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VINOD SHARMA AND ORS.

v.

DIRECTOR OF EDUCATION [BASIC] U.P. AND ORS.

MARCH 20, 1998

B

[S.C. AGRAWAL, K. VENKATASWAMI AND A.P. MISRA, JJ.]

Service Law :

C U.P. Junior High Schools [Payment of Salary of Teacher and Other Employees] Act, 1978—Salary—Claim for—Under the Act—In parity with Junior High Schools Teachers—By teachers of Primary Sections of a recognised junior high school—Claim of teachers accepted in writ petition—Another writ petition claiming arrears of salaries since 1975—Granted since 1991 i.e., date of judgement on the first writ petition—Plea that since teachers of junior high schools getting the salary since 1975, they cannot be denied the right—Held, grant of arrears since 1991 not correct, having brought the teachers in parity with the teachers of junior high school—But in view of their claim, not entitled to be paid prior to the Act, i.e., 1978—U.P. Recognised Basic Schools, Recruitment and Conditions of Service of Teachers and Other Employees Rules 1975—R 10 & 2 [e]—U.P. Recognised Basic Schools [Junior High Schools Recruitment and Conditions of Service of Teachers] Rules, 1978—Rule 2[e]—U.P. Education Act, 1972—Sections 19[1] and 2[b].

F Civil Procedure Code 1908 :- Section 11—Principle of Res-Judicata—Claim of teachers of Primary Sections of Junior High Schools—To receive salary under Payment of Salary Act, 1978—Claim accepted by High Court in a writ petition by the teachers, against the respondents—Order of High Court became final—Second writ petition claiming arrears of the salary since 1975—Arrears granted since the date of judgement in first writ petition—Plea of the State on the point of applicability of the Payment of Salary Act, 1978—And on the point of date of applicability of the Act 1978—Held, pleas not permissible, as the matter has become final inter-se parties.

G Appellants, Assistant Teachers of primary section of Recognised Junior High Schools, were not brought under Payment of Salary Act, which they claimed to be entitled to, since 1975, as per rule 10 of U.P. Recognised Basic Schools, Recruitment and Conditions of Service of Teachers and Other Employees, Rules, 1975.

Appellants filed writ petitions before High Court, seeking directions for payment of salary to them under the Payment of Salary Act, which was passed in 1978. Writ petition was allowed vide order dated 29.8.1991. SLP against this, by the respondent State was dismissed. Review to the SLP was also dismissed.

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As per the direction of High Court, salaries were paid to the appellants as per the Act. But the arrears of the salary which were being claimed since 1.7.1975, were not paid.

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Appellants filed another writ petition before High Court for specific direction for payment of arrears of salary since 1.7.1975. High Court directed to pay the arrears wef. 29.8. 1991 i.e., the date of judgement in earlier writ petition.

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In appeal to this Court, the State contended that Payment of Salaries Act, is not applicable to primary section as the same applies only to Junior High School, and that the appellants were entitled for the payment of salary under the Act, since 11.2.1993, i.e., the date when Government issued such orders. The appellants contended that since teachers of Junior High School were getting salary under the Act since 1.7.1975, primary section teacher cannot be denied the right, being in the same school.

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Allowing the appeal, this court

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HELD : 1. When grievance of the appellants was accepted in the first Writ petition to bring them in parity with the Junior High School teacher, the payment from 1991 cannot be construed to be correct on the facts of the case. But considering the claim of appellants, they could in no case be entitled to be paid prior to the Payment of Salary Act, 1978. Hence appellants' claim since 1975 cannot be accepted. [388-E]

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2.1. Even if the contention of the State may have merit in law, it cannot be sustained, as it has become final *inter-se* between parties. [388-G]

2.2. The contention of the State that appellants were entitled for payment of salary under the Payment of salary Act only since 11.2.1993 i.e., the date when Government issued such orders, cannot be permitted to be raised in the present case since *inter-se* between the appellants and the respondents including State, the matter has become final by the High Court Judgement dated 29.8.1991. [387-G-H]

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1699 of 1998.

From the Judgment and Order dated 7.10.96 of the Allahabad High Court in W.P. No. 24284 of 1995.

B Jayant Das, Gaurav Jain and Abha Jain for the Appellants.

R.C. Verma, Chatanya Siddharth and R.B. Misra for the Respondents.

The Judgment of the Court was delivered by

C **MISRA, J.** Special leave is granted. This appeal is directed against the judgment and order of the High Court dated 7th October, 1996 in a writ petition, wherein direction was issued to the respondents to pay the salary of the appellants under the Payment of Salary Act from 29th August, 1991. The grievance is, the impugned order has shortened the relief from what was envisaged under the judgment and order dated 29th August, 1991. The claim is they should be paid the arrears of their salary not from 29th August, 1991 but from 1st July, 1975.

E It is necessary to refer to certain essential facts to appreciate the controversy in this case. The 58 Gorakha Training Center, Junior High School Dehradun Cantt, was established in the year 1952 for providing education to the children of Ex-Service men, serving Military personnels and officers as well as civilians and the Education Department. The U.P. Government gave recognition to the said institution with effect from 9th April, 1959. The case is that they were appointed as Assistant Teachers being duly qualified. On 9th April, 1970, the District Inspector of Schools Dehradun gave permission to the management to run the classes from class 1 to VIII. The concerned respondents did not bring the appellants under the Payment of Salary Act though they are entitled since the year 1975. Reliance is placed under Rule 10 of the U.P. Recognised Basic Schools, Recruitment and Conditions of Service of Teachers and other employees, Rules 1975 (hereinafter referred to as '1975 Rules'), which is quoted hereunder:-

G "10. Salary of teachers. - A recognised school shall undertake to pay with effect from July 1, 1975, to every teacher and employee the same scale of pay, dearness allowance and additional dearness allowance as are paid to the teachers and employees of the Board possessing similar qualification. Pay will be disbursed through cheque."

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The appellants filed Civil Miscellaneous Writ Petition No. 24478 of 1988 seeking the direction for payment of salary to the appellants under the Payment of Salary Act. The High Court allowed the said Writ Petition on 29th August, 1991, and directed the respondents to bring the appellants under the provisions of Payment of Salary Act and pay their salary accordingly under it. Against this, the State of U.P., who is respondent in the present case, filed a Special Leave Petition (C) No. 827 of 1993 which was dismissed by this Court on 10th May, 1993 and a review petition against the same which was also dismissed on 17th September, 1993. The grievance expressed now is since in the said Writ Petition there was no prayer for payment of arrears of salary which they are claiming now from 1st July, 1975, hence no specific order was passed. The case is that the respondents in spite of that are not paying arrears of salary with effect from 1st July, 1975. The appellants made several representations but with no avail. When this was not redressed, the appellants filed another Writ Petition No. 24284 of 1995 for a specific direction to pay the arrears of salary as aforesaid since 1st July, 1975. That was disposed of by the High Court on 7th October, 1996, which is the impugned order with the direction to pay the salary of the appellants with effect from 29th August, 1991.

So far the claim of the appellants to receive payments since 1st July, 1975, we do not find any indication either in any of the aforesaid two orders passed by the High Court or under any of the relevant Rules. It is true that the aforesaid Rules 1975 came into force on 1st July, 1975. Under this Rule junior basic school is defined; *Section 2 (b)* :

“*Junior Basic School* means an institution other than High Schools or Intermediate Colleges imparting Education up to V class.”

Under *Section 2 (e)* Recognised Schools is also defined:

“Recognised School means any Junior Basic School, not being an institution belonging to or wholly maintained by the Board or any local body, recognised by the Board before the commencement of these rules imparting education from Classes *I to V*.”

Thus, the aforesaid rules defines, a Junior Basic School as imparting education upto Class V and indicate what recognised school means. Rule 10 casts an obligation to pay the salary to a teacher on the recognised school and not on the State Government. The State Government is obliged only under the Payment of Salary Act. Hence, even though a school may be

A 'recognised' but that by itself does not create any right in the appellants to receive their salary under it.

The Uttar Pradesh Recognised Basic Schools (Junior High Schools) (Recruitment and Condition of Service of Teachers) Rules 1978 (hereinafter referred to as '1978 Rules'). The Rule deals with Junior High School of the recognised Basic School. *Section 2(e)* defines '*Junior High School*' :

"*Junior High School* means an Institution other than High School or Intermediate College imparting education to boys or girls or both from class VI to VII (inclusive)."

C We find the aforesaid 1975 and 1978 Rules have been framed under Section 19(1) of the Uttar Pradesh Education Act 1972. Section 2 (b) defines 'Basic Education' as imparting education upto class eight. It is under this Act, Rule 2(b) of 1975 Rules defines 'Junior Basic School' as imparting education upto Class V and Rule 2(e) of 1978 Rules defines 'Junior High School' as imparting education from Class VI to VII (inclusive). In this background another Act was enforced viz. the Uttar Pradesh Junior High School (Payment of Salaries of Teachers and other Employees) Act 1978. Argument for the State is that this Payment of Salary Act is not applicable to the primary Section as this applies only to the Junior High School viz. Classes VI and VII. Two questions arise, firstly whether the State has any right to raise such an issue after matter became final inter se between the parties through the aforesaid decision of the High Court on 29th August, 1991 and secondly whether appellants' claim for payment of salary from 1975 is sustainable, if not, from what date?

F Considering first the later appellants' claim it is necessary to reproduce relevant portion of the decision of the High Court in 1991 as aforesaid :

G "I have heard learned counsel for the petitioners as also the learned standing counsel. The petitioners may be teaching the Primary classes but they are working in the institution which is junior High School and they are teachers of the junior High School which runs the classes from 1 to 8. All the classes which are being though in the school constitute one unit and they are not separated Unit. The respondents have also not said that they are separate unit. In fact Annexure 2 appended to the writ petition makes it abundantly clear that the school is one unit in which education is imparted to primary classes and junior classes by the teachers who are working under the

one management and one Head Master. That being so that petitioners cannot be deprived of the benefit of payment of salary Act and they are entitled to be paid under the provision of the said Act. A

The petitioners are entitled to be paid their salary under the provisions of the Payment of Salary Act as they are teachers of the junior High School and the order contained in Annexure-2 lends support to their contention that they are also entitled to get salary in accordance with the provision of payment of Salary Act." B

However, the aforesaid Junior High School Payment of Salaries Act, 1978 came into force with effect from 1st May, 1979 by virtue of the notification issued under section 1(3). This Act was brought in to remove frequent complaints that salary of teachers and non-teaching employees of aided non-Government Junior High Schools are not disbursed in time, resulting hardships to its employees. The aforesaid judgment dated 29th August, 1991 refers to this Act. For the respondent State of U.P. contention is that this is not applicable to the primary sections, namely, from Class I to Class V but to Classes VI to VII. The High Court finally directed the respondents to bring the appellants under the said Act, meaning thereby under the 1978 Act, and pay the salary according to the provisions of the said Act. The operative portion of the said order is also quoted hereunder : C D

"The respondents are directed by a mandamus to bring the petitioners under the provisions of payment of salary Act and pay their salary according to the provisions of the said Act." E

It is not that appellants are not entitled to the payment of any salary. They are, but prior to bringing them under the said Act this obligation is only on the Recognised School under the aforesaid Rule 10 of the 1975 Rules. But by the said High Court judgment the respondents were bound to bring them under the Payment of Salary Act and pay their salaries accordingly. This cannot be denied by the State. But in spite of this nothing was done in this regard. F

Coming to the State's objection, the submission is that they are only entitled for payment of salary under the said Act since 11th February, 1993, as on that date the Government issued such orders. The objection has no force and cannot be permitted to be raised in the present case. As aforesaid, inter se between the appellants and the respondents including State the matter has become final by the aforesaid High Court judgment dated 29th G H

A August, 1991. Against the aforesaid judgment. admittedly. SLP of the State was rejected even Review Petition was rejected. This apart even otherwise the State has not come in appeal against the impugned judgment dated 7th October, 1996, hence cannot challenge the same in this appeal.

B Returning to the impugned order. we find. inspite of several representations, that the respondents did not respond inspite of the earlier direction, hence it was ordered to pay them under the Payment of Salary Act at least since the earlier High Court judgment and order dated 29th August, 1991.

C Since appellants were not satisfied by the impugned order, as they claimed their salaries since 1975 when the aforesaid 1975 Rule came into effect. The contention is the spirit of the earlier High Court order was to pay from that date. This was as Junior High School teachers were getting since then, hence primary section teachers cannot be denied this right bring in the

D same school. In other words. to pay from the same date as was paid to the Junior High School teachers. We find force in this submission. When grievance of the appellants was accepted in the first Writ Petition to bring them in parity with the Junior High School teachers, the payment from 1991 cannot be construed to be correct on the facts of this case. But considering the claim of appellants, they could in no case be entitled to be paid prior to the Payment of Salary Act, 1978. Hence appellants' claim since 1975 cannot be accepted.

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Considering the direction issued by the High Court, in its first judgment, where clear direction is to pay these appellants under the Payment of Salary Act as in the same institution another set of teachers (Junior High School)

F are being paid under it and the institution being one unit, the same cannot be denied to the teachers in the primary sections. In other words, to pay them also under the same Act from the date Junior High School teachers were paid in this institution. As we have held above even if argument for the State may have any merit in law, cannot be sustained, as it has become final inter se

G between the parties. It is also brought to our notice that one of such teacher Km. Harsh Uniyal similar to the appellants, though did not join in the first writ petition but on the basis of decision of that case (1991), filed a writ petition No.11644 of 1993 which was allowed by the High Court on 8.12.93 with a direction to pay the salary since the payment of Salary Act was made applicable to that institution. We were informed accordingly payment was made to her

H by the respondents.

For the aforesaid reasons, this appeal is allowed with a direction to pay the appellant from the day Payment of Salary Act, 1978 (aforesaid) was made applicable in the said institution, i.e., from the date Junior High School teachers of that institution were paid salary under the 1978 Act. If any payment of salary already made and received by the appellants for this period, the same be adjusted and the balance amount, if any, be paid within two months from the date certified copy of this order is filed before the concerned authority. This is also without prejudice of the concerned authority if the recognised institution (the present institution) has not paid any salary to the appellants which they were obliged after enforcement of payment of salary to take such recourse as permissible in law. Cost on the parties.

K.T.

Appeal allowed.