

PETITIONER:
DHARMVIR

Vs.

RESPONDENT:
STATE OF U.P. AND OTHERS

DATE OF JUDGMENT 04/09/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
JT 1995 (9) 585 1995 SCALE (5) 566

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard the counsel for the parties. The only controversy in this case is whether the appellant is entitled for salary for the period during which he had worked. Though the controversy has been raised as to whether he was validly appointed in accordance with the proceedings prescribed by the appropriate rules, it is not necessary for us to go into that controversy as it is not the question in issue. The District Inspector of Schools, Bulandshahar in his report dated February 1, 1989 had stated that he had inspected the Adarsh Higher Secondary School, Raunija on January 25, 1989 and found that the appellant had been working since September 3, 1985 as teacher since the reserved teacher, viz., Kanchi Mal Gupta, had not joined and one Vijay Kumar had also left the post. Consequently, since the Maths Teacher post was vacant and the appellant had been working ever since September 3, 1985, the appellant is entitled to the payment of salary.

Ms. Rachna Gupta, the learned counsel appearing for the respondent-Management, has stated that the Manager and the appellant had colluded and got double payment. Salary had been duly paid pursuant to the direction of this Court. But he was paid by the Management itself for the period from September 1985 to June 1988. If that is so, it would be open to the Management, in consultation with the District Inspector of Schools, to have it verified whether the salary in fact was paid to the appellant for the period in question. If he has already received it, he is not entitled to the salary now for the same period. We also direct that appellant's entitlement to continue in service according to the rules be decided by the appropriate authority and the post would be filled in accordance with rules. In case the appellant becomes over-aged for consideration, necessary relaxation will be given and he will be considered along with the candidates to be interviewed by the appropriate

Committee in accordance with the rules.

The appeals are accordingly disposed of. No costs.

JUDIS