

CASE NO.:
Appeal (civil) 3075 of 2008

PETITIONER:
SUYASH SHUKLA & ORS

RESPONDENT:
DIRECTOR, HIGHER EDUCATION, U.P. & ORS

DATE OF JUDGMENT: 28/04/2008

BENCH:
S.H. KAPADIA & B. SUDERSHAN REDDY

JUDGMENT:
JUDGMENT

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3075 OF 2008
(Arising out of S.L.P(CIVIL) NO. 884 OF 2004)

SUYASH SHUKLA & ORS.

...APPELLANT (S)

VERSUS

DIRECTOR, HIGHER EDUCATION, U.P. & ORS.

...RESPONDENT(S)

WITH

CIVIL APPEAL NO.3076 OF 2008 @ SLP(C) NO. 885 OF 2004
CIVIL APPEAL NO.3077 OF 2008 @ SLP(C) NO. 1749 OF 2004
CIVIL APPEAL NO.3078 OF 2008 @ SLP(C) NO. 4407 OF 2004
CIVIL APPEAL NO.3079 OF 2008 @ SLP(C) NO. 8550 OF 2004
CIVIL APPEAL NO.3080 OF 2008 @ SLP(C) NO.12053 OF 2004
CIVIL APPEAL NO.3081 OF 2008 @ SLP(C) NO.19027 OF 2004

ORDER

Permission to file SLP granted in SLP(C) No. 19027 of 2004.

Delay condoned.

Impleadment allowed.

Leave granted.

In these Appeals the main question which arises for determination is "whether in the State of Uttar Pradesh teachers appointed on honorarium basis should be allowed to continue even after selectees are made available, from time to time, duly selected by U.P. Higher Education Services Commission."

By the impugned Order passed in Civil Miscellaneous Writ Petition No. 44332 of 2003, High Court has passed an across the Board direction to the concerned Authorities to dismiss all the teachers appointed on honorarium basis (even without notice to the affected parties) in following terms:

"We therefore direct the concerned authorities including Secretary and Director of Higher Education and the U.P. Higher Education Services Commission that they must see to it that Mandeya appointments i.e. (honorarium basis) are not made any more and any appointment already made are terminated forthwith. The posts of lecturer in the Degree/P.G. Colleges should be filled strictly in accordance with the provisions of the Act i.e. by selection through the U.P. Higher Education Services Commission.

The petition is dismissed with the above observations."

Having heard learned counsel for the parties we find that on principle there is no dispute as it is stated on behalf of the appellants and other such Teachers that as and when selectees are made available they have to go.

The only dispute is whether service of the appellants - teachers herein is liable to be terminated on the ground that selectees in some cases are now available.

Learned counsel appearing for the Management has submitted a Chart. According to him the selectees in some cases are now available and to that extent services of the existing teachers appointed on honorarium basis have to be terminated. Therefore, these matters are now confined to working out the details.

In the circumstances, we set aside the above quoted portion of the impugned judgment and we restore Civil Miscellaneous Writ Petition No. 44332 of 2003, in which the Management will have to show whether how many selectees are not cleared by the

Commission and against the number of posts to be filled in.

The difficulty has arisen because the impugned order is passed in Civil Miscellaneous Writ Petition No. 44332 of 2003 in the case of Malvika Shekhar Vs. Director, Higher Education, U.P. & Ors. whereunder the High Court vide sweeping direction has directed the concerned authorities to see that appointment of all teachers on honorarium basis should be immediately terminated. The said order which is quoted hereinabove is passed even without hearing the affected parties. Therefore, to that extent alone, we set aside the above quoted part of the order and we direct the High Court to once again consider the said Civil Miscellaneous Writ Petition No. 44332 of 2003 in the light of the later developments, namely, selection of certain candidates by U.P. Higher Education Service Commission. It would be open to the affected parties to move an I.A. in the pending Writ Petition No. 44332 of 2003 since the Management has prepared the Chart of number of selectees to be fitted against some of the posts. If, however, the High Court is of the view that every affected teacher should file separate Writ Petition, on the basis that they had not done so earlier it may so direct accordingly.

We make it clear that till the High Court decides the above matters, as directed above, the present status quo will continue.

Accordingly, to above extent, the said Civil Miscellaneous Writ Petition No. 44332 of 2003 filed in the High Court stands restored to the file of the High Court for fresh disposal in accordance with law.

Civil Appeals stand disposed of accordingly.

.....J.
[S.H. KAPADIA]

New Delhi,J
April 28, 2008 [B. SUDERSHAN REDDY]

JUDIS