IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.(S). 3808 OF 2015
(Arising out of S.L.P.(C) No.21752 of 2012)

STATE OF HARYANA & ORS. Appellant(s)

VERSUS

VIJAY SETH & ORS. Respondent(s)

O R D E R

Leave granted.

Respondents no.1 to 3 were working as teachers while respondent no.4 was employed as a peon in what was known as J.R.D. Aggarwal Girls School at Kaithal in the State of Haryana. That institution was aided by the State Government but was directed to be closed down by an order dated 17th February, 2009 passed by the High Court of Punjab and Haryana in Writ Petition (C) No.12920 of 2004 and connected matters. The direction for closure came on account of a perennial problem within the management committee adversely affecting the working of the institution. The High Court had directed the District Education Officer to retain control over the school till the end of academic sessions 2008-09 and to close it down thereafter to avoid any future liability. Adjustment of

the students, on the rolls of the institution in other schools, was also ordered by the High Court, with a further direction that the management shall be given two

months time to devise ways and means for utilising the

school premises and for raising money to pay the outstanding liabilities.

It is common ground that the school was pursuant to the said direction closed down in terms of orders of the Commissioner and Director General, School Education, Haryana, dated 22nd June, 2009. The order directed transfer of students admitted after 1st April, 2009 to neighbouring government schools in Kaithal. The order further directed that teachers working in the school shall be treated as discharged from their duty with effect from 1st April, 2009 and that retiral benefits admissible to the staff so discharged shall be released in their favour. Grant-in-aid to the school was also suspended by the very same order for the future.

Aggrieved by the order passed by the Commissioner and Director General, School Education, the respondents filed Civil Writ Petition No.5607 of 2009 inter alia praying for a mandamus directing release of their salaries and other admissible benefits with interest and for their adjustment in other government aided private schools in the light of the provisions of Rule 59(3) of the Haryana School Education (Amendment) Rules, 2007. Out of the writ petitioners-respondents herein, respondent no.1-Vijay Seth

prayed for a direction that she be allowed to take voluntary retirement from service and her retiral benefits be released in her favour.

During the pendency of the writ petition, aforementioned, the appellant-State passed separate but similar orders directing release of the pension payable to the staff members apart from other retiral benefits. When the writ petition eventually came up for hearing before the High Court, the High Court passed an order dated 7 th November, 2011 directing the State to consider the cases of the writ petitioners-respondents herein for adjustment

in other schools in the light of Rule 59(3) of the Haryana School Education (Amendment) Rules, 2007. The High Court took the view that Rule 59(3) of the Rules was attracted not only in cases where teachers become surplus in a running school but also situations where teachers became surplus on account of the closure of an institution. By another order passed by a Single Judge of the High Court on 12th June, 2012 the court once again reiterated that the expression "surplus" did not necessarily imply surplus in a working institution but could also be attracted to an institution which was shut down. The Court while saying so specifically turned down the interpretation placed by the State in the affidavit filed on its behalf and

observed that Rule 59 of the Rules having been interpreted by the court, the Chief Secretary of the State Government was bound by the said interpretation so long as order dated 7th November, 2011 passed by the Court was not set aside by a higher court.

It was at this stage that the State chose to challenge order dated 7th November, 2011 in L.P.A. No.309 of 2012 before a Division Bench of the High Court. The Division Bench of the High Court has by its order dated 24th April, 2012 dismissed the said appeal holding that since the Single Judge had simply directed the appellant-State to consider the cases of the respondents for adjustment against available posts as per the policy framed by the State Government, there was no room for interference with the said direction. This appeal by special leave calls in question the correctness of the said order passed by the High Court.

We have heard Mr. Sanjay Kumar Tyagi, learned Additional Advocate General for the appellant-State of Haryana, and Ms. Nidhi, learned counsel appearing for the respondents. It is true that the writ petition filed by

respondents no.1 to 4 has not been finally disposed of so far. It is also common ground that all that has been directed by the High Court is consideration of the cases

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of respondents no.1 to 4 for adjustment against available posts in other schools. That direction is by its very nature an interim direction which has not, despite lapse of more than three years, been complied with by the appellant-State. In the ordinary course, keeping in view the nature of the controversy and the order passed by the High Court, we would not have interfered with the order under challenge and would have left the matter to be addressed by the High Court on its merits while disposing of the the writ petition. We, however, are not, in the peculiar facts and circumstances of the case, following that course of action. We say so for two precise reasons. Firstly, because the question that falls for determination before us and which would by far be the only question that would arise in the writ petition is whether the respondents would be entitled to adjustment against vacancies in similarly aided schools on account of their being rendered surplus, because of closure of the institution in which they were employed. Once we answer that question there will be nothing left in the writ petition to be determined. It will in substance conclude the controversy for good. The second reason why we are inclined to adopt a somewhat unusual course is the fact that of the four respondents three happen to be teachers

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who have been out of job for the past six years on account of the closure of their institution and are embroiled in litigation before the High Court and before this court only to have themselves reinstated/adjusted suitably in another institution. Also noteworthy is the fact that one of the respondents, has already sought premature/voluntary retirement and is happy with receipt of the retiral

benefits from the date such retirement is granted to her pursuant to her prayer. That leaves two teachers and Lajwanti who is a peon. Continuance of the legal proceedings before the High Court is, therefore, likely to take few years, before the issue is eventually concluded and the controversy given a quietus. We do not think that would be a happy situation. It is in that spirit, that we have heard learned counsel for the parties at some length on the question whether Rule 59 of the Haryana School Education (Amendment) Rules, 2007 entitles the respondents to adjustment on the basis of closure of their institution where they were working.

On behalf of the appellant-State it was contended by Mr. Tyagi that Rule 59 of the Rules envisages adjustment in other institutions only when teachers become surplus on account of the fall of student-teacher ratio, below the norms fixed by the Department. He urged that the rule

does not postulate any teacher or other staff member becoming surplus on account of closure of the institution. He urged that since the institution in the instant case had been closed down, may be for no fault of the respondents no.1 to 4 herein, Rule 59 of the Rules did not envisage adjustment of the staff rendered surplus on account of such a closure.

On behalf of the respondents, it was on other other hand contended that what was important for the application of Rule 59 was the teacher becoming surplus. Any such surplus teacher could then be transferred/adjusted against any another school as per requirement in the same district or outside the district in the State. The very fact that the teachers became surplus on account of closure, did not necessarily imply that such teachers would not be entitled to be adjusted elsewhere.

Rule 59 of the Haryana School Education (Amendment)

Rules, 2007 may at this stage be extracted in extenso:

> "Rule 59. No grant of teachers of uneconomically small class, sections 24(2) (a), (b) and (c) -
>
> (1) No grant shall be admissible to the managing committee for the teachers found surplus by the inspecting officer on the basis of student teacher ratio below the norms as fixed by the Department from time to time, after giving reasonable opportunity to the managing committee.
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>
> (2) Rationalisation of posts shall be done after evry five years.
>
> (3) The Director shall be competent to transfer the surplus posts to another school as per the requirement in the same district or outside district in the State."

It is evident from a plain reading of the above rule that a teacher is rendered surplus if the student-teacher ratio falls below the norms fixed by the Department. Any such teacher can then be transferred/adjusted in another school similarly aided by the State within or outside the district where he was working. The Rule does not specifically provide for adjustment of teachers rendered surplus on account of closure of the institution but that does not, in our opinion, make any material difference. That is because the essence of the rule lies in a teacher becoming surplus. He is in that case entitled to be adjusted in another school. So long as teachers are rendered surplus, they have the right to be adjusted, in terms of Rule 59(3) of the Rules. The provisions of the rule are beneficial in nature. The same must therefore be given a liberal construction. That apart, there is no real rationale behind making a distinction between a teacher who is rendered surplus on account of falling student-teacher ratio and another who is rendered surplus

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because of the closure of the institution. While a teacher rendered surplus because the number of students is

below the prescribed limit would be entitled to adjustment, such adjustment cannot obviously be declined to a teacher who not because of any fault on his part but for some other reasons faces a situation where the institution itself is shut down and students admitted to the school adjusted in other institutions in the neighbourhood. A teacher rendered surplus in such a situation has to be placed on the same footing as a teacher who is rendered surplus because of falling student-teacher ratio. That being so, the High Court was in our opinion perfectly justified in holding that the right to seek adjustment was not dependent upon whether the surplus arose on account of student-teacher ratio or otherwise. The interpretation placed by the High Court in the orders impugned, does not in our opinion suffer from any perversity and ought to be accepted by the appellant-State.

In the result, respondents no.2 and 3 would have to be adjusted in another school similarly aided, within or outside the district anywhere in the State of Haryana. Having said so, we see no reason why a peon who was also similarly employed and became surplus on account of the

closure of the institution, should not on a parity of the reasoning also be entitled to adjustment in another school.

The next question then is whether respondents no.2 to 4 should also be entitled to receive salary for the period they remained out of service on account of orders of their discharge. The discharge orders, as noticed earlier, were passed in the year 2009. More than five years have since then rolled by. We are not unmindful of the hardship which the respondents-teachers and the peon may have suffered on account of being kept out of employment for such a long period, yet we are of the view that adjustment

of respondents no.2, 3 and 4 in another institution within a time-frame to be fixed by us should meet the ends of justice. There was also a feeble suggestion made by Mr. Tyagi that the respondents have also received their retiral benefits, pursuant to the order passed by the Commissioner. In case that is so, the said respondents would refund the amount received by them towards retiral benefits, before they are actually adjusted.

In the result, we dismiss the appeal filed by the State and direct that while respondent no.1 shall be treated to have voluntarily retired and thereby entitled to all retiral benefits admissible to her in terms of the

relevant rules, the appellant-State shall take immediate steps to adjust respondents no.2, 3 and 4 against suitable posts within or outside the district where they were earlier working, as expeditiously as possible but in any case within a period of three months from today. We further direct that the adjustment shall be subject to deposit of any retiral benefits which the said respondents have received pursuant to the order passed by the Commissioner. Needless to say that respondents no.2, 3 and 4 shall not be entitled to any arrears of salary during which they were out of service, but they shall be entitled to the benefit of continuity of service for purposes of pension and all other retiral benefits. In the light of the direction issued by us today, Civil Writ Petition No.5607 of 2009 filed by the respondents shall stand disposed off in terms of this order.

The parties are left to bear their own costs.

.....J.
(T.S. THAKUR)

.....J.

(R. BANUMATHI)

NEW DELHI
DATED 21st April, 2015.

ITEM NO.3 COURT NO.2 SECTION IVB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 21752/2012

(Arising out of impugned final judgment and order dated 24/04/2012 in LPA No. 309/2012,24/04/2012 in CWP No. 5607/2009 passed by the High Court Of Punjab & Haryana At Chandigarh)

STATE OF HARYANA & ORS. Petitioner(s)

VERSUS

VIJAY SETH & ORS. Respondent(s)

(interim relief and office report)

Date : 21/04/2015 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. Sanjay Kr. Tyagi,Adv.
Mr. Parshant Tyagi,Adv.
Dr. Monika Gusain,Adv.

For Respondent(s) Ms. Nidhi,Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

In terms of the signed order, this appeal is dismissed.

"In the result, we dismiss the appeal filed by the State and direct that while respondent no.1 shall be treated to have voluntarily retired and thereby entitled to all retiral benefits admissible to her in terms of the relevant rules, the appellant-State shall take immediate steps to adjust respondents no.2, 3 and 4 against suitable posts within or outside the district where they were earlier working, as expeditiously as possible but in any case within a period of three months from today. We further direct that the adjustment

shall be subject to deposit of any retiral benefits which the said respondents have received pursuant to the order passed by the Commissioner. Needless to say that respondents no.2, 3 and 4 shall not be entitled to any arrears of salary during which they were out of service, but they shall be entitled to the benefit of continuity of service for purposes of pension and all other retiral benefits. In the light of the direction issued by us today, Civil Writ Petition No.5607 of 2009 filed by the respondents shall stand disposed

off in terms of this order.
The parties are left to bear their own costs."

(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed order is placed on the file)