THE GUJARAT SECONDARY AND HIGHER SECONDARY EDUCATION (AMENDMENT) BILL, 2021.

GUJARAT BILL NO. 14 OF 2021.

A BILL

further to amend the Gujarat Secondary and Higher Secondary Education Act, 1972.

It is hereby enacted in the Seventy-second Year of the Republic of India as follows:-

Short title and commencement.

1. (1) This Act may be called the Gujarat Secondary and Higher Secondary Education (Amendment) Act, 2021.

(2) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint.

Amendment of section 2 of Guj. 18 of 1973.

2. In the Gujarat Secondary and Higher Secondary Education Act, 1972, (hereinafter referred to as "the principal Act"), in section 2, in clause (q), for the words "Director of Education, Gujarat State, or an officer authorised by him", the words "Education Department or, as the case may be, any other Department of the Government of Gujarat or an officer authorized by such Department" shall be substituted. **Guj. 18 of 1973.**

Amendment of section 36 of Guj. 18 of 1973.

3. In the principal Act, in section 36, in sub-section (5), for the words "the Tribunal", the words and figures "the Gujarat Educational Institutions Services Tribunal constituted under section 3 of the Gujarat Educational Institutions Services Tribunal Act, 2006" shall be substituted. **Guj. 20 of 2013.**

Substitution of section 40A of Guj. 18 of 1973.

4. In the principal Act, for section 40A, the following section shall be substituted, namely:-

Savings. "**40A.** Notwithstanding anything contained in this Act, sub-section (*1*) of section 34, and clause (b) of sub-section (1) and sub-sections (*2*), (*3*), (*4*) and (*5*) of section 36 shall not apply to any educational institutions established and administered by a minority, whether based on religion or language.".

STATEMENT OF OBJECTS AND REASONS

As per the provisions of the Gujarat Secondary and Higher Secondary Education Act, 1972 (Guj. 18 of 1973), the Gujarat Secondary and Higher Secondary Education Board is constituted so as to regulate the Secondary and Higher Secondary Education in the State. The Board conducts the certificate examination for both the Secondary School (*i.e.* 10th standard) and Higher Secondary School (*i.e.* 12th standard). The Board grants registration to the schools and grants permission to open new school in the State also. Moreover, the Board enjoys the powers and performs the duties as enumerated in section 17 and section 18 of the said Act.

Clause (q) of section 2 of the said Act provides for the definition of "recoginsed school" which means a secondary school or a post basic school recognized by the Director of Education, Gujarat State amongst others. Nowadays, new schools are opened by the Education Department as also by the other Departments such as the Social Justice and Empowerment Department, the Tribal Development Department, *Samagra Shikshan Abhiyan* in the State. Therefore, a suitable amendment is proposed in said clause (q). *Clause* 2 of the Bill provides for the same.

The Gujarat State Legislature has enacted the Gujarat Educational Institutions Services Tribunal Act, 2006 (Guj. 20 of 2013) so as to bring about uniformity amongst all laws relating to the Educational Tribunals and to provide for the constitution of a tribunal *i.e.* the Gujarat Educational Institutions Services Tribunal for the purpose of determining disputes relating to conditions of service of the members of the teaching and non-teaching staff of the educational institutions in the State. Existing section 36 of the said Act of 1973 provides for the procedure for dismissal, removal and reduction in rank of certain persons of the registered private Secondary School or registered private Higher Secondary School and also provides for an appeal against the order of the authorised officer to the Tribunal by the aggrieved person under sub-section (5) of said section 36. Now, as the Gujarat Educational Institutions Services Tribunal has already been constituted under section 3 of the said Act of 2013, it is, therefore,

considered necessary to make suitable amendment in sub-section (5) of section 36 of the said Act of 1973. *Clause* 3 of the Bill provides for the same.

The Supreme Court in the matter of T.M.A. Pai Foundation & Ors vs. State of Karnataka & Ors 2002 (8) SCC 481 has held that so far as minority institutions are concerned, the academic standard cannot be lowered in any manner. Regulations can be framed governing service conditions for teaching and other staff of minority educational institutions where the aid is provided by the State without interfering with overall administrative control of the management over the staff. Accordingly, section 40A of the said Act is proposed to be substituted. *Clause* 4 of the Bill provides for the same.

This Bill seeks to amend the said Act to achieve the aforesaid objects.

BHUPENDRASINH CHUDASAMA,

MEMORENDUM REGARDING DELEGATED LEGISLATION

This Bill involves the delegation of legislative power in the following respects:-

Clause 1.- Sub-clause (2) of this clause empowers the State Government to appoint, by notification in the *Official Gazette,* the date on which the Act shall come into force.

The delegation of legislative power, as aforesaid, is necessary and is of a normal character.

Dated the 23rd March, 2021. **BHUPENDRASINH CHUDASAMA.**

ANNEXURE

EXTRACT FROM THE GUJARAT SECONDARY AND HIGHER SECONDARY EDUCATION ACT, 1972.

(Guj. 18 of 1973)

2. In this Act, unless the context otherwise requires:- **Definitions.**

(a) to (p) XXX XXX XXX

(q) "recognised school" means a secondary school or a post basic school recognised by the Director of Education, Gujarat State, or an officer authorised by him in this behalf or, a high school registered by any University;

(r) to (aa) XXX XXX XXX

34. (1) Fifteen per cent. of vacancies of the teaching staff of a registered private secondary school and a registered private higher secondary school shall be filled up by the persons belonging to the Scheduled Castes and the Scheduled Tribes : **Recruitment and condition of service of persons appointed in registered private secondary schools or registered private higher secondary schools.**

Provided that where a person belonging to a Scheduled Caste or Scheduled Tribe is not available for filling any such vacancy, the vacancy shall be filled up as otherwise provided in this Act.

Explanation.- In this sub-section,-

(a) "Scheduled Castes" means such castes, races or tribes or parts of, or groups within, such castes, races or tribes as are deemed to be Scheduled Castes in relation to the State of Gujarat under article 341 of the Constitution of India.

(b) "Schedule Tribes" means such tribes or tribal communities or parts of, or groups within, such tribes or tribal communities as are deemed to be Scheduled Tribes in relation to the State of Gujarat under article 342 of the Constitution of India.

(2) XXX XXX XXX

Dismissal, removal and reduction in rank of certain persons.

36. (1) No person who is appointed as a headmaster, a teacher or a member of non-teaching staff of a registered private secondary school shall be dismissed or removed or reduced in rank nor shall his service be otherwise terminated by the manager until-

(a) XXX XXX XXX

(b) the action proposed to be taken in regard to him, has been approved in writing by an officer authorised in this behalf by the Board:

Provided that nothing in this sub-section shall apply to any person who is appointed for a temporary period only.

(2) The officer referred to in clause (b), of sub-section (1) shall communicate his decision within a period of forty-five days, from the date of receipt by him of the proposal under the said clause (b) and if such decision is not communicated to the manager by the said officer within such period the action proposed to be taken under the said clause (b) shall be deemed to have been approved by the said officer.

(3) Where a head master, a teacher or a member of non-teaching staff of a registered private secondary school or registered Private Higher Secondary School is suspended by the manager of the school pending any inquiry proposed to be held against him, the fact of such suspension together with the grounds therefor, shall be immediately communicated by the manager to an officer authorised in this behalf by the Board, and such suspension shall be subject to ratification by the said officer within a period of forty-five days from the date of the receipt of the communication in this behalf by such officer and if such ratification is not communicated to the manager by the said officer within such period, the suspension under reference shall cease to have effect on the expiry of such period.

(4) Where a head master, a teacher or a member of the non- teaching staff of a registered private secondary school or registered Private Higher

Secondary School desires to submit his resignation, the resignation shall be tendered by him in person to the District Education Officer concerned and shall not be accepted by the manager unless it is so tendered and forwarded to him by such officer duly endorsed. The acceptance of any such resignation tendered in contravention of this sub-section shall be ineffective.

(5) Any person aggrieved by an order of the authorised officer under clause (b) of sub-section (1) may make an appeal to the Tribunal within a period of thirty days from the date of the decision of the authorised officer.

Savings.

40A. Nothing contained in clause (26) of section 17, sections 34 and 35, and clause (b) of sub-section (1) and sub-sections (2), (3), (4) and (5) of section 36 shall apply to any educational institutions established and administered by a minority, whether based on religion or language.

GUJARAT LEGISLATURE SECRETARIAT

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[SHRI BHUPENDRASINH CHUDASAMA,
MINISTER FOR EDUCATION]

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Secretary,
Gujarat Legislative Assembly.

Government Central Press, Gandhinagar.