

(2015) 03 AHC CK 0100

In the Allahabad High Court

Case No : Special Appeal Nos. 531 and 532 of 2005

State of Uttar Pradesh and Others

APPELLANT

Vs

Tarkeshwar Nath Singh and Others

RESPONDENT

Date of Decision : 23-03-2015

Acts Referred:

Citation : (2015) 3 ADJ 591 : (2015) 3 AWC 2392 : (2015) 3 ESC 1305 : (2015) 146 FLR 109 : (2015) 2 UPLBEC 1512

Hon'ble Judges : Rajes Kumar, J;S.B. Singh, J

Bench : Division Bench

Advocate : R.V. Singh and S.C., for the Appellant; S.K. Singh, Dilip Singh, P.C. Pandey and Vinod Kumar Rai, Advocates for the Respondent

Final Decision : Disposed off

Judgement

1. These appeals are against the order of the learned Single Judge dated 13.8.1998 whereby the writ petition has been allowed following the judgment of the learned Single Judge in the case of Ramesh Upadhyay and Another Vs. State of U.P. and Others, (1993) 2 AWC 847 : (1993) 2 UPLBEC 945 . The petitioners in the writ petitions claimed to be teachers in the Sri Amar Sanskrit Vidyalaya, Khejuri, District Ballia recognised by the State Government. The petitioners in the writ petitions claimed to have been appointed teachers of a primary section. When they have been denied salary and other benefits which was paid to the primary teachers, they filed the writ petition. Learned Single Judge has allowed the writ petitions and has issued a mandamus to the respondents to pay salary to primary school teachers through the State as is done in the case of primary teachers of High School and Intermediate Colleges following the judgment in the W.P. No. 29290 of 1990 Ramesh Upadhyay v. State of U.P. and others. Two writ petitions have also been disposed of in the same terms. It appears that the Special Leave to Appeal (Civil) No. 2471 of 1994 was filed by the State Government against the order of learned Single Judge in the case of Ramesh Upadhyay which was dismissed by the Apex Court on 12.7.1995. It appears that

the similar issue arose in the case of Vinod Sharma and Others Vs. Director of Education (Basic) U.P. and Others, (1998) 79 FLR 122 : (1998) 2 JT 572 : (1998) 2 SCALE 407 : (1998) 3 SCC 404 : (1998) SCC(L&S) 892 : (1998) 2 SCR 382 : (1998) 1 UJ 570 , three judges Bench of the Apex Court has taken the similar view as taken in the case of Ramesh Upadhyay. However, the judgment of three judges Bench of the Apex Court was doubted by the Division Bench of the Apex Court and vide order dated 8.9.2006, the matter has been referred to the larger Bench in Special Appeal No. 3989 of 2006 (State of U.P. and other v. Pawan Kumar Divedi and others). The larger Bench of the Apex Court vide order dated 2nd September, 2014 has upheld the view taken by the three judges Bench in the case of Vinod Sharma. The larger Bench has held as follows:

44. As regards the first two categories of Junior High Schools, the applicability of Section 10 of the 1978 Act does not create any difficulty. The debate which has centered round in this group of appeals is in respect of third category of the schools where Classes I to V are added after obtaining recognition to the schools which are recognized and aided for imparting education in Classes VI to VIII. Whether teachers of primary section Classes I to V in such schools are entitled to the benefit of Section 10 of the 1978 Act is the moot question. As noticed, the constitutional obligation of the state to provide for free and compulsory education of children till they complete the age of 14 years is beyond doubt now. The note appended to clause (xxvi), para 1 of the Educational Code (revised edition, 1958), inter alia, provides that Basic Schools include single schools with Classes I to VIII. In our view, if a Junior Basic School (Classes I to V) is added after obtaining necessary recognition to a recognized and aided Senior Basic School (Classes VI to VIII), then surely such Junior Basic School becomes integral part of one school, i.e., Basic School having Classes I to VIII. The expression "Junior High School" in the 1978 Act is intended to refer to the schools imparting basic education, i.e., education up to VIII class. We do not think it is appropriate to give narrow meaning to the expression "Junior High School" as contended by the learned senior counsel for the state. That Legislature used the expression Junior High School and not the Basic School as used and defined in the 1972 Act, in our view, is insignificant. The view, which we have taken, is fortified by the fact that in Section 2(j) of the 1978 Act, the expressions defined in the 1972 Act are incorporated.

45. The submission of Mr. P.P. Rao, learned senior counsel for the State of U.P. with reference to the subject School, namely, Riyaz Junior High School (Classes VI to VIII), that the said school was initially a private recognized and aided school and the primary section (Classes I to V) was opened by the management later on after obtaining separate recognition, which was unaided, the teachers of such primary section, in terms of definition in Rule 2(b) and Rule 4 of the 1975 Rules are not entitled to the benefits of Section 10 of the 1978 Act does not appeal to us for what we have already said above. The view taken by the High Court in the first round in Vinod Sharma that Classes I to VIII taught in the institution are one unit, the teachers work under one management and one Head

Master and, therefore, teachers of the primary classes cannot be deprived of the benefit of the 1978 Act, cannot be said to be a wrong view. Rather, it is in accord and conformity with the Constitutional scheme relating to free education to the children up to 14 years.

46. Though in the Reference Order, the two-Judge Bench has observed that the High Court in the first round in Vinod Sharma did not appreciate that the education at the primary level has been separated from the Junior High School level and separately entrusted under the different enactments to the Board constituted under Section 3 of the 1972 Act and the same Board exercises control over Junior Basic Schools and it was a conscious distinction made by the Legislature between two sets of schools and treat them two separate components and, therefore, Vinod Sharma does not take the correct view but we think that the features noted in the reference order do not render the view taken in Vinod Sharma bad. We find merit in the argument of Dr. M.P. Raju that the schools having the Junior Basic Schools and the Senior Basic Schools either separately or together are under the same Board, i.e., the Board of Basic Education, as per the 1972 Act. Moreover, any other view may render the provisions of the 1978 Act unconstitutional on the ground of discrimination. In our considered view, any interpretation which may lead to unconstitutionality of the provision must be avoided. We hold, as it must be, that Junior High School necessarily includes Classes I to V when they are opened in a Senior Basic School (Classes VI to VIII) after obtaining separate recognition and for which there may not be a separate order of grant-in-aid by the Government.

2. Learned Standing Counsel submitted that so far as the legal issue is concerned, namely whether the teacher of primary school is entitled for the benefit of the same salary which the teachers of the High School and Intermediate College is entitled under the Act of 1978 is concerned, the same is no more res integra and is covered by the decision of the Apex Court to this extent that the order of the learned Single Judge is liable to be affirmed. He, however, further submitted that in the present case, the writ petitions have been decided ex parte without giving opportunity to the State to file counter-affidavit, and therefore, the State could not get opportunity to dispute appointment of the teachers. In the affidavit alongwith stay application, it is categorically stated that the appointment of the petitioners were not in accordance to the law following the proper procedure against the notified vacancies, and therefore, they are not entitled for salary at all. This question has not been adjudicated by any of the authority, and therefore, before making the payment the fundamental question that whether the appointment of the petitioners were in accordance to the law requires examination, and therefore, necessary directions in that regard may be issued to the concerned authorities.

3. Sri Santosh Kumar Singh, learned counsel for the respondents-petitioners has submitted that the petitioners are working since long in the school as primary teacher. There is no dispute in this regard that they are working as teacher of

primary school. There appointments have not been doubted at any stage, therefore, they are entitled for the salary. It is further submitted that they are regularly getting salary from the State Government. We have considered the rival submissions.

So far as claim of the petitioners are that they are entitled for the salary similar to the teachers of the High School and Intermediate College under 1978 Act is concerned, issue is no more res integra. It is covered by the decision of the Supreme Court referred hereinabove. Therefore, the view of learned Single Judge is liable to be affirmed. However, a question whether the petitioners in the writ petitions are validly appointed teachers, has not been adjudicated at any stage. Therefore, we direct the authority concerned to examine the appointment of the petitioners and in case appointments of the petitioners are found to be in accordance to the law, the salary may be paid and in case if the authority concerned may arrive to the conclusion after giving opportunity to the hearing to the petitioners that they are not legally appointed, a reasoned order may be passed in this regard and in such circumstances, the petitioners may not be entitled for the salary in accordance to the law laid down by the Court.

With the aforesaid directions, both the special appeals stand disposed of.