

PETITIONER:

SMT. SARAN KUMAR GAUR & ORS.

Vs.

RESPONDENT:

STATE OF UTTAR PRADESH & ORS.

DATE OF JUDGMENT 13/08/1991

BENCH:

MISRA, RANGNATH (CJ)

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MISRA, RANGNATH (CJ)

KULDIP SINGH (J)

CITATION:

1991 SCR (3) 559

1993 SCC Supl. (2) 749

JT 1991 (3) 478

1991 SCALE (2) 350

ACT:

Service Law: College teachers--Strike Called back to duty--Not joining within time--Alternate teachers appointed--Entitlement to salary--Applicability of the principle 'No work-No pay'--Teachers absorbed back in the same institution---Seniority--Credit to be given for the interregnum.

HEADNOTE:

The appellants, teachers in a minority institution fully financed by State, went on a strike and when they were called back to duty, they did not return within time, leading to appointment of alternate teachers. They approached the High Court for their absorption. The High Court having dismissed the matter, the aggrieved teachers have preferred the present appeal by special leave. By interim orders, this Court has already directed the absorption of the teachers in different institutions. Seven teachers have been absorbed in the very same institution. It was contended on behalf of the seven teachers that they should be paid salary for the period of gap before their absorption and that their seniority should be maintained. The alternate teachers who worked in the interregnum contended that they should be paid salary for the period they worked.

Disposing the appeal, this Court,

HELD 1. One set of teachers have actually worked while the other set has not. The teachers had gone on strike and when they were called back to duty a group of teachers including the seven did not return within time and that. led to appointment of alternate teachers. It is clear from the material on record that the alternate teachers did work during the period. It may not be appropriate to hold that they are not entitled to remuneration for the work done. However, the institution has admittedly not received any benefit of service during the relevant period from the other set viz. the seven teachers who were absorbed later. On the principle that. when work is not done remuneration is not to be paid, no direction is given for payment. If they are entitled to salary, it is open to them to take appropriate proceeding to claim the same. It does not

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finally close their clam against the State or the institu-

tion. The alternate teachers who have worked and if they have not been paid, they should be disbursed the salary due to them. Then is some contest as to whether they are qualified or not. On the basis of the facts on record the teachers appear to be qualified and that question should not be reopened. In regard to two teachers who were prepared to wait to take their chance, they would not be paid any remuneration. Seven teachers who have now been provided jobs under the orders of this Court and those who were waiting to take their chance should be equated for the common period of no work [562F-H, 563A-C]

2. However, the seven teachers who have got absorption should be given their seniority for the period they were out of employment. The Director of Public Instruction is required to take this order into account and given them credit for seniority for the period they were out of employment on the deemed situation that they had worked. This would not entitle them to salary unless they are otherwise entitled to the same. [563D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2 145 of 1988.

From the Judgment and Order dated 3.5. 1988 of the Allahabad High Court in C.M.W.P. No. 13143 of 1985

Avadh Behari Rohatgi S. Markandeya, G. Seshagiri Rao and Ms. C. Markandeya for the appellant.

Ms., Shobha Dikshit, Pankaj Kalra, Ejaz Maqbool, Dileep Tandon, J.M. Khanna and S.K. Jain for the Respondents.

The following Order of the Court was delivered:

This appeal by special leave is against the order of the Allahabad High Court. The subject matter of dispute is in regard to 11 lady teachers of Saghir Fatima Mohammadia Girls Inter College, Agra. This is claimed to be a minority institution but fully financed from the State resources.

By interlocutory orders made from time to time the real litigative part of has already been attended to. We would refer to our order of 2nd May, 1991 where this court observed "We are happy to find that pursuant to our order made earlier in this case Smt. Kamla

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Mehra, Smt. Saran Kumari Gaur and Swaliha Begum have been given postings and they have already reported to duty. So far as petitioners Km. Asifa Rizvi, Km. Sayyada Rizwani and Shafiqa Begum are concerned, Ms. Dikshit points out that though there is some possibility of adjusting them in other institutions it is a time-taking process inasmuch as under the scheme government have no power to impose teachers from out side on the administration of the institutions.

We think it appropriate in the interest of justice to require the Director of Secondary Education to require such of the colleges where appropriate vacancies are available to adjust these three teachers. To so adjust them the institutions shall take our present order as a direction to adjust them and as and when called by the Director of Secondary Education it shall be implemented. Failure to comply shall be treated as violation of our direction.

So far as Smt. Sudha Dixit is concerned, we gather from the representation made at the Bar that a vacancy in the speciality is about to arise in the coming month. If that be so, Ms. Dikshit has agreed to see that she is so posted.

As far as two remaining teachers are concerned, they do not agree to go out of the institution and Ms. Dikshit points

out that in their subjects there is no vacancy. In these circumstances, they have choice to wait indefinitely till vacancy occurs without claiming salary till employment. If this is not acceptable to them the order of termination already made shall be taken as final and conclusive and their petition shall stand dismissed."

We are told that the vacancy which was contemplated in regard to Smt. Sudha Dixit has not worked out for her. She had been offered a posting in Mathura, away from the institution where she had been working and she did not choose to go there. Mr. Markandeya appearing for her, however, does not agree with this statement made by others and says that she volunteered to go but was informed that the institution had not taken a decision to keep her and she was to be intimated as and when a decision was taken. No intimation has been received by her as yet.

Out of the two remaining teachers referred to in our order dated 2nd May, 1991, it appears that one has already been absorbed in Aligarh and the remaining teacher, Khaliq Jahan, is holding a lower post for the time being and Ms. Dikshit has told us that she has already

562 suggested to the Government that as and when a vacancy arises she should be accommodated in a post according to her entitlement

So far as Smt. Sudha Dixit is concerned, we think 'a situation has now arisen where the Director must implement our order. We had clothed him with adequate powers by our order of 2nd May, 1991 and he must under that authority 'proceed to enforce his order. The Director should provide employment to Smt. Sudha Dixit in terms of the assignment made and the institution where she has been directed to join should accept the teacher. Beyond that we do not intend to say anything at this stage.

This leaves the only, remaining question to be dealt with, i.e., as to how the period during which the seven of the teachers who have been absorbed in that very institution should be dealt with. It is said that during this gap period of seven years another set of teachers had been working who are represented before us by Mr. Kalra in these proceedings. It is the submission of the appellants that the seven teachers who are substituted did not possess the requisite qualification and reliance is placed on Section 16(F) of the Act to support the submission that they are not entitled to salary for the work done. Simultaneously the seven teachers have contended through their counsel that they had been visiting the institution everyday and had been leaving their attendance with the appropriate authority, therefore, they should be entitled to salary.

This is not a proceeding in which we have to decide who has to be paid the salary. But as things stand one set of teachers have actually worked while the other set for reasons which are germane to appropriate management has not. We are told that teachers had gone on strike and when they were called back to duty a group of teachers including the seven did not return within time and that led to appointment of alternate teachers. We must point out that this again is not an appropriate matter to be decided by us. We are, however, satisfied from the material placed before us that the 11 teachers who are represented by Mr. Kalra did work during the period. It may not be appropriate, to hold that they are not entitled to remuneration for the work done. The institution had admittedly not received any benefit of service during the relevant period from the seven teachers on the appellants' side. On the principle that when work is

not done remuneration is not to be paid, we dispose of the present appeal without giving any direction for payment to them. If they are entitled to salary, it is open to them to take appropriate proceeding to claim the same,

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We do not finally close their claim against the' State of the institution. But so far as teachers represented by Mr. Kalra are concerned, if they have not been paid, they should be disbursed the salary due to them. There is some contest as to whether they are qualified or not. On the basis of the facts on record we are of the view that they appear to be qualified and that question should not be reopened.

We draw support for our view for non-payment to the appellants from our' interim order of 7th February, 1990. In regard to two teachers who were prepared to wait to take their chance, we indicated that they would not be paid any remuneration. Seven teachers who have now been provided jobs under our orders and those who were waiting to take their chance should be equated for the common period of no work.

We, are, however, of the view that seven teachers who have got employment should be given their seniority for the period they were out of employment. We accordingly require the Director of Public, Instruction to take our order into account and given them credit for seniority for the period they were out of employment on the deemed situation that they had worked, Our doing so, we again repeat, would not entitle them to salary unless they are otherwise entitled to. This disposes of the appeal.

We are sorry that we entertained an appeal of this type by special leave and got dragged into a dispute which should not have been brought upto this court.

G.N.
of.
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Appeal disposed