

CASE NO.:
Appeal (civil) 3989 of 2006

PETITIONER:
State of U.P. & Ors

RESPONDENT:
Pawan Kumar Divedi & Ors.

DATE OF JUDGMENT: 08/09/2006

BENCH:
B.P. Singh & Altamas Kabir

JUDGMENT:
J U D G M E N T
(Arising out of SLP) No.3549/2005)
WITH
Civil Appeal Nos. 3990/06, 3991/06, 3992/06, 3993/06, 3994/06
(Arising out of SLP) Nos. 3551/05, 3554/05, 24918/04, 20410/05 and 9978/03)

ALTAMAS KABIR, J.

Special leave granted in all the special leave petitions. All the special leave petitions have been taken up together since they involve a common question of law arising out of similar facts. SLP) Nos. 3549/05, 3554/05, 24019/04 and 20410/05 have been filed by the State of Uttar Pradesh against the Committee of Management of different Institutions having a primary section. SLP) No.9978/03 has been filed by the Principal Secretary, Basic Education of the U.P. Government and SLP) 3551/05 has been filed by the District Basic Education Officer of the Uttar Pradesh administration.

The common question arising in all these appeals is whether teachers of privately-managed primary schools and primary sections of privately-managed schools imparting education up to the High School level, are eligible to receive their salaries from the State Government.

Schools in Uttar Pradesh are either under public management or under private management. Public institutions are managed either directly by the government departments or by the District Boards and Municipal Boards. Privately managed institutions may be divided into two categories, namely, "aided institutions" and "unaided institutions". Aided institutions are those which are private recognized institutions which receive grant-in-aid from public funds. Unaided institutions are those which do not receive any form of financial assistance whatsoever from public funds. The students of the different secondary and primary schools are categorized as belonging to the pre-basic stage, junior basic (primary) stage, senior basic (junior high school) stage and higher secondary stage. Pre-basic stage comprises of the nursery section. Junior Basic (primary) stage refers to classes I to V. Senior Basic (junior high school) stage refers to classes VI to VIII. The higher secondary stage is comprised of two stages, namely, high school stage comprising classes IX and X and Intermediate stage comprising Classes XI and XII.

Prior to 1972 the basic schools were controlled either by the Zila Parishad and Nagar Palika or were under private management recognized by the appropriate authority and in some cases primary section was being run along with the junior high school, higher secondary and intermediate college

sections. The recognition of the institutions and service conditions of the teachers were governed under the provisions of the Education Code. In 1972, the U.P. Basic Education Act was enacted and came into force from 17th August 1972. Under the said Act, a Board known as Board of Directors of Basic Education was established, inter alia, to organize, co-ordinate and control the imparting of basic education and teachers training therefor in the state, to raise its standard and to co-relate it with the system of education as a whole in the state and generally to exercise supervision and control over basic schools. Under the said Act "basic education" was defined in Section 2 (1) (b) to mean education up to the VIIIth class imparted in schools other than high schools or intermediate colleges, and the expression "basic schools" was to be construed accordingly. The said Act did not make any provision for payment of salary to the teachers of the basic schools but power was vested in the State Government under Section 19 of the Act to make rules relating inter alia to the recruitment and the conditions of service of persons appointed to the posts of teachers and other employees of basic schools recognized by the Board.

Section 9 of the 1972 Act provided that on and from the appointed day, every teacher, officer and other employee serving under a local body exclusively in connection with basic schools would stand transferred and become a teacher, officer or other employee of the Board and would continue to hold office for the same tenure, at the same remuneration and upon the terms and conditions as he would have held, had not the Board been constituted, unless such service conditions were altered by rules made by the State Government in that behalf. It may not be out of place to mention at this stage that in 1971 the State Government took a decision to pay the salaries of the teachers and other employees working in the high schools and intermediate colleges and to give effect to the same, the U.P. High School and Intermediate College (Payment of Salaries of Teachers and Other Employees) Act, 1971, was enacted. Since the primary sections of these institutions were not treated to be part of the high schools or intermediate college, no provision was made for payment of salary to the teachers of the primary section. In 1973, the Government made a departure and took a decision to pay the salary of the teachers of the primary sections attached to girls' institutions. A similar concession was made in respect of 30 girls' schools which were functioning prior to 1973 and were affiliated with higher secondary schools. Although, privately-run primary schools were not taken over under the 1972 Act, no provision was also made for payment of salaries to teachers of the said schools.

In 1975, in exercise of its powers under Section 19 of the 1972 Act, the State Government framed the U.P. Recognised Basic Schools (Recruitment and Conditions of Service of Teachers and other Conditions) Rules, 1975 wherein "junior basic school" has been defined in Section 2 (b) to mean an institution other than high school or intermediate college imparting education up to the Vth class. Section 2 (e) defines "recognized school" to mean any junior basic school not being an institution belonging to or wholly maintained by the Board or any local authority, recognized by the Board before commencement of the said rules and imparting education from class I to class V. In the said Act, provision has been made regarding the salary of teachers in Section 10 wherein a recognized school was required to undertake to pay with effect from 1st July, 1975 to every teacher and employee the same scale of pay, dearness allowance and additional dearness allowance as paid to the teachers and employees of the Board

possessing similar qualifications. In spite of the directions contained in Rule 10 of the 1975 Rules, the Government Order No. 1091/15-6-9 (7)/73 dated 25th March, 1975, made it clear that primary classes affiliated with boys' junior high schools would not be eligible for government grant.

The 1975 Rules were followed by the enactment of the Uttar Pradesh Junior High Schools (Payment of Salaries of Teachers and Other Employees) Act, 1978, with the object of regulating the payment of salaries to teachers and other employees of junior high schools receiving aid out of State funds. In the said Act the expression "institution" is defined to mean a recognized junior high school receiving maintenance grant from the State Government.

Section 10 of the said Act which received the assent of the Governor on 12th January, 1979 provides that the State Government shall be liable for payment of salaries of teachers and employees of every institution due in respect of any period after the appointed day. Section 13-A provided that notwithstanding anything contained in the Act, the provisions of the Act would, mutatis mutandis, apply to all institutions which were upgraded to high school or intermediate standard and to such teachers and other employees thereof in respect of whose employment maintenance grant is paid by the State Government to such institutions. Sub-section (2) provided that for the purposes of the Section, the reference to the students wherever they occurred in Section 5, would be construed as reference to the students of classes up to junior high school level only.

The aforesaid enactment was followed by the promulgation of the Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Conditions of Service of Teachers) Rules, 1978 which was directed to be published in the U.P. Gazette on 13th February, 1978. It was provided that the Rules would come into force at once. In Section 2) "Board" has been defined to mean the Uttar Pradesh Board of Basic Education constituted under Section 3 of the Act. Section 2 (f) defines "Junior High School" to mean an institution other than high school or intermediate college imparting education to boys or girls or both from classes VI to VII inclusive.

The respondent-school, Riyaz Junior High School, in SLP) No. 3549/2005 is situated in Allahabad and is a recognized junior high school (VI to VIII inclusive). The primary section was given recognition on 28th February, 1980.

It would be pertinent to indicate at this stage that by a Government Order dated 25th March, 1975 it had been decided that non-government institutions would not be given permission to run primary classes from Class I to Class V. It was also indicated that the said Government Order would not affect schools which had been opened by the State Government or the Basic Shiksha Parishad.

As it appears from the materials on record, the Assistant Teachers working in the primary section of the aforesaid schools were being paid their salaries out of the compensatory grant which was being given to primary schools attached to junior high schools, high schools, Sanskrit Schools (Junior High School) and independent primary sections. On 30th March, 1983, Junior High Schools were brought on the grant-in-aid list. Since the teachers of the primary section were excluded from such grant, some of the teachers, being the respondent Nos. 1 to 9 in SLP) Nos. 3549/2005, filed a Writ Petition No. 26432/1999 in the Allahabad High Court inter alia praying for issuance of a writ in the nature of mandamus directing the State-Respondents to pay the salaries of the petitioners as Assistant Teachers in Riyaz Junior High School

Ukhiya Khasi Kerari Kaushambi, Allahabad, from 1988 when aid had been granted to the institution or from the date of appointment of the petitioners.

Prior to the filing of the aforesaid writ petition, a similar writ petition had been filed by one Vinod Sharma and others wherein teachers of the primary section of 58 Gorkha Training Centre, Junior High School, Dehradun Cantt., which was established in the year 1952 for providing education to the children of ex-servicemen, serving military personnel and officers as well as civilians, filed a writ petition in the Allahabad High Court since they were not brought within the ambit of the Payment of Salary Act, claiming that they were entitled to be brought under its provisions since 1975. In the said writ petition reliance was placed on Rule 10 of the U.P. Recognised Basic Schools, (Recruitment and Conditions of Service of Teachers and other Conditions) Rules, 1975, which provided that a recognized school would undertake to pay with effect from 1st July, 1975 to every teacher and employee the same scale of pay, dearness allowance, and additional dearness allowance as were paid to the teachers and employees of the Board possessing similar qualifications. The High Court allowed the said writ petition on 29th August, 1991 and directed the State Respondents to bring the writ petitioners under the provisions of the Payment of Salary Act and to pay their salaries accordingly under it. The State of U.P. filed a Special Leave Petition) No.827/1993 against the order of the Allahabad High Court which was dismissed by this Court on 10th May, 1993 and a review petition was also dismissed on 17th September, 1993. Inasmuch as in the writ petition there was no prayer for payment of arrears of salary, no specific order had been passed and the State Respondents did not, therefore, pay arrears of salary with effect from 1st July, 1975. Consequently, the writ petitioners after making several representations filed another writ petition for a specific direction for payment of the arrears of salary since 1st July, 1975 and the same was disposed of by the High Court with a direction to pay the salaries of the writ petitioners with effect from 29th August, 1991 which was thereafter impugned in Civil Appeal No. 1699/1998 in this Court.

The provisions of the 1975 Rules fell for consideration in the said appeal and it was noticed that "Junior Basic Schools" had been defined in Section 2 (b) to mean an institution other than high schools or intermediate colleges imparting education up to Vth class. Under Section 2 (e) "Recognised School" is defined to mean any junior basic school not being an institution belonging to or wholly maintained by the Board or any local body, recognized by the Board before the commencement of the said Rules for imparting education from Classes I to V. This Court also noticed the provisions of the 1978 Rules wherein "Junior High School" has been defined in Section 2 (e) to mean an institution other than high school or intermediate college imparting education to boys or girls or both from Classes VI to VIII (inclusive).

Considering the arguments advanced on behalf of the State that the payment of Salary Act was not applicable to the primary sections i.e. junior basic schools and applied only to the junior high schools, this Court referred to the decision of the High Court which took note of the fact that although the petitioners were teaching in the primary classes, they were working in the institutions which was a junior high school and they were all teachers of the junior high school which ran classes which were being taught in the school which constituted one unit and were not separate units. The High Court also came to the conclusion that the school was

one unit in which education was being imparted to primary classes and junior classes by the teachers who were working under one management and one headmaster. On the strength of such finding, the High Court held that the petitioners could not be deprived of the benefit of the payment of the Salary Act and directed the State Respondents to bring the petitioners under the provisions of the Payment of Salary Act and to pay their salaries according to the provisions of the said Act. This Court allowed the Civil Appeal with a direction to pay the appellant from the date the Payment of Salary Act, 1978 was made applicable to the institutions, i.e. from the date the junior high school teachers of that institution were paid salary under the 1978 Act.

Although, on behalf of the appellants in all these appeals an attempt has been made to distinguish the issues involved in these appeals and those involved in the writ petition of Vinod Sharma, the main issue is substantially the same, namely, whether the State Government has any liability to bring the teachers of recognized primary schools within the purview of the Payment of Salary Act, 1978 and as to whether such teachers are entitled to receive salaries according to the provisions of the said Act.

As indicated hereinabove, the first of the two writ petitions filed by Vinod Sharma and Others, being Civil Miscellaneous Writ Petition No. 24478/1988, seeking a direction for payment of salary to the writ petitioners under the Payment of Salary Act, 1978 was allowed by the High Court on 29th August, 1991 with a direction upon the respondents to bring the writ petitioners under the provisions of the Payment of Salary Act, 1978 and to pay their salary accordingly under it. Against the aforesaid order, Special Leave Petition (Civil) No. 827/1993 was filed by the State of Uttar Pradesh, which was dismissed by this Court on 10th May, 1993 and a Review Petition was also dismissed on 17th September, 1993. The grievance of the writ petitioners in the second writ petition was that there was no direction for payment of arrears of salary from 1st July, 1975, i.e. the date on which the relevant rules came into force. Since the same was disposed of by the High Court with a direction upon the respondents to pay the salaries of the teachers with effect from 29th August, 1991, the writ petitioners came up to this Court in Civil Appeal No.1699/1998 for a direction upon the respondents to pay them their arrear salaries from 1st January, 1975. It is in the said appeal that the various provisions of the different enactments and rules were considered and the question once again surfaced as to whether the State Government was liable to pay the salaries of the primary teachers of recognized schools. This Court, as mentioned hereinbefore, came to the conclusion that the said question was no longer res integra after the decision of the High Court on 29th August, 1991.

In the present appeals, submissions which were similar to those raised in the writ petitions filed by Vinod Sharma and Others before the High Court and in the Special Leave Petition in this Court have been repeated and reiterated. What has been highlighted is the fact that having regard to the various Government Orders, it would be quite evident that the State Government had never intended to bring the primary sections of the different junior basic schools, junior high schools and intermediate colleges within the scope of the Payment of Salary Act, 1978 and that a deliberate and conscientious decision was, therefore, made in treating the "junior basic schools" differently from "junior high schools". It is the latter category of schools that were brought within the scope of the Payment of Salary Act, 1978.

While noticing the fact that "junior basic schools" and "junior high schools" were treated differently, the High Court and, thereafter, this Court appear to have been swayed by the fact that certain schools provided education from Classes I to X as one single unit, although, the same were divided into different sections, such as, the primary section, the junior high school section, which were combined together to form the junior basic section from Classes I to VIII, and the high school section comprising classes IX and X. In fact, in one of these appeals where a recognized Sanskrit institution is involved, the said institution is imparting education both for the primary section, the high school section, the intermediate section and the B.A. Section. The Mahavidyalaya is thus imparting education from Class I up to graduate level in a recognized institution affiliated to the Sampurnanand Sanskrit University, Varanasi. It has been contended by Dr. Padia on behalf of the institution that the said institution is one unit having different sections and the teachers of the institution are teachers not of the different sections but of the institution itself and as a result no discrimination could be made amongst them. This was precisely one of the arguments advanced in Vinod Sharma's case which was accepted by this Court.

However, it appears to us that both the High Court and this Court appear to have lost sight of the fact that education at the primary level has been separated from the junior high school level and separately entrusted under the different enactments to a Board known as the Uttar Pradesh Board of Basic Education constituted under Section 3 of the Uttar Pradesh Basic Education Act, 1972 and the same Board was entrusted with the authority to exercise control over "junior basic schools" referred to in the 1975 Rules as institutions imparting education up to the Vth class.

In our view, the Legislature appears to have made a conscientious distinction between "junior basic schools" and "junior high schools" and treated them as two separate components comprising "junior basic education" in the State of Uttar Pradesh. Accordingly, in keeping with the earlier Government Orders, the Payment of Salaries Act, 1978 did not include primary sections and/or separate primary schools within the ambit of the 1978 Act.

Of course, it has been conceded on behalf of the State Government that an exemption was made in respect of 393 schools which had been continuing to function from prior to 1973 and the teachers had been paid their salaries continuously by the State Government. In the case of the said schools, the State Government took a decision to continue to pay the salaries of the teachers of the primary section of such schools.

Apart from the above, it has also been submitted by Mr. Dinesh Dwivedi, learned senior counsel appearing for the State of Uttar Pradesh that payment of salaries of teachers of recognized primary institutions must be commensurate with the State's financial condition and capacity to make such payment.

Having regard to the contentions of the respective parties, the issue decided in Vinod Sharma's case that teachers of the primary sections of recognized junior basic, junior high schools and high schools were entitled to payment of their salaries under the Payment of Salary Act, 1978, merits re-consideration.

Since the Civil Appeals preferred by Vinod Sharma and Others were heard by a Bench comprised of three Hon'ble Judges, let these appeals be placed before the Hon'ble The Chief Justice for appropriate orders and direction for placing

these appeals before a larger bench for re-consideration of the issue involved.

JUDIS