

Saran Kumar Gaur (Smt) and Others

Vs

State of U. P. and Others

Civil Appeal No. 2145 of 1988

(CJI Ranganath Misra, Kuldip Singh JJ)

13.08.1991

ORDER

1. 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.

2. By interlocutory orders made from time to time the real litigative part of the dispute has already been attended to. We would refer to our order of May 2, 1991 where this court observed :

"We are happy to find that pursuant to our order made earlier in this case Smt Kamla 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 outside 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 orders 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. Dixit 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 but 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."

3. 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.

4. Out of the two remaining teachers referred to in our order dated May 2, 1991, it appears that one has already been absorbed in Aligarh and the remaining teacher, Kaliq Jahan, is holding a lower post for the time being and Ms. Dikshit has told us that she has already suggested to the government that as and when a vacancy arises she should be accommodated in a post according to her entitlement.

5. 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 May 2, 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.

6. This leaves the only remaining question to be dealt with, i.e. as to how the period during which 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. Karla 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-FF 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.

7. 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 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. Karla 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 proceedings to claim the same. We do not finally close their claim against the State of the institution. But so far as teachers represented by Mr. Karla 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.

8. We draw support for our view for non-payment to the appellants from our interim order of February 7, 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.

9. 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 give 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.

10. 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 up to this Court.

ANNEXURE

ORDER (Coram Ranganath Misra, M. M. Punchhi and S. C. Agarwal, JJ. - Order dated February 7, 1990)

1. This matter is heard in part and is adjourned for four weeks to enable counsel for the parties including learned Additional Advocate General appearing for the State of Uttar Pradesh to explore possibilities of adjusting 8 of the 17 teachers whose services were terminated and who are available for re-employment to be absorbed. We have impressed upon learned Additional Advocate General that steps should be taken to ensure absorption of these 8 teachers in this very institution so that there would be no rancour left. If, however, such absorption is not possible, alternative proposals should be placed before the Court on the adjourned date of hearing.

2. We gather that 11 teachers who are substituted are parties to this appeal as respondents 7 to 16 and 18. Though they are admittedly rendering service no salary is being disbursed to them on the plea that the dispute is still pending before this Court. We do not think that it is appropriate at all to extract service without payment of remuneration. We direct the management of the institution to draw up appropriate bills for disbursement of their salaries beginning from February 1990 and the learned Additional Advocate General has assured that the departmental authorities would draw the bills and disburse such payments. Such payment shall continue to be made month after month until further directions of this Court without prejudice to the stand taken by the parties in this dispute.

3. Two teachers being Noorjehan and Zahid Khan out of the 11 terminated teachers have since died. The service benefits which had accrued to them have to not been disbursed to their legal representatives on the plea of pendency of this litigation. Since with their death the connection with the institution has come to an end and there is no question of their reverting to service, we see no justification for the dues to be withheld. We direct the management to draw up appropriate bills for collecting money from the State and in case there is any other source out of which retrial dues are to be paid the management should take appropriate steps and arrange payment to the legal representatives. In respect to each of the two teachers, one of the authorised legal representatives would be entitled to receive the payment from the institution. These payments should be disbursed within eight weeks from today.

4. This matter stands adjourned to March 7, 1990.

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