

(1998) 11 AHC CK 0049

In the Allahabad High Court

Case No : C.M.W.P. No. 11031 of 1996 and No. 12826 of 1997

Smt. Sushila Srivastava and others

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 16-11-1998

Acts Referred:

Uttar Pradesh Recognized Basic School (Recruitment and Conditions of Service of Teachers and Other Conditions) Rules, 1975 — Rule 10, 11, 12, 13, 14

Citation : (1999) 1 AWC 369 : (1999) 1 UPLBEC 605

Hon'ble Judges : O.P. Garg, J

Bench : Single Bench

Advocate : S.U. Khan, for the Appellant;

Final Decision : Allowed

Judgement

O.P. Garg, J.—Whether the teaching and non-teaching employees of private recognised primary schools are entitled to full salary, all

allowances and other benefits as are admissible to their counterparts in the Basic Schools run by the Basic Siksha Parishad (for short "Parishad"),

U. P. is the moot point which arises for consideration and determination in the present two writ petitions, which are being decided by this common judgment.

2. Put briefly, the facts of the case are that there is a Montessori school with the name of Shri Maheshwar Montessori Bal Mandir. Madar Gate.

Aligarh. The said school is run and managed by a private body. The said school was recognised in the year, 1962 by the District Inspector of

Schools (for short "D.I.O.S.") which was the competent authority to grant recognition as the Basic Shiksha Adhiniyam had not by that time come

into force. The school was brought on the grant-in-aid list by the State in the

year, 1963 and since then the grant is being released by the State

Government for disbursement of the salaries to the teaching and non-teaching staff.

3. In Civil Misc. Writ No. 11031 of 1996--Smt. Sushila Srivastava, petitioner No. 1 is the Directoress, petitioner Nos. 2 to 7 are teachers,

petitioner Nos. 8 and 9 are clerks while petitioner Nos. 10 to 13 are class IV employees. The appointment of the petitioner Nos. 1 to 7 who are

on teaching staff, were duly approved by the Regional Inspectress of Girls's Schools (for short "R.I.G.S.") Agra/Basic Education Officer, Aligarh

while the Committee of Management had made appointments of class III and IV posts. The teachers and the employees of the recognised aided

Montessori schools are paid out of the grant released by the State Government. In the year 1975, U. P. Recognised Basic Schools (Recruitment

and Conditions of Service of Teachers and other Conditions) Rules. 1975 (hereinafter referred to as "the Rules of 1975") were framed. Rule 10 of

the said Rules reads as follows :

10. A recognised school shall undertake to pay with effect from July 1, 1975 to every teacher and employee the same scale of pay, dearness

allowance and additional dearness allowance as are paid to the teachers and employees of the Board possessing similar qualification. Pay will be

disbursed through cheque.

4. It appears that no action was taken for a considerable long time under the said Rules and the employees of the recognised Basic Schools

continued to be paid salary which was much less in comparison to the employees of the Basic Schools run by the Parishad. However, in the year

1986 and 1987, the State Government issued orders to enhance the grant to the recognised Basic Schools Including the Montessori Schools on

the basis of revised pay scales. Later on, the requisite grants were not released. Consequently, a Civil Misc. Writ Petition No. 17846 of 1988 was

filed by Shri Maheswar Montessori Bal Mandir, Madar Gate, Aligarh which was finally decided on 27.11.1991. The State Government was

directed to release enhanced grant so that the salary to the teachers is paid in accordance with Rule 10 of the Rules of 1975. The direction of this

Court in that petition was as follows :

I accordingly direct that the Government should release the enhanced grant of

the petitioner keeping in mind that the enhanced grant should be sanctioned on the basis of paying salary to the teachers in accordance with Rule 10 as quoted above. The necessary grant should be released within three months from the date the certified copy of this order is received by the Secretary, Education Department, U. P. Government.

Lucknow.

5. It appears that the State Government filed a SLP before the Supreme Court to challenge the order dated 27.11.1991 passed in Civil Misc. Writ

No. 17846 of 1988. The S.L.P. which was numbered as SLP (Civil) 15789 of 1992 was dismissed on 14.1.1993. The State Government moved

a review petition No. 1245 of 1993 before the Supreme Court which too was dismissed on 20.7.1993. For quite some time, the State

Government did not comply with the order passed by this Court, as confirmed by the Supreme Court. On 24.8.1993, an order was issued by the

State Government asking for detailed accounts of the payment of salary and allowances to the teachers so that requisite grants may be released. In

the said letter, a copy of which is Annexure 4 to the writ petition, a reference was made to Rule 10 of the Rules of 1975 as well as to paragraph

308 of the Education Code. Paragraph 308 of the Education Code reads as follows :

308. The annual grant shall not exceed the difference between the approved annual cost of maintenance and the approved income of the institution

from fees and private sources, or half the annual cost of maintenance, whichever is less.

The effect of the aforesaid Government Order was that in view of the provisions of Paragraph 308 of the Education Code, only half salary of the

teachers of the Montessori Schools was to be paid/reimbursed by the Government while under Rule 10 of the Rules of 1975, full salary and

allowances are payable by the Government to the teachers of the Basic Schools. The grievance of the petitioners is that the State Government has

failed to implement the judgment of this Court as affirmed by the Supreme Court though it is duty bound to pay full salary to the petitioners as is

being paid to the teachers and employees of the Basic Schools run and maintained by the Parishad in view of provisions of Rule 10 of the Rules of

1975 ; that recourse to Paragraph 308 of the Education Code, which is merely in

the form of executive instructions cannot be taken and, therefore, there is no justification to withhold half salary of the petitioners by the State Government by invoking the provisions of Paragraph 308 of the Code.

It is, therefore, prayed that the respondents be commanded to pay full salary to the petitioners, as is being paid to the teachers and other

employees of the Basic Schools run and maintained by parishad w.e.f. 1986-87 till date in future as and when it accrues.

6. Another Civil Misc. Writ No. 12826 of 1997, has been filed by the Committee of Management of Shri Maheshwar Montessori Bal Mandir.

Madar Gate. Aligarh taking almost the same grounds, as mentioned above, for the relief that the respondents be commanded to pay full salary.

Dearness Allowance. City Compensatory Allowance, House Rent Allowance, Bonus, Interim Relief, including benefits of selection grade and

retrial benefits to the teachers and other employees of the petitioners' institution as are admissible to the teachers and other employees of the Basic

Schools run by the Parishad. It has also been prayed that the impugned order dated 29.3.1997. Annexure-8 to the writ petition, whereby grant-in-

aid has been curtailed to the petitioners' school be quashed and the respondents be further commanded to pay grant in accordance with the details

sent by the D.I.O.S. and the Accounts Officer, mentioned in the letters of the Deputy Director of Education dated 3.9.1996. Annexures- 6 and 7

to the writ petition, along with interim relief as admissible by Government Order dated 16.8.1995.

7. Counter, rejoinder and various supplementary affidavits have been exchanged and brought on record.

8. The stand taken on behalf of the State is that the provisions of Rule 10 of the Rules of 1975 are not applicable to the private recognised

institutions but are applicable only to those Basic institutions, which are run by the Parishad ; that Chapter IX of the U. P. Education Code, 1958

which deals with the grants-in-aid to the recognised institutions provides for annual grant to the extent of half of the whole tutitional expenditure on

the institution and in view of express provisions of Paras 295, 307 and 308 of the Code, the grant claimed by the petitioners cannot be released. It

is also stated that under Rule 9 of the Rules of 1975, the appointment of only those teachers has to be taken into consideration who possess the

minimum requisite qualifications and for whose appointment, prior approval of the Basic Siksha Adhikari has been obtained in writing ; that the

minimum qualification of the teachers is Intermediate Pass and B.T.C. Trained. According to the respondents, since the appointments of the

teachers have been made by the Committee of Management, the teachers of the institution in question are not entitled to the benefit of the

provisions of Rule 10 of the Rules of 1975. It is maintained that the liability of the Government is limited to the maintenance grant under Paragraph

308 of the U. P. Education Code.

9. Heard Sri S. U. Khan, learned counsel for the petitioners in the two petitions and learned standing counsel.

10. At the outset, decks may be cleared from the cobwebs created on account of the pleas taken in the counter-affidavit by the State. The stand of

the State is that the provisions of Rules of 1975 are not applicable to the private recognised Basic Schools and that the Rules are applicable only

for the benefit of the teachers of the Schools run by the Parishad. In this connection, a short and swift reference may be made to the provisions of

Rules of 1975. The title of the Rules indicates that the Rules have been framed with a view to make provisions with regard to the recruitment and

conditions of service of teachers of the ""recognised Basic Schools". The expression ""recognised Schools" has been defined in Rule 2 (e) of the

Rules. ""Recognised School"" means any Junior Basic School, not being an institution belonging to or wholly maintained by the Board or any local

body, recognised by the Board before the commencement of these rules for imparting education from class I to V. Rule 3 provides that every

recognised school shall be bound by the conditions and restrictions specified Under Rules 4 to 14. A bare reading of the Rules would make it

amply clear that they apply to all the recognised Schools and do not exclude from their operation the private recognised institutions. It is indubitable

fact that the petitioners' institution has been duly recognised and since it is a recognised School, the Rules of 1975 applied to it. The reference by

the respondents to U. P. High School (Payment of Salaries) Act. 1978 is, therefore, " wholly misplaced. There can be no doubt about the fact that

the services of the teachers of the petitioners' institution are governed by the Rules of 1975. It has also been so held in the earlier Writ Petition No.

17846 of 1988.

11. All the teachers of the petitioner's institution have been duly appointed and their appointments have been approved by the competent authority,

namely, R.I.G.S. Agra/District Basic Education Officer, Aligarh. The fact of their appointment and approval is beyond the pale of controversy.

This controversy has unnecessarily been introduced in the counter-affidavit by the respondents.

12. Now the question is as to which provision--whether Paragraph 308 of the Education Code or Rule 10 of the Rules of 1975, would prevail. It

is accepted at all hands that paragraph 308 of the Code has been in existence much prior to the enforcement of the Rules of 1975. The Code, as

has been mentioned in the counter-affidavit in Civil Misc. Writ No. 12826 of 1997, is the legacy of the British regime. Not only this, the provisions

of the Code are mere executive instructions having no statutory force. This aspect of the matter came to be considered in the Full Bench decision

of this Court in *Magan Ram Yadav v. Deputy Director of Education and others* AIR 1980 All 1966. In that case, the provisions of paragraph 143

of the Code came to be considered. It was held that the said provision, or for that matter, U. P. Education Code, has no statutory force. The

various provisions made in the Education Code are in the nature of administrative directions for the guidance of the authorities of the Education

Department. The various provisions in the Code certainly do not have the backing of law and, therefore, as against Rule 10 of the Rules of 1975,

they would be of no consequence. Subsequent statutory rule would override the administrative provision or executive instructions contained in the

form of various paragraphs of the Education Code. Therefore, the State Government cannot assert that it is not bound to release the grant-in-aid

more than what is required under the provisions of the Education Code. There can be no escape from the finding that the provisions of Rule 10 of

the Rules of 1975 are applicable to the teaching and non-teaching staff of the petitioners' institution.

13. Now the question is, can the petitioners be denied the benefit of Rule 10 of the Rules of 1975 on the ground of paucity of funds or on an

illusory distinction in between the teaching and non-teaching staff of private recognised primary schools and the schools run by the Parishad. It

would not be out of place to mention that in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., , the

Apex Court has declared that the children have a fundamental right to get free education. This Court has also held in S. K. Dixit v. District

Inspector of Schools 1995 (26) ALR 601 that right to get education means the right to get good quality of education and not any kind of

education. If the teachers of the Primary School are not satisfied with their emoluments or they are discriminated in the matter of payment of salary,

allowances and other benefits with their counterparts in other institutions run by the Parishad, a feeling of frustration and desperation is bound to be

generated with the result, it cannot be expected that a dissatisfied and disgruntled teacher would deliver the goods. The ultimate sufferers would be

the children whose right to get free education has been recognised as fundamental right by the Apex Court. This aspect of the matter also came to

be considered by this Court in Ramji Tiwari and Others Vs. District Inspector of Schools and Others, , in which it was observed that the claim of

the petitioners for salary as teachers in the primary section is inextricably interlinked with the fundamental right of the children to get free education

upto the age of 14 years. It is obvious that unless such teachers are given proper salaries, allowances and perquisites they will not take proper

interest in their work and hence the children will not get proper education. This Court was of the opinion that the claim of the teachers of the

primary classes to get proper salaries, etc., and the fundamental right of children to get education are two sides of the same coin. Certain

instructions were issued for granting requisite emoluments, perquisites and incentives to the teachers of the primary schools. Learned counsel for

the petitioners placed reliance on another decision of the Apex Court in State of Haryana and others Vs. Rajpal Sharma and others, , in which the

question of parity in pay scales between the teachers of a recognised aided school and the teachers of a Government school came to be

considered. Relying upon the decision in Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others, , the Apex Court came to

the conclusion that the teachers of aided schools must be paid the same pay scales and dearness allowances as teachers in Government schools for

the entire period served by them. The matter again came to be considered in the case of Haryana State Adhyapak Sangh and Others Vs. State of

Haryana and others, , in which a positive direction was issued to the effect that from April 1, 1990, the teachers employed in aided schools shall be

paid the same salary and dearness allowances as is paid to the teachers employed in the Government schools and the said benefit was extended to

the privately managed aided schools. In K. Krishnamacharyulu and others v. Shri Venkateswara Hindu College of Engineering and another AIR

1998 SC 295, the question of equal pay for equal work was raised. Executive instructions were issued by the Government giving the employees of

private educational institutions right to claim pay scale at par with the Government employees. It was observed by the Apex Court that the State

has obligation to provide facilities and opportunities to the people to avail of the right of education. The private institutions cater to the needs of

educational opportunities which has element of public interest. A teacher duly appointed to a post in the private institution also is entitled to seek

enforcement of the orders issued by the Government. A dispute was raised in that case about the forum which such employees of the private

institutions should approach. The High Court of Andhra Pradesh held that the remedy is available under Industrial Disputes Act. However.

Supreme Court took the view that an element of public interest is created and the institution is catering to that element, the teacher, the arm of the

institution is also entitled to avail of the remedy provided under Article 226, under which the jurisdiction is very wide. In view of the aforesaid

discussion, it is beyond doubt that the teachers employed in the recognised Basic Schools are entitled to the same salary, allowances, benefits and

facilities as are available to their counterparts In the Primary Schools run by the Parishad. The teachers of the recognised Basic Schools cannot be

discriminated in the matter of emoluments, facilities and other benefits.

14. In conclusion, both the writ petitions succeed and are hereby allowed. Quashing the impugned order dated 29.3.1997, which curtails the grant

to the petitioners' school, the respondents--State of U. P. as well as Director of Education (Basic), Lucknow are commanded to pay full salary,

clearness allowance, other allowances, bonus, interim relief, including the benefits of Selection Grade as well as retrial benefits, to the teaching and

non-teaching employees of Shri Maheshwar Montessory Bal Mandir. Madar Gate, Aligarh as are admissible and being paid to the teaching and

non-teaching employees of Basic Schools run by the Parishad, with immediate effect-Parties shall bear there own costs.