

(1981) 05 AHC CK 0040

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 5468 of 1979

State of U.P. and Others

APPELLANT

Vs

District Judge and Others

RESPONDENT

Date of Decision : 07-05-1981

Acts Referred:

Uttar Pradesh High School and Intermediate Colleges (Payment of Salary to Teachers and Other Staff) Act, 1971 — Section 2(c)

Uttar Pradesh Intermediate Education Act, 1921 — Section 16D, 2(d)

Citation : (1981) AWC 418

Hon'ble Judges : Yashoda Nandan, J;N.D. Ojha, J;C.S.P. Singh, J

Bench : Full Bench

Advocate : S.N. Upadhyay, for the Appellant; R.N. Singh and S.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

N.D. Ojha, J.—On the view that there was a direct conflict between two Division Bench decisions of this Court in Mahanand Singh and Ors. v. State of U.P., 1978 AWC 446 and Brij Bhushan Lal Sinha and Others Vs. State of U.P. and Others, Hon'ble H.N. Seth, J. referred two questions to a larger bench and they have come up for answer before this bench. These questions are :

Question No. 1

Whether when an institution receiving maintenance grant as a Junior High School is recognised as a High School under the provisions of Intermediate Education Act, 1921 but is not paid any maintenance grant as such High School, it is governed by the provisions of Uttar Pradesh High School and Intermediate Colleges (Payment of Salaries to Teachers and other Employees) Act, 1971 ?".

Question No. 2 :

Whether the maintenance grant received by the institution as a Junior High School can, when the institution is raised to the level of High School be treated

to be a maintenance grant as defined by Section 2(c) of the U.P. High School and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 ?.

2. Since the entire case has not been referred to us but only two abstract questions of law have been referred, we find it unnecessary to give the facts to this case. They are already contained in the order of reference.

3. The answer to the aforesaid two questions according to Mahanand Singh's case has to be in the negative whereas according to the case of Brij Bhushan Lal it has to be in the affirmative. For the reasons to be recorded shortly we find ourselves in respectful agreement with the view expressed in Mahanand Singh's case and regret our inability to subscribe to the view taken in the case of Brij Bhushan Lal. Having gone through the decision in Mahanand Singh's case carefully we find it difficult to agree with the observations made in the case of Brij Bhushan Lal that the decision in Mahanand Singh's case regarding the effect of payment of maintenance grant to Junior High School was academic". The discussion in paragraph 5 of the report in Mahanand Singh's case leaves no room for doubt that the question about the effect of grant-in-aid being paid to the Junior High School concerned in that case was squarely considered and it was held that the Junior High School to which grant-in-aid was being paid could not be a part of the recognised Higher Secondary School and Uttar Pradesh High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act, 1971 (hereinafter referred to as U.P. Act 24 of 1971) did not create any legal liability on the State Government for payment of salary under the said Act.

4. So far as the observations made in paragraph 2 of the report in the case of Brij Bhushan Lal about the necessity of U.P. Act No. 24 of 1971 being interpreted as a beneficent piece of legislation are concerned it would be seen that even in that case in paragraph 13 of the report while dealing with Mahanand Singh's case the learned Judges have agreed with the legal proposition that if an institution was not receiving any maintenance grant for the time being from the State Government, the teachers and employees of such institution would not be entitled to any relief under U.P. Act 24 of 1971. It is, therefore apparent that the beneficent provisions of U.P. Act 24 of 1971 can be extended to the teachers and employees of only such a recognised High School or Intermediate College which is receiving maintainancy grant from the State Government, and this is precisely the requirement of the definition of the term institution"" contained in Section 2(b) of U.P. Act 24 of 1971. If, therefore, a recognised High School or Intermediate College is not receiving any maintenance grant from the State Government the provisions of U.P. Act 24 of 1971 cannot obviously be applied to it simply on the ground that the said Act being a beneficent piece of legislation, the teachers and employees of even such a High School or Intermediate College are entitled to be paid salary under the said Act in order to save them from the plight of being exposed to exploitation."

5. The provisions of U.P. Act 24 of 1971 apply to an institution"" which term stands defined in Section 2(b) of that Act as follows :

(b) Institution" means a recognized institution for the time being receiving maintenance grant from the State Government.

6. As such before a High School or Intermediate College can be treated as an institution under U.P. Act 24 of 1971 it has to fulfill two conditions. Firstly, it should have been recognized or received recognition within the meaning of the said term as defined in Section 2(d) of U.P. Intermediate Education Act, 1921 (hereinafter referred to as U.P. II of 1921) and secondly, it should be receiving maintenance grant for the time being i. e. at the time when the question whether U.P. Act 24 of 1971 applies to such an institution comes up for consideration before any authority or Court of law. At this place we will also (like) to make it clear that the requirement of the word receiving" will be fulfilled even if the institution is receiving the maintenance grant not directly i. e, through its committee of management but also through an agency recognized in law, e. g, an Authorised Controller appointed u/s 16-D of U.P. Act II of 1921 or any other authority appointed under some analogous provision of law or a receiver appointed by a Court.

7. The term maintenance grant" is defined in Section 2(c) of U.P. Act 24 of 1971. According to the said definition maintenance grant means such grant-in-aid of an institution as the State Government by general or special order in that behalf direct to be treated as maintenance grant appropriate to the level of the institution."

8. This definition on its plain language contemplated (1) that there should be a general or special order passed by the State Government directing a fixed amount of grant-in-aid to be treated as maintenance grant payable to a particular recognised High School or Intermediate College and (2) that the amount fixed should be appropriate to the level of the institution meaning thereby that the level of the institationa should be taken into consideration by the State Government while fixing the amount of maintaince grant payable to it.

9. It is on the light of the definition of these two terms and the principle contained in the maxim Expression Unites exclusion altruism the express mention of one thing implies the exclusion of another-that the two questions referred to us have necessarily to be considered. In this connection the following observations made by the Supreme Court in Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, have to be borne in mind :

A centruy ago, in Taylor v. Taylor, (1875) 1 Ch. D. 426 Jessel M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council in AIR 1936 253 (Privy Council) and later by this Court in several cases Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya

Pradesh, , Deep Chand Vs. The State of Rajasthan, to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies where indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other. Maxwell's Interpretation of Statutes 11th Edn. pp. 362-363.

10. When the definition of the term maintenance grant enjoins that it should be appropriate to the level of the institution it casts a duty upon the State Government to apply its mind in regard to the level of the institution. It is not the argument of the Standing Counsel for the Petitioners, nor can it obviously be, that the level of a Junior High School is the same as that of a High School or an Intermediate College. So the fact whether the School is a Junior High School or a High School or an Intermediate College is also a relevant fact to be kept in mind while fixing the amount of maintenance grant. Even two High Schools or Intermediate Colleges may have different levels inter se e. g. one may be imparting education in larger number of subjects and may have larger number of teachers and employees than the other. This distinction again will have to be kept in mind by the State Government while fixing the amount of maintenance grant for each school. We may add that the distinctions pointed out above in regard to level of an institution are only illustrative and not exhaustive. The word "level" has, inter alia, the following dictionary meanings :

height, natural or appropriate position or rank ; a condition of equality ; in the same line or plane ; equal imposition or dignity.

11. The other requirement of the term maintenance grant"" as seen above, is that the State Government should in this behalf pass a general or special order directing a particular amount of grant-in-aid to be treated as maintenance grant for the High School or the Intermediate College concerned. This again postulates application of mind and passing an express general or special order. In other words, only that amount of grant-in-aid can come within the purview of maintenance grant which has been fixed in the manner specifically provided for in Section 2(c) of U.P. Act 24 of 1971 and any other amount irrespective of its nature will be excluded on the principle contained in the maxim Expression Units test exclosto alterius.

12. If the submission made by the Standing Counsel for the Petitioners based on the decision in the case of Brij Bhushan Lal is accepted many words in the definition of the term maintenance grant" will be rendered a mere surpluses. Indeed the said definition will have "to be rewritten in somewhat the following manner. Maintenance grant means any grant-in-aid paid to an institution by the State Government". Had this been really the intention of the legislature we do not see any reason why the term maintenance grant" was not defined in this masser which is apparently much simpler from the linguistic point of view than the existing dtfaitien of the said form. Bat this was not done. In this connection it will be useful to keep in mind the well recognized rule of interpretation laid down

by the Supreme Court in *The State of Bombay Vs. Ali Gulshan*, that courts should be against such a construction, as far as possible, which is likely to render certain words of a statute a mere surplusage. It is again settled law that it is not permissible to cut down the plain meaning of the terms of the statute on considerations of policy behind the legislation. See *M.P.V. Sundararamier and Co. Vs. The State of Andhra Pradesh and Another*, . Nor is it competent to the Court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature. See *Tolaram Relumal and Another Vs. The State of Bombay*, . Further, the Court is only concerned to interpret the law and if it is valid, to apply the law as it finds it and not to enter upon a discussion as to what the law should be. See *Purshottam Govindji Halai Vs. Shree B.M. Desai, Additional Collector of Bombay and Others*, .

13. Further, the purpose which the State Government seeks to achieve by requiring us to interpret sub-section (c) of Section 2 of U.P. Act 24 of 1971 in the manner urged by its counsel can be achieved by it without any difficulty if it only cared to perform the duty cast upon it by the said sub-section.

14. On a conspectus of the relevant provisions in this behalf of U.P. Act 24 of 1971 we are of the opinion that the said Act will apply to a High School or Intermediate College only:

(1) if it has been recognized or given recognition as a High School or Intermediate College within the meaning of the term "Recognition" as defined in Section 2(d) of U.P. Act II of 1921.

(2) if in respect of a High School or Intermediate College so recognized the State Government has, consequent upon its recognition, after applying its mind in regard to its level as explained herein before fixed an amount of grant-in-aid appropriate to its level and by a general or special order passed in this behalf directed the amount so fixed to be treated as maintenance grant payable to it; and

(3) if a High School or Intermediate College referred to above is receiving the maintenance grant either ; directly or through an agency recognized in law as enumerated above, for the time being, i.e. at the time when the question as to whether U.P. Act 24 of 1971 does or does not apply to such an institution comes up for consideration before any authority or Court of law.

15. We are further of the opinion that if any of the aforesaid requirements is not fulfilled in respect of a High School or Intermediate College U.P. Act 24 of 1971 will not apply to such a High School or Intermediate College.

16. There is yet another reason on account of which grant-in-aid continued to be paid to those who were managing a Junior High School prior to its being upgraded as a recognized High School cannot, in the absence of fixation of maintenance grant for such High School as contemplated by Section 2(c) of U.P. Act 24 of 1971 be treated as maintenance grant being received by the High

School. The term basic education as defined in Section 2(b) of the Uttar Pradesh Basic Education Act, 1972 means education upto the eighth class imparted in schools other than High School or Intermediate Colleges, and the expression "basic schools" shall be construed accordingly. Likewise the term Junior High School as defined in the Uttar Pradesh Recognized Basic Schools (Junior High Schools Recruitment and Conditions of service of teachers) Rules, 1978 means an Institution other than High School or Intermediate College imparting education to boys or girls or both classes VI to VIII (inclusive).

17. A basic school or a Junior High School is thus different from a High School or an Intermediate College. On the plain language of these definitions the same institution cannot be called a basic school or a Junior High School as well as a High School or an Intermediate College. Each one has a distinct legal entity. On a basic school or a Junior High School being upgraded as a High School or an Intermediate College the identity of the institution known as basic school or Junior High School is lost. It ceases to exist as a legal entity and in its place another institution with a new legal entity comes into being. One cannot be equated with the other. In this connection reference may also be made to the decision of the Supreme Court in *Commissioner, Lucknow Division and Others Vs. Kumari Prem Lata Misra*, . It would further be seen that administration including constitution of Committee of Management of an institution recognized under U. P. Act II of 1921 is to be carried out in accordance with a Scheme of Administration prepared u/s 16-A of the said Act and this Section does not apply to basic school or a Junior High School. For all these persons and in the absence of any specific provisions in this behalf-none having been pointed out to us-maintenance grant payable to the basic school or Junior High School which has been upgraded as High School cannot and does not automatically become payable to the recognised High School. Suppose after a Basic School or a Junior High School has been upgraded as a recognised High School, the State Government stops payment of the amount of maintenance grant which was being paid to the Basic School or the Junior High School, can the recognized High school claim as a matter of right that the said amount has become automatically payable to it. The answer, in the absence of any specific provision permitting such automatic transformation, so to speak will, in our opinion, have to be in the negative. Such a recognized High School will have to wait till maintenance grant payable to it as a recognized High School has been fixed as contemplated by Section 2(c) of U.P. Act 24 of 1971. Consequently, even if the maintenance grant payable to a Basic School or a Junior High School is continued to be paid to those who were managing the erstwhile Basic School or Junior High School it cannot be said that the upgraded recognized High School is receiving any maintenance grant as defined in Section 2(c) of U.P. Act 24 of 1971.

18. In view of the foregoing discussion our answer to both the questions referred to us are in the negative.

19. Let the papers of the case along with this opinion of ours be now placed

before the Hon"ble H.N. Seth. J. for deciding the writ petition on merits.