay Commission and amended the Gujarat Civil Services (Revision of Pay)Rules, 1987 (For short "the Rules 1987") with regard to the Primary Teachers irrespective of the fact whether a teacher is of grant-in-aid recognized Primary School or non-granted

recognized Primary School and under the said Rules, a teacher having the qualification of PTC who is termed as trained teacher is entitled for the salary in the pay scale of Rs. 1200-2400 and so far as untrained teacher is concerned, the pay scale is Rs. 950-1400 is prescribed and the said Rule is made applicable with effect from 1.1.1986.

6.3) It was pointed out that the State Government further amended the Pay Rules in 1998 by notification dated 26.02.1998 prescribing the pay scale for the trained teacher at Rs. 4000-6000 and for untrained teacher at Rs.3050-4590. It was submitted that Rule 106(4)(v) of the Rules 1949 is made applicable only after 27.09.2006 to non-granted recognized Private Primary School.

6.4) It was submitted that the petitioner trust extended the benefit of 4th Pay

Commission to respondent no.1 teacher with effect from 1.01.1996 and respondent no.1 was getting the pay in the pay scale of Rs.3050-4590. It was submitted that though respondent no.1 was receiving the salary as per the Government Rules and Regulations, Execution Application was filed to execute the consent terms entered between the parties on 1.05.2012. However, the Tribunal has no jurisdiction to proceed with the Execution Application in view of the provisions of sections 9, 10, 11, 11(A) of the Act, 2006 which was amended with effect from 2.11.2013.

6.5) It was submitted that section 23 of the Act,2006 relied upon by the Tribunal to overrule the preliminary objections of the petitioner is erroneous inasmuch as section 23 of the Act, 2006 cannot be applied in the facts of the case. It was submitted that as per section 40F of the Act, the Tribunal has

power to execute its own order, but the said provision is deleted on 6.2.2014 after the new Act came into force in the year 2013. It was pointed out that the Tribunal has jurisdiction to execute the orders prior to 6.2.2014 but thereafter there is no provision under the Act giving jurisdiction to the Tribunal to execute its own order and therefore, the impugned order passed by the Tribunal in Execution Applications is without jurisdiction.

6.6) It was also pointed out that in reply dated 17.02.2017, it was submitted before the Tribunal that the petitioner already has complied with the terms of the compromise entered into between the parties and the petitioner trust is paying salary as per the terms and conditions of the compromise.

6.7) It was submitted that as per the terms of the compromise, the petitioner trust has paid the excess amount of Rs.1,94,334/- to respondent no.1 and as she was not entitled to get such amount paid by the petitioner trust over a period of time as per the Government Rules and Regulations in terms of the compromise, the petitioner trust has passed an order dated 20.06.2016 for recovery of such amount. It was submitted that the Tribunal without considering the facts has passed the impugned order, which is erroneous, bad in law and exceeding its jurisdiction not vested in it.

6.8) It was submitted that the Tribunal has committed an error by entertaining the Execution Petition filed by respondent no.1 teacher ignoring the fact that the petitioner trust has acted upon the terms and conditions of the compromise arrived at between the

parties and there is nothing on record to show that after 7.09.1998, the State Government has amended the Pay Rules and pay scale of Assistant Primary Teachers of non-granted recognized Private Primary Schools and therefore, the Tribunal could not have passed the order directing the petitioner trust to give the benefits of 6th and 7th Pay Commission on the basis of the Primary Teacher of granted recognized Private Primary Schools to the respondent no.1.

6.9) It was submitted that the Tribunal could not have awarded interest at the rate of 6% to respondent no.1 as there is no fault on part of the petitioner in facts of the case and the Tribunal has travelled beyond the scope of the consent terms between the parties.

6.10) It was submitted that the Tribunal

could not have passed the order in Execution Application as there is no decree drawn as per section 2(2) of the Code as per the order passed in the Original Application based on compromise arrived at between the parties.

6.11) Learned Advocate Mr. Ravani referred to and relied upon section 11 of the Act, 2006 which provides for an appeal by an aggrieved employee against any order or decision before the Tribunal and submitted that in absence of any provision under the Act for execution of the order passed by the Tribunal and in absence of any appeal under section 11, the Tribunal could not have exercised the jurisdiction by allowing the Execution Applications filed by the respondents teachers.

6.12) It was submitted that the Tribunal has also ignored the provisions of section 14

of the Act,2006 in absence of any Rules framed under section 21 inasmuch as the Tribunal could not have exercised the jurisdiction to execute the order as the Tribunal has only limited powers under the provisions of the Code for summoning and enforcing the attendance of any person and examining him on oath or requiring the discovery and production of documents or issuing commission of examination of witnesses or any other matters which may be prescribed. It was therefore, submitted that on plain reading of section 14 of the Act,2006, the Tribunal has no power to execute its order when no decree drawn is drawn by the Tribunal for the purpose of execution under the provisions of the Code. As there is no decree drawn, the Tribunal could not have executed its own order under the provisions of the Code by directing the petitioner trust to pay the outstanding

salary as per the demand made by the respondent teachers.

6.13) It was submitted by learned Advocate Mr. Ravani that the economic condition of the petitioner is very poor and therefore, the Tribunal could not have passed the impugned order fastening financial liability upon the petitioner trust.

6.14) In support of his submissions, learned Advocate Mr. Ravani referred to and relied upon the following decisions:

1) **Commissioner of Customs & Central Excise v. Hongo India (P) Ltd.** reported in 2009 (236) E.L.T. 417 (S.C.), wherein the Apex Court has held as under:

> "**19)** As pointed out earlier, the language used in Sections 35, 35B, 35EE, 35G and 35H makes the position clear that an appeal and reference to the High Court should

be made within 180 days only from the date of communication of the decision or order. In other words, the language used in other provisions makes the position clear that the legislature intended the appellate authority to entertain the appeal by condoning the delay only up to 30 days after expiry of 60 days which is the preliminary limitation period for preferring an appeal. In the absence of any clause condoning the delay by showing sufficient cause after the prescribed period, there is complete exclusion of Section 5 of the Limitation Act. The High Court was, therefore, justified in holding that there was no power to condone the delay after expiry of the prescribed period of 180 days. Even otherwise, for filing an appeal to the Commissioner, and to the Appellate Tribunal as well as revision to the Central Government, the legislature has provided 60 days and 90 days respectively, on the other hand, for filing an appeal and reference to the High Court larger period of 180 days has been provided with to enable the Commissioner and the other party to avail the same. We are of the view that the legislature provided sufficient time, namely, 180 days for filing reference to the High Court which is more than the period prescribed for an appeal and revision.

20) Though, an argument was raised based on Section 29 of the Limitation Act, even assuming

that Section 29(2) would be attracted what we have to determine is whether the provisions of this section are expressly excluded in the case of reference to High Court. It was contended before us that the words "expressly excluded" would mean that there must be an express reference made in the special or local law to the specific provisions of the Limitation Act of which the operation is to be excluded. In this regard, we have to see the scheme of the special law here in this case is Central Excise Act. The nature of the remedy provided therein are such that the legislature intended it to be a complete Code by itself which alone should govern the several matters provided by it. If, on an examination of the relevant provisions, it is clear that the provisions of the Limitation Act are necessarily excluded, then the benefits conferred therein cannot be called in aid to supplement the provisions of the Act. In our considered view, that even in a case where the special law does not exclude the provisions of Sections 4 to 24 of the Limitation Act by an express reference, it would nonetheless be open to the court to examine whether and to what extent, the nature of those provisions or the nature of the subject-matter and scheme of the special law exclude their operation. In other words, the applicability of the provisions of the Limitation Act, therefore, to be judged not from the terms of

> the Limitation Act but by the provisions of the Central Excise Act relating to filing of reference application to the High Court. The scheme of the Central Excise Act, 1944 support the conclusion that the time limit prescribed under Section 35H(1) to make a reference to High Court is absolute and unextendable by court under Section 5 of the Limitation Act. It is well settled law that it is the duty of the court to respect the legislative intent and by giving liberal interpretation, limitation cannot be extended by invoking the provisions of Section 5 of the Act.
>
> **21)** In the light of the above discussion, we hold that the High Court has no power to condone the delay in filing the "reference application" filed by the Commissioner under unamended Section 35H(1) of the Central Excise Act, 1944 beyond the prescribed period of 180 days and rightly dismissed the reference on the ground of limitation."

2) **Kewal Chand Mimani (D) by Lrs. v. S.K. Sen and others** reported in (2001) 6 Supreme Court Cases 512, wherein the Apex Court held as under :

> **"(19.)** Another aspect of some importance ought also to be delved

into at this stage, to wit, the effect of the liberty granted to mention the matter after the Judgement was delivered. It is on this score that Mr. Gupta, very strongly contended that question reopening the issue by reason of the liberty would not arise. As a matter of fact, it has been contended that by the aforesaid first judgment, the High Court came to a definite finding that the property should immediately be restored back to the possession of the owner of the property and /or the occupier, which cannot but mean the Mimanis, as the case may be - this direction as contained in the Judgement by itself connotes final disposal and denotes specifically the determination of the issue raised in the matter. The High Court, Mr. Gupta contended, recorded that though many other points were argued and several case laws were cited, but there was felt no necessity for deciding those points as the appeal succeeded on the point of Order of requisition not been continued on the basis of a lapsed statute. No doubt - a very convincing reason that when the entire appeal stands disposed of there exists no scope of reopening the issue on the basis of the liberty granted to mention the matter doubt, there is none. Liberty to mention cannot be used as a means to achieve an advantage which is not otherwise available in law - a question which stands finally decided cannot be reopened neither

the Court has any further jurisdiction upon the signature been appended on the Judgement by oral mention. The issue stands concluded as soon as the Judgement is pronounced and the same is signed. Be it noted however, that the words "liberty to mention" has been as a matter of fact a phraseology, which did come through judicial process without any definite legal sanction for the purpose of clarification, if needed, but not otherwise. It is a legal process which has been evolved for convenience and for shortening the litigation so that the parties are not dragged into further and further course of litigation, and it is in this context that the submissions of Mr. Gupta, that the Court has no jurisdiction to reopen the issue on the ground of availability of the legal phraseology of liberty to mention cannot be brushed aside. As noticed herein before, the insertion of the above noted legal phraseology is to obliterate any confusion or any difficulty being experienced in the matter - it does not give the right anew to the party to agitate the matter further nor does it confer jurisdiction on the Court itself to further probe the correctness of the decision arrived at : Review of a Judgement cannot be had on the basis of this liberty. The circumstances, under which review can be had - is provided under Order 47 of the Code of Civil Procedure. In any event, law is well settled on this score

> that the power to review is not any inherent power and it must be conferred by law either specifically or by necessary implication. In this context reference may be made to the decision in Patel Narshi Thakershi V/s. Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273."

3) **Rameshwar Dass Gupta v. State of U.P. and another** reported in (1996) 5 Supreme Court Cases 728, wherein the Apex Court held that the Executing Court cannot travel beyond the order or decree under execution as under :

> **"(4.)** It is well settled legal position that an executing Court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Or. 21, of the Civil Procedure Code. In view of the fact that it is a money claim, what was to be computed is the arrears of the salary, gratuity and pension after computation of his promotional benefits in accordance with the service law. That having been done and the Court having decided the entitlement of the decree-holder in a sum of Rs. 1,97,000.00 and odd, the question that arises is whether the executing Court could step out and grant a

> decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution? In our view, the executing Court has exceeded its jurisdiction and the order is one without jurisdiction and is thereby a void order. It is true that the High Court normally exercises its revisional jurisdiction u/s. 115, of the Civil Procedure Code but once it is held that the executing Court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, we do not find any illegality in the order passed by the High Court in interfering with and setting aside the order directing payment of interest."

4) The Apex Court in case of **S. Bhaskaran v. Sebastian (Dead) by Lrs. & Ors.** (judgment dated 13.09.2013 passed in Civil Appeal No.7800/2014) following the decision in case of **Rameshwar Dass Gupta** (supra), held that the High Court could not have gone beyond the decree to be executed by allowing the party to reopen the question of trusteeship by way of an application in Execution Petition in

facts of the said case and thereby High Court exceeded jurisdiction under section 115 of the Code. As the findings of the trial Court had attained finality, the decision of the Executing Court ought to have been affirmed.

7. On the other hand, learned Senior Advocate Mr. Shalin Mehta assisted by learned advocate Ms. Vidhi Bhatt, learned advocate Mr. Deepak Khanchandani, learned advocate Mr. Mahendra U.Vora and learned advocate Mr.D.P. Kinariwala assisted by learned advocate Mr. Joy Matthew, learned advocate Mr. Maulik Nanavati assisted by learned advocate Mr. Vishal S. Awtani for the respective private respondents and learned Assistant Government Pleaders Mr. Dhawan Jayswal, Mr. Jayneel Parikh and Mr. Kurven Desai for the respondent-State made submissions as under:

7.1) It was submitted that under the old

Act as well as under the new Act, there is no power given to the Tribunal for execution of its own order. However, the Tribunal is also not vested with any power of Contempt of Court and in such a situation when a party approached under the provisions of the Contempt of Courts Act before this Act, in case of **Girishchandra R. Bhatt and another v. Dineshbhai N. Sanghvi** reported in (1996) 1 GLR 812, it was held by the Division Bench of this Court that the orders passed by the Tribunal are executable by rejecting the contempt petition and it was further held that the provisions of the Code would be applicable. It was submitted that respondent no.1 in Special Civil Application No. 9462/2017 retired from service with effect from 31.05.2017 and the petitioner has tried to recover the sum of Rs.1,94,334/- which is not tenable in the Execution Application filed by respondent no.1. Reliance was also

placed on the decision of the Apex Court in case of **State of Punjab and others v. Rafiq Masih (White Washer) and others** reported in (2015) 4 Supreme Court Cases 334 to submit that no recovery can be made against the respondents teachers in view of clauses (i), (ii), (iii) and (v) of paragraph no.18 of the said decision.

7.2) It was submitted that the Tribunal decided the issue of jurisdiction twice, firstly by order dated 21.9.2015 and thereafter by order dated 29.9.2016 rejecting the application filed by the petitioner trust and therefore, the contention raised by the petitioner that the issue of jurisdiction is not decided by the Tribunal cannot be looked into as the petitioner has never challenged both the orders before the Tribunal.

7.3) With regard to the contention raised

by the petitioner that the Tribunal cannot entertain Execution Petition in absence of decree drawn, it was submitted that the Tribunal passed the order on 1.05.2012 for recording the compromise between the parties and therefore, there is no question of issuance of any further order or decree. It was submitted that the Tribunal has exercised the jurisdiction to implement its own order in view of decision of Division Bench of this Court in case of **Girishchandra R. Bhatt and another** (supra).

7.4) With regard to the contention raised on behalf of the petitioner that the Tribunal could not have awarded 6% interest, it was submitted that interest is a discretionary power vested with the Tribunal which is exercised rightly in favour of the respondents teachers.

7.5) With regard to the contention of economic condition of the petitioner trust, it was submitted that the petitioner has not paid the legitimate dues to the respondents teachers who have succeeded before the Tribunal and the petitioners are bound to comply the order passed by the Tribunal and the financial aspect cannot be looked into by the Tribunal for implementation of order which is passed on the basis of compromise arrived at between the parties.

7.6) Learned advocates for the respective respondents also relied upon the statement of calculation of the outstanding dues placed on record with a prayer to direct the petitioner trust to make the payment at the earliest as per the impugned order passed by the Tribunal.

7.7 Reliance was placed on the decision

of the Supreme Court in case of **Sir Sobha Singh and Sons Pvt. Ltd. v. Shashi Mohan Kapur** reported in AIR 2019 SC 5416, wherein the Apex Court held that there are some orders, which are in the nature of decree and thus capable of being executed without drawing decree. In facts before the Apex Court, the decree was drawn under Rule 3 of Order 23 of the Code which suggest that it is necessary after recording the compromise in the order to further pass a decree in accordance therewith. It was submitted that in facts of the case when the Tribunal has passed the order dated 1.05.2012 as per the terms of the compromise, there was no need to draw any decree.

8. Having heard the learned advocates for the respective parties and having gone through the material on record as well as the impugned common order passed by the Tribunal,

the question of law raised by the petitioners in this group of petitions are considered as under:

9. The Division Bench of this Court in case of **Girishchandra R. Bhatt and another** (supra) while deciding the application filed under section 10 of the Contempt of Courts Act,1971 for noncompliance of the order of the Tribunal has held that the order of the Tribunal is executable in view of Clause 14 of Guj. Primary Education Tribunal (Procedure) Order, 1987 which confers power upon the Tribunal to exercise the powers under the provisions of the Code. The Division Bench has held as under:

> **"(22.)** Mr. Shah, to substantiate his argument, referred to Sec. 40-F read with Clause 14 of Guj. Primary Education Tribunal (Procedure) Order, 1987. Mr. Shah contended that Clause 14 of the Order provides that the Tribunal shall in any manner not provided for in this Order, follow the procedure, as far as it is

applicable, laid down in the Code of Civil Procedure, 1908. Mr. Shah also contended that this Order is provided in view of subsection (5) of Sec. 40-F of the Bombay Primary Education (Gujarat Amendment) Act, 1986. To substantiate his argument, he also relied on sub-Sec. (6) of Sec. 40F of the said Act. Sub-Section (5) and sub-sec. (6) of Sec. 40-F reads as under :

[

["40F. (5). The Tribunal shall follow such procedure as the State Government may by general order direct.]

[40F (6). The Tribunal shall have the same power as are vested in a Civil Court under the Code of Civil Procedure, 1908 (V of 1908), when trying a suit, in respect of the following matters, namely :

[(a) enforcing the attendance of any person and examining him on oath;]

[(b) compelling commissions for the examination of witnesses;]

[(d) such other matters as may be prescribed; and every inquiry or investigation by the Tribunal shall be deemed to be a judicial proceeding within the meaning of Secs. 193 and 228 of the Indian Penal Code."]

[If one reads the whole of the Bombay Primary Education (Gujarat Amendment)

Act, 1986, and in particular Chapter VII-B, which provides for procedure for imposition of penalty on teachers of recognised private primary schools, it only provides for the jurisdiction of the Tribunal under Sec. 40E and constitution of Tribunal under Sec. 40F. There is nothing to show in said Chapter VII-B as to how any order that may be passed by the Tribunal can be executed or enforced.] [Sub-Section (5) of Sec. 40F provides for the procedure that the State Government may by general order direct and the State Government has by the Gujarat Primary Education Tribunal (Procedure) Order, 1987 provided for the procedure. The scheme of that Procedure Order is as under.

(23.) Clause 1 provides for the title of the Order. Clause 2 provides for the definitions. Clause 3 provides for the place and notice of date of hearing. Clause 4 provides for the presentation of appeals and application, Clause 5 provides for registration of appeals and applications. Clause 6 provides for intimation to President and calling of record and proceedings of officer authorised under sub-Clause (a) of sub-sec. (1) of Sec. 40B. Clause 7 provides for stay of execution of order. Clause 8 provides for notice of hearing. Clause 9 provides for procedure at the hearing. Clause 10 provides for hearing in the absence of parties. Clause 11 provides for adjournment. Clause 12 provides for pronouncement of judgment. Clause 13 provides for copies of documents on payment of fees. We are concerned with Clause 14, which provides for following provisions of Civil Procedure Code in

the matters not provided in this Order.

(24.) Now, if we look at the scheme and the provisions made in the Order, it is clear that while providing or prescribing the procedure the State Government has provided to some extent the same procedure which the Civil Court follows. It is only with a view to expedite the hearing of the matters separate tribunals are constituted so that the hearing need not be delayed on certain technical aspects. Clause 7 providing for stay of the execution of order is suggestive of the fact that it was in the mind of the legislature that a situation to : execute orders may arise. It has appeared that there is nothing in this Procedure Order for enforcement or execution of the order that may be passed by the Tribunal. In absence of any express provision for the. execution and that State Government would have thought it fit to avoid any situation that may arise because of absence of such specific provision that the Tribunal need not be without any power to enforce its own orders, Clause 14 provides to meet that exigency. Thus, what is not provided by Clauses 1 to 13 is tried to be provided by Clause 14. What lacks in Clauses 1 to 13 is specific provision for enforcement or execution of orders that may be passed. To make adjudication complete and effective, Clause 14 provides for application of provisions to follow the procedure of Code of Civil Procedure as far as it is applicable. This may also be read to provide for the enforcement or execution of the order as per the procedure prescribed in the Civil

Procedure Code. This is how the Civil Procedure Code is brought in by Clause 14. It will be relevant to refer that where jurisdiction to adjudicate and decide rights and liabilities is conferred by a statute, power to enforce said rights and liabilities must be provided. If it is not provided specifically, it should be impliedly read in, if the same can be read from some of the provision to make the Code or the Act complete for the purpose of determining and adjudicating finally the issue which came before the Tribunal. It can be said that if a court has power to adjudicate, it also has power to enforce the same. Right to adjudicate would be incomplete in absence of power to execute. In the instant case, if we read Primary Education (Gujarat Amendment) Act, 1986, Chapter VII-B, and the Procedure Order, it can be said that the Tribunal is not without the power to enforce or execute the order that may be passed by it. We may pose a question whether can there be legislation adjudicating and deciding rights of the parties without any provision to enforce the same- If the legislation is not providing with a power to enforce the same, can it be said that it brings to an end the dispute between the parties- We are of the view that there can be no legislation providing adjudication and deciding the rights of the parties without any provision to enforce the same. We would like to say that it is inherent in the authority to enforce its own order, if it is authorised by the legislation to decide or adjudicate and pass the same. We are, therefore, of the

opinion that in absence of any specific provision in Chapter VII-B of the Bombay Primary Education (Gujarat Amendment) Act, 1986 read with Procedure Order 1987 for the enforcement of the rights that may be decided by the Tribunal, can there be any provisions from which we can read or spell out right to enforce the same- We are of the opinion that if Clause 14 of the Procedure Order is read with Clause (d) of sub-sec. (6) of Sec. 40F, the only inference which can be drawn is that except the procedural aspect provided in Clauses 1 to 13, rest of the Civil Procedure Code is made applicable which also includes enforcement of the right determined by the Tribunal. We mean to say that provisions of Civil Procedure Code be read in Procedure Order as if provided therein."

10. The Division Bench while referring to the provisions of section 40F which is now substituted as section 14 of the Act with effect from 6.02.2014 held as under:

> "**(31.)** Assume that there is no provision to execute the order of the Tribunal. Most of the orders of the Tribunal, if in favour of the teachers, are in the nature of reinstatement with or without back wages or may be for difference of salary arising due to application of new scale. If in favour of the management, it may be for recovery of excess salary paid, if any. If contempt is the only remedy to enforce the order, then contempt court while deciding the matter may also direct the contemner to purge the

contempt. If the contemner does not purge the contempt on his part, the same can be enforced through some agency, may be Police agency. Now, if the contempt is alleged for disobeying the order of reinstatement or payment of back wages or difference of salary, can contempt court get it enforced through any agency- Can there be forcible recovery or arrears- In our opinion, 'no'. By not complying with the order, the contemner may go on committing contempt again and again and there would be no end to this process of committing contempt repeatedly. Would it be just and proper for the court to go on taking action for repeated contempts- In our opinion, `no' and, therefore, there should be some provision to enforce the same. We may state that this may not be a case if a contemner is an employer like Government, semi-Government or Corporation or like run by Government.

(37.) In these circumstances, we come to the conclusion that Clause 14 of the Procedure Order provides for application of procedure for execution of the order that may be passed by the Tribunal by way of execution provided in C. P. C.

38.) In view of our finding that all procedure as far as it is applicable laid down in C. P. C. will apply, we would like to make it clear that after passing the award if the same is complied with by the respondent, then the petitioner can have the Tribunal again by way of application to execute the same and the procedure to be followed by the Tribunal, utilising its own infrastructure, would be like a Civil Court, which executes its own decree and orders. May be that the Tribunal be burdened with an additional work, but that is not the concern of this Court.

(39.) This Court (Coram : A. P. Ravani & C, K. Thakkar, JJ.) in M. C. A. Nos. 31 and 32 of 1992, has held in its judgment dated 13-2-1992 as under :

> "It is often contended that the Tribunal has no power to secure the compliance of the interim orders and final orders that may be passed by it. The contention has no roots either in law or in common sense. Way back in the year 1969, in the case of I. T. Officer V/s. Mohd. Kunhi AIR 1969 S.C. 430, the Supreme Court has held as follows :
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> > 'It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to usual reasonable means to make such grant effective.' In connection with the provisions of Sec. 25A of the Income Tax Act, 1961, the Supreme Court observed that the powers which have been conferred by Section 25A on the appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective. After referring to Maxwell on Interpretation of Statutes , the Supreme Court has observed as follows :
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> > > "Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts or employing such means, as are essentially necessary to its execution. Cui jurisdictio data est, ea quoqe concessa esse vindentur, since quibiis jurisdictio

explicari non potuit.[The Supreme Court approvingly quoted the following observations from Ex Parte, Martin (1879) 4 QBD 212:

> 'where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be useless if it could not be encorced'.
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> XXX XXX XXX
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> 8. The provisions of the Bombay Primary Education Act clearly show that the Tribunal has been formed with powers to decide the disputes between the teacher and the school management. Thus, there is an express grant of power. This express grant of power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. Thus, the power also includes the power of doing all such acts, or of employing such means as are essentially necessary for execution. Therefore, the Tribunal should ordinarily exercise its power of imposing effective and meaningful conditions even while issuing interim orders to see

that the interim orders are complied with. This can and should be done by the Tribunals. We may illustrate as to what can be done by the Tribunal :

(a) The Tribunal can direct the opponent to remain present in court and report compliance of its interim order;

(b) The Tribunal can direct that in case the amount is not paid as per the direction by its interim order, the amount shall carry interest at the appropriate rate which in the present day market condition can be between 15 to 21 per cent;

(c) The Tribunal can and should indicate that in case there is failure to comply with its order, defence of the opponent may be struck off. After giving an opportunity to the opponent, if the opponent fails to show sufficient cause relieving him from the consequences of the non-compliance of the order, its defence may be struck off. Later on, in fit cases on compliance of the orders or on any other suitable condition the opponent may be permitted to appear and defend;

(d) The Tribunal in appropriate cases can award cost and in given cases, it can be even exemplary costs. Even for non-compliance of the interim orders, costs can be awarded.

This list is merely illustrative one and by no means should be treated as exhaustive. The Tribunal can and should act with innovative and employ all necessary means to make the conferment of power meaningful and effective. The aforesaid discussion clearly shows that the Tribunal has ample power to see that its interim orders are complied with. We fail to understand why the tribunal cannot exercise its power and is forcing the parties to have recourse to this Court for which the parties are required to undergo harassment and incur heavy expenses. Moreover, the time of this Court is also unnecessarily wasted in the work which could be done by the Tribunal itself."

(40.) In view of the above discussion, we conclude that the order that may be passed by the Tribunal is executable by the

> Tribunal, following the procedure laid down in C. P. F. Simply because the order passed by the Tribunal is executable, it does not take out the case of the petitioners from the purview of contempt, if it can be so held in the facts and circumstances of the case. Supreme Court in Alahar's case (supra) has held that contempt is not a substitute for execution. However, we further clarify that simply because an order can be executed, it does not go out of rigour of contempt if case falls within the ambit of civil or criminal contempt. There may be cases where non-compliance of the order even if the same is executable may amount to contempt. However, it depends on the facts of each case and this Court may take cognizance under Contempt of Courts Act."

11. Reliance placed on the decision of Apex Court in case of **Sir Sobha Singh and Sons Pvt. Ltd.**(supra), is not directly applicable to the facts of the case but the observations of the Supreme Court in paragraph no.34 could be of help to the respondents teachers where the Apex Court observed that "True it is that there are some orders, which are in the nature of decree and thus capable of being executed as such…." The Apex Court further upholding the objections raised by the judgment creditor observed as under :

"**(39.)** As mentioned above, the Executing Court dismissed the applications filed by the respondent with a cost of Rs. 5 lakhs which resulted in issuance of warrant of possession of the suit house. The High Court, by impugned order, set aside the order of the Executing Court and dismissed the execution application as being not maintainable. The High Court, however, did not then consider it necessary to examine the question as to whether the Executing Court was right in rejecting the respondent s applications.

(40.) We have, therefore, perused the order of the Executing Court. Having perused it, we are of the considered view that the Executing Court was right in rejecting the objections raised by the respondent in his applications and, therefore, find no good ground to interfere in those findings of the Executing Court.

(41.) In our view, all the objections raised by the respondent were frivolous and were raised only with a view to avoid execution of the compromise decree. None of the objections raised by the respondent could be gone into after consent order had been passed. In any event, none of the objections raised by the respondent had any substance on merits and were, therefore, rightly rejected by the Executing Court to which we concur. In our view, the respondent having taken time twice to vacate the suit house and yet not adhering to the undertaking given, this Court cannot countenance such conduct of the respondent. It is reprehensible."

12. As held by the Apex Court from time to time, it is well settled law that Executing Court cannot go beyond the decree. The Tribunal by order dated 1.05.2012 disposed of the applications on the basis of the terms of compromise arrived at between the parties which is binding upon the petitioner trust. As per clause (2) of the terms of compromise, the petitioner trust was liable to pay salary to the respondents teachers from 1.01.2012 from time to time as per the Government Rules and Regulations. Thus, the petitioner trust has agreed for the payment of salary to the respondents teachers from time to time with effect from 1.01.2012 as per the Government Regulation meaning thereby that the respondents teachers are entitled to get salary as per the granted recognized Private Primary School.

13. In view of the above discussion, when

the Tribunal has held on two occasions rejecting the applications made by the petitioner trust holding that the Tribunal has jurisdiction and considering the fact that section 14 of the Act,2006,the Tribunal has rightly exercised the powers vested in the Civil Court under the Code read with decision of the Division Bench in case of **Girishchandra R. Bhatt and another** (supra).

14. The Tribunal has also not taken any decision with regard to the applicability of Rule 106(4)(v) of the Rules, 1949 but it has only directed the petitioner trust to implement the terms of the compromise. The Tribunal has in this context observed that there is no mention of Rule 106 in terms of the compromise and therefore, objection raised by the petitioner for interpretation of Rule 106(4)(v) of the Rules 1949 has rightly not been considered by the Tribunal.

Therefore, there is no misinterpretation made by the Tribunal about the said Rule. The Tribunal has rightly observed that the order dated 1.05.2012 recording the compromise arrived at between the parties has achieved finality and accordingly, the respondent teachers are entitled to get the benefits of 6th and 7th Pay Commission scales as agreed by the petitioner trust to pay the pay scales payable to the granted recognized Private Primary School with effect from 1.01.2012 as per clause (2) of the terms of compromise.

15. Reference made by the petitioner to section 23 of the Act, 2006 which is relied upon by the Tribunal in its earlier orders rejecting the preliminary objections raised by the petitioner trust for transfer of pending cases is concerned, the said section was invoked by the Tribunal read with section 9 of the Act,2006 which provides for

jurisdiction of the Tribunal to entertain and decide an appeal preferred under section 11 and application made under section 12 and the cases transferred to it under section 23. The Tribunal has also observed that as per section 10 of the Act which provides for practice and procedure of the Tribunal, proviso to sub-section (3) of section 10 stipulates that until the regulations are made under sub-section(3), the Tribunal may adopt regulations made by any of the existing Tribunal functioning prior to the commencement of the Act and accordingly, the Tribunal in view of the decision of Division Bench which was rendered in the old Act and the Rules, has rightly applied the same to the new Act for exercising the powers of execution of its own order.

16. In view of the above, the contentions raised on behalf of the petitioner with

regard to the applicability of the provisions of Rule 106(4)(v) would not be applicable as terms of the compromise would be binding to the petitioner and when the petitioner trust has agreed to pay the pay scale with effect from 1.01.2012 to the respondent teachers as per the applicable Government regulations from time to time, the Tribunal has rightly rejected the contention of the petitioner to apply Rule 106(4)(v) of the Rules, 1949.

17. In view of the foregoing reasons, the petitions being devoid of any merit are accordingly dismissed. Rule is discharged. No order as to costs.

(BHARGAV D. KARIA, J)

At this stage, learned advocate Mr.Siddhant R. Shah for learned advocate Mr.Y.N.Ravani for the petitioner submits that this judgment may be

kept in abeyance in view of the order dated 04.05.2017 passed by this Court granting interim relief on various terms and conditions.

On verification of the order passed by this Court, it appears that the interim relief granted on 04.05.2017 was in operation till 14.06.2017 and was never extended. Moreover, in view of the reasons given in the judgment, the request made by the learned advocate Mr.Shah is not acceded to and is accordingly rejected.

(BHARGAV D. KARIA, J)

RAGHUNATH R NAIR