

DIRECTOR OF EDUCATION AND ORS.

v.

GAJADHAR PRASAD VERMA

NOVEMBER 21, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

Service Law:

U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971:

Section 9—Clerk appointed in leave vacancy—Resolution of Managing Committee to continue his service uninterruptedly even after vacancy ceased to exist—Whether School could claim reimbursement of salary of such Clerk from Government—Held: No.

The respondent came to be appointed in a leave vacancy. By a resolution the Managing Committee resolved that the service of the respondent would be continued uninterruptedly, even in the absence of leave vacancy.

The question involved in this appeal was whether the school of the respondent could claim reimbursement of the salary of such clerk from the Government.

Allowing the appeal, this Court

HELD: 1.1 The U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act regulates the payment of the salary by the Government. Section 9 provides that no institution shall create a new post of teacher or other employee except with the previous approval of the Director or such officer as may be empowered in that behalf by the Director. Admittedly, no such steps have been taken by the Management. Such prior approval of the Director or the empowered officer is a condition precedent and mandatory, and government had before it the relevant data of the posts for which the grant of aid was sanctioned. To make the government reimburse the salary of an additional teacher or an employee, the government should have similar relevant material and data to have it duly verified and decision taken to grant sanction of the additional post. The inspecting and reporting officers are enjoined to make

A personal inspection and submit the report of the existing correct facts. The dereliction of duty, or incorrect or false reports would be misconduct entailing them to disciplinary action for dismissal from the post held by them. Therefore, the failure to obtain prior approval disentitles the Management to obtain reimbursement of the salary of such teacher or other employee. (619 A-E)

B 1.2 The Management has to bear the expenditure from its resources without claiming any reimbursement from the government. The High Court has committed grievous error of law in not adverting to this crucial question and allowing the writ petition directing the government to create the post and to make the payment of the salary etc. (619 H, 620 A)

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9517 of 1994.

D From the Judgment and Order dated 11.11.1992 of the Allahabad High Court in C.M.W.P. No. 2669 of 1990.

Ms. Rachna Gupta for R.B. Misra for the Appellants.

Pramod Swarup for the Respondent.

The following Order of the Court was delivered:

E Leave granted.

We have heard learned counsel for the parties.

F This appeal by special leave arises from the order of the Allahabad High Court in CMWP No. 2669/90 dated 11.11.1992. The admitted facts are that one Hariram Yadav, while working as clerk, went on leave. In the leave vacancy, the respondent came to be appointed till Hariram Yadav joined the duty. By resolution dated 28.12.1986, the Managing Committee resolved that even after Hariram Yadav joins duty on 1.5.87, the service of the respondent would be continued uninterruptedly. It is stated in the counter affidavit filed in this Court that the approval of the District Inspector of Schools was also obtained in that behalf. But no supporting material has been placed before us. The valid appointment of the non-teaching staff of a private aided institution to be valid, should be in accordance with the relevant rules. Since the validity of the appointment of the additional clerk is not in issue, we need not deal with the matter in

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H depth.

Be that as it may, the crucial question is whether the school of the respondent can claim reimbursement of the salary of such clerk from the Government? The U.P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees) Act 24 of 1971 (for short 'the Act'), regulates the payment of the salary by the Government. Section 9 is relevant in that behalf. It provides that no institution shall create a new post of teacher or other employee except with the previous approval of the Director or such officer as may be empowered in that behalf by the Director. Admittedly, no steps have been taken by the Management to have obtained prior approval of the Director of any other authorized officer for creation of the additional post of clerk. The prior approval of the Director or the empowered officer is a condition precedent and mandatory, for creation of an addition behind. Of is that the prior other an employed the government had before it the relevant data of the posts for which the grant of aid was sanctioned. To make the government to reimburse the salary of an additional teacher or an employee, the government should have similar relevant material and data to have it duly verified and decision taken to grant sanction of the additional post. The inspecting and reporting officers are enjoined to make personal inspection and submit the report of the existing correct facts. The dereliction of duty or incorrect or false report would be misconduct entailing them to disciplinary action for dismissal from the post held by them. Therefore, the failure to obtain prior approval disentitles the Management to obtain reimbursement of the salary of such teacher or other employees.

Shri Pramod Swarup, learned counsel for the respondent, placed before us the direction issued by the State Government for creation of an additional post when the strength of the students exceeds 1100. It is his contention that since the strength of the students has been more than 1100, the creation of additional clerk has become necessary and that, therefore, the management has resolved to appoint the respondent as an additional clerk. We are concerned with the creation of the additional post, may be, due to the increase in the strength of students. What is material is whether prior approval of the Director or the empowered officer has been obtained before creating that post. It is not the case of the respondent of the management that such prior approval had been obtained or given by the competent officer. Therefore, so long as prior approval had not been given, though the respondent might have been appointed by the management, the government is not obliged to reimburse the salary paid to such clerk. The management has to bear the expenditure from its own resources without claiming any reimbursement from the government. The High Court, therefore, has committed grievous error of law in not adverting to this

- A crucial question and allowing the writ petition directing the government to create the post and to make the payment of the salary etc. The directions are wholly illegal and legally unsustainable.

- B It is stated and brought to our notice that a post has been created by the government pursuant to the impugned order passed by the High Court. But the government have also stated therein that it was subject to the result in the appeal. In that view, the creation of the post would not be an advantageous factor that favours the respondent. If there is any increase in the strength and sanction of the post is needed, it is open to the management to take appropriate steps as per law.

- C Accordingly, the order of the High Court is set aside. The civil appeal is allowed. The writ petition stands dismissed. No costs.

G.N.

Appeal allowed.