

SUPREME COURT OF INDIA

State of U.P.

Vs.

Committee of Management, Azad Uchhtar Madhyamik Vidyalaya"

C.A.No.700 of 1997

(K.Ramaswamy and G.T.Nanavati JJ.)

03.02.1997

ORDER

1. Leave granted. We have heard counsel on both sides.
2. This appeal by special leave arises from the judgment of the Division Bench of the Allahabad High Court, made on September 7, 1994, in Special Appeal No. 131/93.
3. The Division Bench by the impugned order has directed the Inspector of Schools to inspect the primary school covered under the provisions of Payment of Salary Act, 1971, to find out whether the primary section has been merged or attached to the High School which was upgraded in 1974, whether the teachers have been working in that school and whether salary was to be paid to such teachers who are working as per the said report. We have called for the said report in that behalf. In the report dated 25-1-1997, the District Inspector of Schools has stated that the inspection of the attached primary section of the respondent-Institution was made on January 7, 1997. It is further stated that the primary section of the school was recognised as an attached institution as per the orders of the District Inspector of Schools, Gorakhpur, dated September 6, 1989, and the payment

of salary to the teachers of the primary section attached to the High Court (School) was being made under the Payment of Salary Act, 1971,. But after the school was detached from the list of the approved schools, the payment of salary came to be stopped. It is further stated that as per the records of the Institution, the attached Primary School is continuing from the year 1970. It is also stated that "(I)n the attached Primary Section of the institution total number of 21 teachers are teaching in which 19 (Nineteen) teachers are untrained and 2 (Two) are trained". More details have been furnished in the report. As regards the number of students found in the Primary Section of the institution, it is furnished in the report that as on 7-1-97, a total number of 859 students had been registered and 611 students were present. It is further stated that" (T)he present attached Primary Section is governed by the same Authorised Controller/Principal of the Higher Secondary School and the education is imported within the same campus as per rules."

4. In view of the above report, the question arises: whether the primary section of the respondent-Institution should be continued to be attached to the High School or should be detached and whether a separate school is required to be established under the Basic Shiksha Parishad. When we put the question to the learned counsel for the State whether any separate school has been established in that village, he is unable to give us any information in that behalf. It would be obvious from the report submitted that no other Government school appears to be functioning there. Otherwise, the Inspector would have reported in that behalf.

5. In view of the fact that more than 600 students, as against more than 800 students enrolled, are actually studying in the school, we think that attachment of the Primary section from 1970 to the upgraded school of 1974, would be justified. However, with regard to payment of salary, it is not clear from the record whether the untrained teachers are entitled to payment of salary: if so, at what rate and upto what period and whether untrained teachers are required to be appointed under the relevant rules. In the absence of such factual and legal position, it would not be safe to give any direction on that issue. Under those circumstances, we think that appropriate course would be that the District Inspector of Schools, Maharaj Ganj be directed to enquire, after notice to the teachers and Manager-respondents to decide whether the payment of salary to the 19 untrained teachers could be made and if so, at what rates, as per Government Rules, and upto what period and what would be the procedure taken for appointment of untrained teachers in the schools as per the existing rules and the procedure. When the report in that behalf is given, the issue of payment of salary to them would be accordingly decided. As regards the two trained teachers, they are required to be paid the full salary as per the Payment of Salary Act, 1971, from the date of their acquiring qualifications or the date of their assuming the charge as teachers, whichever is later. As regards the untrained teachers, they are required to be paid after the necessary enquiry is completed. The Inspector of Schools is directed to complete the enquiry within a period of two months from today and then make necessary payment of salary as per the rules.

6. The appeal is accordingly disposed of. No. costs.

Order accordingly.