

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**U.P. JUNIOR HIGH SCHOOL COUNCIL
INSTRUCTOR WELFARE ASSOCIATION** **...APPELLANT(S)**

STATE OF UTTAR PRADESH & ORS. ...RESPONDENT(S)

STATE OF UTTAR PRADESH AND ORS. APPELLANT(S)

ANURAG AND ORS. ...RESPONDENT(S)

ANURAG AND ANR. APPELLANT(S)

STATE OF U.P. AND ORS. ...RESPONDENT(S)

PANKAJ MITHAL, J.

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2. Education, that too good education at least up to the primary level based upon values and morals, is fundamental to the progress of the nation.
3. Accepting the above fundamental principle, the Constitution (Eighty-Sixth Amendment Act), 2002 *vide* Section 2, inserted Article 21A in the Constitution of India with effect from 01.04.2010 recognizing Right to Education to all children between the age of 6-14 years.
4. Article 21A reads as under :-

“21A. Right to education. – The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine”

5. In furtherance of the above objective, the Right of Children to Free and Compulsory Education Act, 2009¹ was enacted on 26.08.2009 to provide free and compulsory education to all children of the age of 6-14 years.
6. The State of U.P., to promote primary education, adopted the centrally sponsored scheme of *Sarva Shiksha Abhiyaan* (now merged into *Samagra Shiksha* Scheme, launched in 2018) and

¹ Hereinafter referred to as ‘the Act’

decided to appoint part time instructors/teachers on contractual basis in Upper Primary Schools (Class VI-VIII) throughout the State of U.P.

- 7.** In order to implement the above programme, the State of U.P. issued a Government Order dated 31.01.2013, contemplating to appoint part time instructors/teachers on contractual basis on a fixed honorarium of Rs.7,000/- per month to impart physical education, education in art and work education. The said Government Order stipulated for appointment of one instructor/teacher for every one hundred students and prescribed the eligibility conditions and the minimum qualifications for the appointment of such instructors/teachers in accordance with the norms set out by the National Council for Teacher Education².
- 8.** Under the above programme, an advertisement dated 25.02.2013 was issued by the State of U.P. inviting applications from eligible candidates for appointment as part time contractual instructors/teachers in the Upper Primary Schools of the State.

² In short 'NCTE'

- 9.** On the basis of the aforesaid advertisement, a vigorous exercise was undertaken for the selection of eligible qualified teachers for appointment as part time contractual instructors/teachers in the Upper Primary Schools. Following the above exercise, a large number of teachers came to be appointed under contracts for eleven months on a fixed honorarium of Rs.7,000/- per month with the condition that these instructors/teachers so appointed would not directly or indirectly take up any part time or whole-time job anywhere else.
- 10.** The instructors/teachers so appointed were continued even after the expiry of contractual period of eleven months on renewed basis, year after year, but their honorarium remained fixed at Rs.7,000/- per month despite the fact that recommendations were made by appropriate authorities for the enhancement of the same. Though, the recommendations so made were partly accepted and even some enhancement was made, but subsequently only the earlier fixed honorarium of Rs.7,000/- per month was continued and paid to them. Aggrieved thereby, they invoked the writ jurisdiction of the High

Court challenging the decision of the Executive Committee of the *Shiksha Pariyojna Parishad*.

- 11.** The Single Judge of the High Court of Judicature at Allahabad decided the writ petitions and directed for the payment of Rs.17,000/- per month to such instructors/teachers with effect from March 2017. However, in Special Appeal to the Division Bench preferred by the State, the High Court by the common impugned judgment and order dated 02.12.2022 passed in several such Special Appeals, directed the State Government to pay honorarium of Rs.17,000/- per month for the year 2017-2018 only.
- 12.** Thus, there are eleven appeals preferred against the same common impugned judgment and order dated 02.12.2022 passed by the High Court of Judicature at Allahabad. The first Civil Appeal arising from S.L.P.(C) No.9459/2023 is the leading appeal and has been preferred by the Welfare Association of instructors/teachers so appointed. The second set of six Civil Appeals arising from S.L.P. (C) Nos.1744-49/2026 is preferred by the State of U.P. against the very same order. Lastly, the third set of four Civil Appeals arising from S.L.P. (C) Nos. 3331-

3334/2024 is by some of the part time instructors/teachers in their individual capacity.

- 13.** The instructors/teachers are aggrieved for the reason that the High Court permitted payment of Rs.17,000/- per month as honorarium to them only for the year 2017-2018 and not thereafter. The State of U.P. is aggrieved for the reason that the burden to pay the said honorarium has been saddled upon it, though, it was also for the Central Government to have contributed the necessary funds to bear that burden and also because of the observations and the findings of the High Court regarding the interpretation of Section 7 of the Act.
- 14.** It is in these circumstances that all these appeals have come up before this Court for consideration raising a common question as to *whether part time contractual instructors/teachers appointed in Upper Primary School in the State of U.P. are entitled to revision of their honorarium of Rs.7,000/- per month which was fixed for a contract period of eleven months in the year 2013 or would continue to receive the same fixed honorarium for years together or for all times to come without any increment.*

- 15.** Undisputedly, all the instructors/teachers possessed minimum qualifications and fulfilled the eligibility conditions for appointment as part time contractual instructors/teachers. They were duly selected and were appointed in various Upper Primary Schools of the State pursuant to the advertisement dated 25.02.2013. They are all continuing to function as such ever since their appointment in the year 2013/2014.
- 16.** The service contract provided that they will be paid a fixed honorarium of Rs.7,000/- per month by the *Zila Basic Shiksha Adhikari* and that the period of their employment would only be eleven months subject to renewal but is silent about the honorarium on renewal of term. It categorically provided that all such instructors/teachers will not directly or indirectly engage in any other whole-time or part time profession or business or enter into the service of any other employer.
- 17.** Some time in the year 2016-2017, the State Government submitted a proposal to the Project Approval Board³ for enhancement of the honorarium payable to these instructors/teachers to Rs.15,000/- per month. However, the

³ In short 'PAB'

PAB, instead of sanctioning Rs.15,000/- per month, only sanctioned honorarium of Rs.8,470/- per month for the period March 2016 to February 2017. In this way, the honorarium payable to these instructors/teachers was revised to Rs.8,470/- per month for the above period which stood substituted for the honorarium of Rs.7,000/- per month, which was initially fixed. Accordingly, the contract stood impliedly modified to the above effect.

- 18.** In the year 2017-2018, the State Government submitted a fresh proposal to the PAB for the enhancement of honorarium to Rs.17,000/- per month which was approved on 27.03.2017 in the 254th Meeting of PAB. Based upon the aforesaid approval, the Additional Chief Secretary (Basic Education), Government of Uttar Pradesh, issued an order on 02.06.2017 stating that the Government of Uttar Pradesh had accepted the proposal for payment of Rs.17,000/- per month to the part time contractual instructors/teachers for the year 2017-2018. However, despite the approval as aforesaid and the letter of the Additional Chief Secretary (Basic Education), Government of Uttar Pradesh, the necessary funds were not released rather

the Executive Committee of the *Shiksha Pariyojna Parishad* of the State reviewed the PAB approval and revised the amount of honorarium as Rs.9,800/- per month instead of Rs.17,000/- per month as recommended and accepted. Accordingly, PAB issued order dated 02.01.2018 fixing honorarium to these part time contractual instructors/teachers at the rate of Rs.9,800/- per month.

- 19.** Despite recommendation and acceptance of the proposal to pay honorarium of Rs.17,000/- per month to these part time contractual instructors/teachers and thereafter fixation of the honorarium at the rate of Rs.9,800/- per month by the PAB, the said instructors/teachers were allowed and paid honorarium only at the previously fixed rate of Rs.8,470/- per month.
- 20.** To add insult to injury, PAB approved and fixed honorarium of Rs.7,000/- for the year 2019-2020 *vide* its order dated 19.07.2019. Thus, lowering the honorarium revised and paid at Rs.8,470/- from March 2016 to Rs.7,000/- per month again.
- 21.** In this manner, all the instructors/teachers so appointed were paid honorarium of Rs.7,000/- per month from the year 2013

till 2015-2016; for the year 2016-2017 at the rate of Rs.8,470/- per month; for the year 2017-2018 again at the rate of Rs.8,470/- per month despite the fact that the Executive Committee of the *Shiksha Pariyojna Parishad* had fixed it at Rs.9,800/- per month, even though, the State/ Central Government had accorded approval from PAB for payment of Rs.17,000/- per month and from the year 2019-2020 they are again paid fixed honorarium of Rs.7,000/- per month as initially fixed.

- 22.** We have heard Shri P. S. Patwalia, senior counsel on behalf of instructors/teachers and Shri Ardhendumauli Kumar Prasad, senior counsel on behalf of the State of U.P. and others on the merits of the appeals.
- 23.** Shri P.S. Patwalia, senior counsel for instructors/teachers argued that the honorarium fixed and paid to these teachers at the rate of Rs.7,000/- per month, does not even meet the minimum standard of wages admissible to the workers. The payment of such meagre amount defeats the very purpose and object of free education enshrined under the Act. It renders the implementation of the said Act as illusory. Secondly, the year

wise honorarium paid to such instructors/teachers demonstrate prolonged stagnation with no chance of promotion and increase in salary, as such, is arbitrary and contrary to the statutory mandates. Thirdly, once an approval has been granted by the PAB to pay honorarium of Rs.17,000/- per month for the year 2017-2018 and the same had been accepted by the State/Central Government, as reflected by the letter/order dated 02.06.2017 issued by the Additional Chief Secretary (Basic Education), Government of Uttar Pradesh, the same stands substituted in place of the fixed honorarium of Rs.7,000/- per month and, as such, it is not open for the respondent to resile from the same and to pay Rs.7,000/- per month as honorarium for the year 2019-2020 onwards. Lastly, it has been submitted that the State cannot discriminate between the instructors/teachers appointed to implement the above programme with the other instructors/teachers and that the said instructors/teachers are entitled to periodical enhancement of honorarium so as to avoid stagnation. It has been argued that honorarium, once enhanced and paid, could

not have been reduced to Rs.7,000/- per month with effect from the year 2019-2020 onwards.

- 24.** On behalf of the State of U.P., Shri Ardhendumauli Kumar Prasad submitted that in fact the writ petitions itself were not maintainable before the High Court inasmuch as the instructors/teachers have not exhausted the statutory remedies available to them under the scheme as provided under Section 24(3) of Act before approaching the High Court. Moreover, the decision to fix honorarium to such instructors/teachers is a policy decision under the scheme and since it is a policy matter, the courts have no role to play and interfere with the same. In this connection, he relied upon certain precedents which we would refer to, if necessary, at some later stage. Lastly, he argued that these instructors/teachers are simply part time contractual workers and once they have accepted the terms and conditions of the contract, they are estopped from claiming any higher honorarium. They cannot approbate and reprobate by accepting the terms of the contract and then to challenge the same. Apart from this, under the scheme, the financial burden

with regard to payment of honorarium to these instructors/teachers has to be shared by the Central Government and the State Government in the ratio of 60:40 respectively. Therefore, once the State has fulfilled its obligation to contribute 40 per cent of the finances, it was upon the Central Government to contribute the remaining 60 per cent and if the Central Government fails to fulfil its obligation, the court could not have directed the State to bear that burden. Thus, the High Court has misconstrued various provisions of Section 7 of the Act in passing the impugned judgment.

- 25.** Shri S. R. Singh, senior counsel appearing for some of the instructors/teachers in the Civil Appeals arising from S.L.P. Nos.3331-3334/2024 had submitted that Section 8 of the Act mandates the State Government to ensure good quality elementary education (Class I-VIII) in accordance with the standards and norms prescribed and, therefore, it is incumbent upon the State to engage best of instructors/teachers and that would only be possible if proper honorarium is paid to them. Moreover, Rule 20(3) of the rules framed under the Act provides that pay and allowances and

other benefits such as pension payable to these instructors/teachers shall be at par with the instructors/teachers having similar qualification, work and experience. Therefore, the State cannot discriminate and pay honorarium to them at a much lower rate than admissible to similarly placed and qualified instructors/teachers. The fixation of salary for the instructors/teachers is within the domain of the State Government and once a decision was taken in this regard by the PAB, it had the statutory force and was no longer dependent upon the discretion of the Central Government or on the availability of the funds, either in the hands of the State Government or on account of non-release of funds by the Central Government.

- 26.** In the light of the above facts and submission advanced on behalf of the parties, the central issue in the present appeals is about the honorarium payable to the part time contractual instructors/teachers of the Upper Primary Schools in the State of Uttar Pradesh and whether the fixed honorarium payable to them under the initial contract is revisable from time to time.

- 27.** Before delving into the merit of the case, it is pertinent to address the preliminary objection raised by the State of Uttar Pradesh regarding the maintainability of the Writ Petition. The submission on behalf of the State of U.P. is that the writ petitions were not maintainable as instructors/teachers have not exhausted the remedies available under the Act/scheme. In this regard, reliance has been placed upon Section 24(3) of the Act which provides that grievances of the instructors/teachers shall be redressed in such manner as may be prescribed.
- 28.** No doubt, the aforesaid provisions make arrangement for a redressal of the grievance of the instructors/teachers but the grievances referred therein are in context with the default in performance of duties by them or in connection with the disciplinary action, if any, taken against them. This is evident from the reading of Sub-section (2) of Section 24 of the Act which provides that a teacher committing default in performance of duties shall be liable to the disciplinary action and it is in that connection that Sub-section (3) provides for the redressal of the grievance of the teacher. The provisions of

Section 24 are required to be read together and not in isolation. Sub-section (3) of Section 24, as such, cannot be read divorced Sub-section (1) and (2) of Section 24.

- 29.** Moreover, as held in ***Rajasthan State Electricity Board v. Union of India***⁴, the existence of an alternative remedy under a statutory scheme does not operate as an absolute bar to the exercise of writ jurisdiction under Article 226 of the Constitution. This is particularly so in cases where the writ petition has already been entertained by the Court, pleadings have been completed, and the matter has been adjudicated on merits. In such circumstances, relegating the parties to an alternative forum would defeat the ends of justice and render the prior proceedings redundant.
- 30.** The Supreme Court has consistently clarified that the rule of exclusion of writ jurisdiction on account of availability of an alternative remedy is one of prudence and self-restraint, not of compulsion. This principle was authoritatively reiterated in ***Harbanslal Sahnia v. Indian Oil Corporation Ltd.***⁵ wherein it was held that the High Court, while exercising its writ

⁴ (2008) 5 SCC 632

⁵ (2003) 2 SCC 107

jurisdiction, must weigh the facts and circumstances of each case, assess the pros and cons, and then decide whether interference is warranted. Thus, where the facts so justify, the Court retains full discretion to entertain and decide a writ petition notwithstanding the availability of an alternative remedy. Thus, the objection to the maintainability is unsustainable and is overruled.

- 31.** In order to appreciate the issue at hand it is important to first examine the position/status accorded to the teachers in the Indian society.
- 32.** In the larger narrative of nation-building, the energy, idealism, and strength of the youth are rightly recognised as the driving force of progress. Yet, this raw potential requires direction, and it is the teacher who shapes it into a constructive and purposeful force. The true foundation of a strong nation does not lie merely in the size of its young population, but in the character and values of its citizens. It is here that the teacher emerges as the most crucial catalyst.
- 33.** It has been rightly observed that the real meaning of nation-building lies in shaping character and refining personality.

While parents bear the primary responsibility of nurturing values, teachers play an equally vital and decisive role. They engage with young minds during their most formative years and, in doing so, profoundly influence attitudes, conduct, and ideals. When parents and teachers work together to instill discipline, moral values, and social responsibility, the foundations of a stable and principled nation are laid.

- 34.** This role of the teacher is beautifully captured in the verse,

"रवि रहेगा जिसके पीछे, वही अरुण भेदेगा तम।"

When the sun stands behind a youth, darkness cannot remain before them. In this verse, the sun symbolises knowledge, clarity, and truth, while darkness represents ignorance and confusion. In this sense, the teacher stands in the place of the sun. With a teacher's guidance, a student is never truly lost. The teacher's wisdom and values remain as a constant source of strength and direction, enabling the student to overcome ignorance and move towards understanding, just as dawn dispels the darkness of night.

- 35.** Therefore, if we seek a better future for the nation, we must recognise, value and support teachers who are quietly shaping

the country's destiny by moulding character, instilling values, and guiding the youth.

- 36.** Culturally, India has always recognized teachers equivalent to God. This Indian concept is universally known and is reflected in the following couplet:

“गुरु ब्रह्मा गुरु विष्णु, गुरु देवो महेश्वरा।
गुरु साक्षात् परब्रह्म, तस्मै श्री गुरुवे नमः॥”

This couplet elevates teacher to divine level by recognizing teacher's crucial role in shaping its pupils' character and life. It recognizes teacher's contribution in imparting knowledge and preserving correct values through relentless and continuous guidance. Thus, a teacher is a divine channel and not merely an instructor who acts as a guiding force in nurturing insight and enlightening thoughts. He is a divine trinity.

- 37.** In India, while teachers have been given stature equivalent to the God, there have been instances where they are placed above God. This is reflected from the following couplet:

“गुरु गोविंद दोऊ खड़े, का के लागौं पांय।
बलिहारी गुरु आपने, जिन गोविंद दियो बताय॥”

This verse highlights the supreme importance of teacher. It presents a situation where when teacher and God appears in front of you, it is always better to bow down to the teacher first then God as he is a person who awakens our life and introduces us to God. It conveys that while God represents truth, it is teachers who help us reach the truth, the God. Therefore, in all humility, the Indian culture, society and ethos place teachers, if not higher to the God but, at least equivalent to them. Teachers command the highest respect in society and are revered/worshipful as Gods.

- 38.** It is in the above scenario that we have to consider the manner in which our primary teachers have to be treated, who are responsible for the character building of the generation next i.e. *Bharat Bhagya Vidhata*. They are the ones who build the character of new generation. Character building of the citizens is the foundation for the nation building. If this foundation is weak, the nation is bound to collapse. Therefore, we must accord the highest regard and respect to our teachers at all levels, even at the level of the government, especially the primary teachers. They have to be compensated for their work

most suitably. In fact, no honorarium would be enough to compensate the services rendered by our teachers.

39. The part time contractual instructors/teachers appointed in Primary Schools of the State of Uttar Pradesh, in the first place, ceases to be contractual teachers as soon as the contract period of eleven months initially entered into or the renewed period, if any, comes to an end. It is noticed from the counter affidavit that the original contracts were last renewed in 2017-18 and in these renewed contracts the honorarium agreed upon is Rs.8,470/- per month. There is no renewed contract thereafter. The contract having once expired and not having been renewed specifically and reduced to writing after 2017-18 would not actually be a contract so as to recognize the instructors/ teachers so appointed to be contract teachers on the expiry of the above contract. They would rather be treated as teachers simpliciter after 2017-18.

40. There is another reason to treat them as teachers at par with other teachers. The part time contractual instructors/teachers appointed in Upper Primary Schools possesses the basic educational qualifications and eligibility as set out by the

National Council for Teachers Education which are at par with the norms laid down for appointment of regular teachers. In this view of the matter, the part time contractual instructors/teachers appointed by the State Government under the Scheme are in no way inferior to the regular teachers or the Assistant Teachers appointed otherwise under the scheme.

- 41.** Secondly, part time contractual instructors/teachers of the Upper Primary School are not even part time teachers, though they are described so. It is for the simple reason that their appointment itself *vide* Clause 5 of their service contract stipulates that they are being appointed with the condition that they would not directly or indirectly take up any part time appointment or whole-time job anywhere else. The moment Government prohibits these instructors/teachers from taking any part time or whole-time job anywhere else, they should *de facto* be treated as full time teachers. Part time teachers are those who teaches part time during the day and do other work in the remaining time. However, nothing has been placed on record to show that they actually work part time and do not

discharge duties equivalent to those that are discharged by regular teachers. They are instructors/teachers who actually work full time like any other teacher and cannot even take up any other work during their spare time. Thus, in fact, they are whole time teachers.

42. In other words, the nomenclature used to describe the instructors/teachers as part time contractual teachers is completely deceptive. They neither remain contractual teachers after the expiry of the contractual period nor they are part time teachers especially when no material has been put forth to show that they work only part time and do not possess equivalent qualification as that of the regular teachers or that they do not discharge equal duties as are expected from the regular teachers.

43. There is another important facet of the matter which needs to be addressed by us. The appointment of these part time contractual instructors/teachers, though for a limited period of one year, has undisputedly continued for over ten years in a row. The scheme adopted by the State Government envisages for appointment of one such instructor/teacher for every

hundred students; meaning thereby, that for every hundred students in a school, one instructor/teacher is mandatory. Thus, it flows from abovementioned facts that though posts for such teachers have not been specifically created but by virtue of their continuous engagement and subsistence of the scheme, they have acquired certain degree of permanency and the posts stand created or deemed to be created *per se* automatically. Notably, these part-time contractual instructors/teachers were discharging duties similar to regular teachers including teaching up to eight periods in a day, thereby performing the same workload and responsibilities as regular teachers. In view of constitutional mandate of providing free education up to primary levels, the State Government cannot abandon the scheme and render the Upper Primary Education meaningless, as it would be in conflict with the Act. Accordingly, the nature of work assigned to these instructors/teachers is apparently of a permanent nature. The conclusion is, therefore, inevitable that the appointments of these instructors/teachers are more or less of a permanent

nature and against a post which is deemed to have been created substantively.

- 44.** The appointment of these instructors/teachers, even if held to be contractual, part time or even temporary in nature, there is hardly any scope to replace these instructors/teachers by a fresh contractual, part time or temporary instructor/teacher inasmuch as these are the persons who are not only qualified but have acquired some experience of working and are definitely more suitable than the freshers. It goes without saying that an *ad hoc* employee cannot be replaced by another *ad hoc* employee, a temporary employee cannot be replaced by another temporary employee, a contractual employee cannot be replaced by another contractual employee and the guest employee by another guest employee. The incumbents working as aforesaid are entitled to preference in comparison to the new candidates, unless of course there is anything against them. In fact, practice of engaging employees on *ad hoc*, temporary, part time, contractual or as guest ought to be avoided and the Government should strictly adhere to proper procedure for regular recruitment.

45. In the instant case, all appointments of the instructors/teachers were made by following the procedure prescribed under the scheme pursuant to a proper advertisement. In a sense, they were all substantively appointed, maybe there was no sanctioned post but the sanction of the post is deemed to be there as the nature of the work assigned to these instructors/teachers is of a permanent nature which in all probabilities is of a continuing nature and is not likely to be abandoned or curtailed in any manner. The term “substantive appointment” is not so defined but in service jurisprudence is considered to mean an appointment, not being an *ad hoc* appointment, on a post made after selection in accordance with the rules and in the absence of the rules in accordance with the procedure prescribed for under any scheme or the instructions of the Government. Therefore, once these instructors/teachers have undergone the process of selection under the scheme regardless of the fact that there existed a post, their appointments have to be treated as substantive in character.

46. In the facts and circumstances, the business of calling such instructors/teachers as *ad hoc* appointees or temporary appointees or part time or contractual appointees is altogether a misnomer and is not at all appropriate.
47. In ***Jaggo v. Union of India and Ors.***⁶ this Court observed that it is a hard reality that temporary employees, particularly in Government institutions often face multifaceted forms of exploitation which include misuse of “temporary labels”, “lack of career progression” and “denial of basic rights and benefits”. It further observed that employees engaged for work which is essentially recurring and integral to the functioning of an institution are often labeled as “temporary” or “contractual” employees even though their roles mirror those of regular employees. Such deceptive description of the employees deprives them of their dignity, security and benefits that other regular employees are entitled to, despite performing identical duties. These employees often find themselves excluded from opportunities for skill development, promotions or incremental pay raises, and they remain stagnant in their roles. They are

⁶ 2024 SCC Online SC 3826

deprived of fundamental benefits such a pension, provident fund, health insurance and paid leave even though they work for decades resulting in social insecurity.

- 48.** The question that arises now is as to what should be the appropriate honorarium payable to such instructors/teachers. No doubt, they were appointed on a fixed honorarium of Rs. 7,000/- per month way back in the year 2013-14 but that fixed honorarium was only for a period of 11 months or for the renewed period thereafter but was not applicable for their extended term on the expiry of contracted period. In the wake of the subsequent renewed contract for the period 2016-17 fixing honorarium @ Rs.8,470/- per month, the question is what would be the honorarium payable to them after 2017-18 as there is no material on record to establish that any fresh contract was executed for the subsequent years.
- 49.** At this juncture it would be necessary to advert to yet another submission that has been put forth by the State. It is contended that the fixation of honorarium of these instructors/teachers is a policy decision wherein Court has no role to play. This cannot be accepted in the facts and

circumstances of the case. The fixation of honorarium to the instructors/teachers may be a policy decision but it cannot be exercised in an arbitrary manner so as to subject the instructors/teachers to '*Begar*'. The honorarium has to be fixed in consonance with the duties assigned to these instructors/teachers depending upon their stature. Therefore, any policy decision of the Government permanently fixing the honorarium of the instructors/teachers for all times to come, cannot be justified and approved of as periodical revision depending upon the price rise, cost of living and other host of factors. It is always permissible to revise the honorarium once fixed, not only in the case of instructors/teachers but also in the employment of workers/labourers.

- 50.** It is admitted on record that the State Government in the year 2016-17 had submitted a proposal to pay Rs. 15,000/- per month as honorarium to them; meaning thereby, that the State Government acknowledges that the honorarium initially fixed for these instructors/teachers is insufficient and has to be increased. This realization probably may be for the reason that in the year 2016-17 not even the labourers/unskilled workers

were being paid such low honorarium. The minimum wages Act provided for a minimum wage of Rs.7,214/- per month in 2016-17 to the daily unskilled workers. Therefore, the Government might have thought that such instructors/teachers cannot be paid honorarium at a lower rate than the workers. Despite the above recommendations, the PAB approved and sanctioned honorarium to them at the rate of Rs. 8,470/- per month and that too for the year 2016-17 only.

- 51.** In the subsequent year, a fresh proposal was submitted by the State Government to the PAB to pay Rs. 17,000/- per month as honorarium to these instructors/teachers. It was also approved by the PAB. Even the Additional Chief Secretary (Basic Education), Government of Uttar Pradesh acknowledged *vide* Letter dated 02.06.2017 that the Government has accepted the proposal for payment of Rs. 17,000/- per month as honorarium to these instructors/teachers. However, despite such an acceptance, the Executive Committee of the *Shiksha Pariyojna Parishad* fixed the honorarium for these instructors/teachers at the rate of Rs. 9,800/- per month for

the year 2017-18 only. However, they were not even paid the honorarium of Rs. 9,800/- per month fixed and determined, what to say about the proposed and accepted honorarium of Rs. 17,000/- per month.

- 52.** It is admitted on record that the honorarium payable to these instructors/teachers which was fixed at Rs. 7,000/- per month in the year 2013-14 was enhanced to Rs. 8,470/- per month in the year 2016-17 and then to Rs. 9,800/- per month in the year 2017-18 but even then, they were never paid Rs.9,800/- per month. This may be probably due to the renewed contract for the year 2017-18 wherein these instructors/teachers agreed for Rs.8,470/- per month but this renewed contract also ended and there was no fresh contract. Thus, the honorarium fixed in the initial contract stood revised and substituted by Rs.8,470/- per month rather by Rs. 9,800/- per month in the next year and could not have been reduced thereafter in the absence of any contract to the contrary. It must be borne in mind that there was no stipulation under the contract that the honorarium once fixed, cannot be revised or refixed or enhanced or once revised could be reduced. In this situation,

the State Government was not justified in reducing the honorarium payable to these instructors/teachers from the year 2019-20 onwards again to Rs. 7,000/- per month after it was enhanced to Rs.8,470/- for the year 2016-17 and to Rs. 9,800/- per month in the year 2017-18. The State Government cannot take away the benefit which is once extended to these instructors/teachers in a unilateral way without following the principles of natural justice.

- 53.** The above facts and circumstances clearly indicate that the State Government was conscious of the fact that the honorarium of these instructors/teachers initially fixed under the contract is open to change and is revisable, if not on year-to-year basis but periodically. The honorarium cannot remain stagnant for all times to come.
- 54.** Article 23 of the Constitution provides with a general prohibition against “traffic in human beings, beggar and other similar forms of forced labour”. In the landmark case of ***People’s Union For Democratic Rights v. Union of India***⁷, the Supreme Court has adopted an expansive interpretation of

⁷ (1982) 3 SCC 235

Article 23 of the Constitution. The court explained the meaning of “Forced labour” to encompass any work or service rendered unwillingly as a result of force or compulsion. It held that “force” under Article 23 of the Constitution not only includes physical or legal force but also economic compulsion due to which the individual is left with no other alternative but to accept remuneration less than the minimum wages. It was held that when a person is rendering service or doing labour at a meagre amount less than the minimum wages, then he is not voluntarily working, he is being forced by his economic hardship to accept the pay. The case also covers contractual workers who may have formally agreed to such terms, as such agreements are often the product of uneven bargaining power and do not represent free and voluntary consent in a substantive sense. Thus, this Article takes a hit at every form of forced labour, whether it is a direct case of forced labour or case of forced labour hidden under the guise of voluntary work or contractual work. Any unfair practice fixing remuneration of these instructors/teachers permanently as Rs. 7,000/- per month or Rs. Rs. 8,470/- per month for all times is a kind of

forced labour amounting to '*Begar*' which is strictly prohibited under Article 23 of the Constitution.

55. In the present case, the further unilateral reduction of the already low remuneration has placed these part time instructors/teachers in place of economic vulnerability. These instructors'/teachers' position is worsened by Clause 5 of their employment contract, which explicitly prohibits them from taking up any other employment, part-time or whole-time. This clause, operating in tandem with the State's unilateral wage reduction, creates a coercive cage. The instructors/teachers are left with no alternative, they cannot seek supplementary income elsewhere due to the contractual bar, and they cannot refuse the reduced wages due to economic necessity. This complete deprivation of choice is the essence of the "force" contemplated in the abovementioned case.

56. Consequently, the State's actions has created a condition of economic coercion that is inconsistent with the constitutional safeguards against forced labour. The State's action of withdrawing a legitimately enhanced wage and then allowing honorarium to remain artificially depressed would, in

substance, be inconsistent with the spirit of Article 23 of the Constitution which prohibits all forms of forced labour. The State, under the guise of contractual management or financial constraint, cannot compel labours/teachers to such coercive circumstances.

- 57.** In view of the above discussion, one thing is very clear that the honorarium fixed for these instructors/teachers under the contract cannot remain stagnant and is revisable suitably on periodical basis and that if once revised and increased cannot be reduced for subsequent periods.
- 58.** Now the issue is the manner and the basis on which the honorarium payable to these instructors/teachers has to be revised and fixed.
- 59.** The *Samagra Shiksha Scheme* subsumed the earlier *Sarva Shiksha Abhiyan* came into being in the year 2018. It is a centrally sponsored scheme which promotes primary education at the State/Union Territory level. It provides for the fund sharing pattern in the following manner *inter se* the Union and the State or Union Territory:

- (i) For eight North-Eastern States and three Himalayan States, in the ratio of 90:10;

- (ii) For all other States and Union Territories, in the ratio of 60:40; and
- (iii) For Union Territories without legislature, it is 100% by the Union.

60. The aforesaid scheme aims for providing additional support to the States and the Union Territories to improve the quality of primary education.

61. The Scheme is implemented at the national level by Governing Council headed by the Minister of Education and then there is a Project Approval Board at the national level which is headed by the Secretary, Department of School Education and Literacy. It is the primary function of the PAB to approve the annual work plan and budget of States and Union Territories. It has full financial powers to approve plans and sanction the budgets for the implementation of the scheme. No other authority has any say in the financial matters and that connected with the budget of the scheme. The aforesaid powers and functions of the PAB and that it is a national level administrative body is duly spelled out in Chapters 14.2.2 and 14.2.4 of the scheme.

- 62.** At the State level, there is a Governing Council headed by the Chief Minister/State Education Minister and then there is an Executive Committee headed by the Chief Secretary/Commissioner/Education Secretary of the State/Union Territory. The Governing Council is vested with the power to frame necessary policies and to facilitate Center-State Coordination, whereas, the administrative powers vests with the Executive Committee. However, none of the above two bodies are vested with any financial powers or the power to sanction budget. Therefore, the power to sanction budget remains in the exclusive domain of PAB. It means that under the scheme, it is only the PAB who has the authority to sanction budget and *inter alia* to even fix honorarium of the instructors/teachers.
- 63.** The Act is completely silent with regard to the financial matters and the fixation of honorarium admissible to the instructors/teachers appointed under the scheme. However, Section 24 of the Act provides for the duties of the teachers appointed under the scheme and Section 27 *inter alia* lays down that no teacher shall be deployed for any non-educational

purpose other than the work in connection with the decennial population census, disaster relief duties or duties relating to elections to the local authority or the State Legislature or the Parliament, as the case may be. In other words, teachers under the scheme can be deployed in certain non-educational work also.

- 64.** It is only Rule 20 of the Right of Children to Free and Compulsory Education Rules, 2010 framed under the Act which provides for the salary, allowances and conditions of the service of teachers appointed under the scheme. It *inter alia vide* sub-rule 20 (3) provides that the scales of pay and allowance, medical facilities, pension/gratuity/provident fund and other prescribed benefits of teachers shall be at par for similar qualification, work and experience of other teachers. It necessarily means that the instructors/teachers appointed under the scheme for the benefit of the primary education under the Act have been placed at par with other instructors/teachers and that apart from pay, they are entitled to allowances, medical facilities, pension/gratuity/provident fund and similar benefits.

65. In view of the foregoing provisions and the scheme, it is evident that the instructors/teachers appointed under the scheme have to be at par with other instructors/teachers and they have to perform not only the academic duties but certain other non-educational duties as well. They are entitled to honorarium at par with the other instructors/teachers. However, under the facts and circumstances of the case, the instructors/teachers appointed under the scheme described as part time contractual instructors/teachers, are being paid fixed honorarium of Rs.7,000/- per month only, which is even lesser than the minimum wages admissible to the workers/labourers. Accordingly, as mentioned earlier, the honorarium payable to these instructors/teachers needs to be revised periodically. This periodic revision has to be done by none other than PAB and its decision is to be treated as final and binding as no other authority or body under the Act or the scheme has any power to sit over its decision and to take a contrary view. In the case at hand, the honorarium initially fixed at Rs.7,000/- per month was revised to Rs.8,470/- and thereafter, the PAB had opined and fixed it at Rs.9,800/- per month for the year 2017-18. Once

such a decision had been taken, it was no one's business to intervene and to reduce the honorarium and pay either Rs.8,470/- or Rs.7,000/- per month to these instructors/teachers.

66. It may also be noted that PAB had determined the honorarium of Rs.17,000/- per month for the year 2017-18 but this was not implemented. Therefore, in all earnest, the instructors/teachers appointed under the scheme became entitled for payment of honorarium at the rate of Rs.17,000/- per month for the year 2017-18 and thereafter, till it is suitably revised by the PAB. There is nothing on record to demonstrate that any revision of honorarium has taken place after 2017-18 by the PAB but even then that the honorarium was lowered to the initial one that is Rs.7,000/- per month. Therefore, the payment of honorarium of Rs.7,000/- per month to the instructors/teachers appointed under the scheme from the year 2018-19 onwards is completely illegal, arbitrary and unjustified in the facts and circumstances of the case.

67. In the light of the above discussion, it is most appropriate for us to direct for the payment of honorarium at the rate of

Rs.17,000/- per month to all instructors/teachers appointed under the scheme from the year 2017-18 onwards till the same is revised by the appropriate authority i.e., PAB and further that the PAB shall periodically revise the honorarium fixed for these instructors/teachers, if not annually but once in three years.

- 68.** Though, Section 7 of the Act provides for sharing of financial responsibilities between the State/Union Territories and the Central Government and casts a liability upon both the Governments to share the financial burden in such percentage as may be determined from time to time by the Central Government in consultation with the State Government. Nonetheless, Section 7 (5) of the Act, in unequivocal terms, saddles the State Government with the responsibility to provide funds for the implementation of the provisions of the Act. The above Sub-section (5) of Section 7 of the Act reads as under :-

“(5) Notwithstanding anything contained in sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.”

69. A simple reading of the aforesaid provision reveals that the State Government shall take into account not only the sums provided by the Central Government to the State Government but also its other resources and shall be responsible to provide funds for the implementation of the provisions of the Act. Therefore, an onerous duty has been cast upon the State Government to implement the provisions of the Act *vis-à-vis* the payment of honorarium to the instructors/teachers. Therefore, in all earnest, it is primary duty of the State Government to pay honorarium to the instructors/teachers appointed under the Act or the scheme formulated thereunder. In the event, the Central Government fails to contribute its share of finances, the State Government is free to recover it from the Central Government but cannot deny payment to instructors/teachers. The principle of “pay and recover” as such would be attracted and would be applicable.

70. On the basis of the above discussion, we conclude as under :-

- i) The appointment of the part time or contractual instructors/teachers in fact no longer remains contractual in

nature once the contract period of eleven months for which they were initially appointed or the extended contract period stood expired;

ii) They were not even part time instructors/teachers as they were specifically prohibited for taking any job or part time employment elsewhere during their spare time;

iii) In fact, these instructors/teachers having continued continuously for over ten years in a row are deemed to be employed permanently against deemed substantive posts, as with the passage of time and keeping in mind the continuity of the work, such posts stand automatically created;

iv) The PAB is the sole central authority to manage budget and finances under the Act and the scheme and to fix honorarium for the instructors/teachers appointed thereunder. No other authority has any say in the matter concerning finance and budget consequently in the fixation of honorarium;

v) The PAB having once approved the proposal for fixing Rs.17,000/- per month as honorarium to these

instructors/teachers, no authority can sit over such a decision and pass orders contrary to it;

vi) The initial burden to pay honorarium to the instructors/teachers is upon the State Government who is free to recover the contribution of the Central Government from the Union of India on the principle of “pay & recover”;

vii) The honorarium payable to these instructors/teachers cannot be permitted to remain stagnant and the same is revisable periodically at least once in three years by the PAB or any other authority as may be determined by the Central Government/State Government under the scheme or the modified scheme;

viii) Any action of the State/Union Government to employ instructors/teachers on a fixed honorarium of Rs.7,000/- per month as was initially fixed in 2013-14 amounts to ‘*Begar*’ and unfair practice which is violative of Article 23 of the Constitution;

ix) The PAB having fixed honorarium to these instructors/teachers at the rate of Rs.17,000/- per month with effect from the year 2017-18, the State Government/Central

Government is not justified in paying them at a lesser rate of either Rs.8,470/- or Rs.9,800/- or at the basic rate of Rs.7,000/- per month.

71. In view of the above discussion, the question formulated in paragraph 14 above is answered by holding that part time contractual instructors/teachers appointed in the Upper Primary School in the State of U.P. are entitled to revision of their honorarium of Rs.7,000/- per month which was initially fixed for the contract period of eleven months in the year 2013 and that the said revision has to take place, if not annually then periodically as per the discretion of the PAB. Since the PAB for the year 2017-18 had determined the said honorarium to be Rs.17,000/- per month, all instructors/teachers appointed under the scheme are entitled for the payment of the same at the above rate of Rs.17,000/- per month with effect from 2017-18 till further revision takes place.

72. Thus, all these instructors/teachers are entitled to receive honorarium at the rate of Rs.17,000/- per month with effect from 2017-18. The State Government shall start paying honorarium to them at the rate of Rs. 17,000/- per month

w.e.f. 01.04.2026 and the arrears of which shall be paid to them by the State Government within a period of six months from today. The State Government may recover the contribution of the Central Government from the Union of India.

- 73.** Accordingly, the Civil Appeals arising out of S.L.P (C) No.9459 of 2023 and S.L.P. (C) Nos.3331-3334 of 2024 filed by the Welfare Association and teachers respectively are allowed whereas the Civil Appeals arising out of S.L.P. (C) Nos. 1744-1749 of 2026 filed by the State of U.P. & Ors. are dismissed in the above terms.

.....**J.**
[PANKAJ MITHAL]

.....**J.**
[PRASANNA B. VARALE]

NEW DELHI;
FEBRUARY 04, 2026