

ITEM NO.10

Court 6 (Video Conferencing)

SECTION X

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

SPECIAL LEAVE PETITION (CIVIL) Diary No(s).24505/2020

(Arising out of impugned final judgment and order dated 02-11-2018 in SPA No. 524/2014, WPSS No. 439/2015, WPMS No. 776/2015, SPA No. 128/2015 and 09-10-2020 in RA No. 1623/2018 passed by the High Court of Uttarakhand at Nainital)

BENGAL ENGINEERING GROUP AND CENTRE & ANR.**Petitioner(s)****VERSUS****SUNIL KUMAR SHARMA & ORS.****Respondent(s)**

(WITH I.R. and IA No.122858/2020-CONDONATION OF DELAY IN FILING and IA No.122861/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

WITH**Diary No(s). 26155/2020 (X)**

(WITH I.R. and IA No.134891/2020-CONDONATION OF DELAY IN FILING and IA No.134892/2020-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 15-02-2021 These petitions were called on for hearing today.

CORAM :**HON'BLE DR. JUSTICE D.Y. CHANDRACHUD****HON'BLE MR. JUSTICE M.R. SHAH****For Petitioner(s)**

Mr. Sajan Poovayya, Sr Adv.
Mr. Abhinav Agrawal, AOR
Mr. Pratibhanu Singh Kharola, Adv.
Ms. Raksha Agrawal, Adv.
Mr. Sharan Balakrishnan, Adv.

Mr. Naresh Kaushik, Adv.
Mr. Vardhman Kaushik , AOR

For Respondent(s)

Mr. Gopal Sankaranaryanan, Sr. Adv.
Mr. B. Shravanth Shanker, AOR
Ms. Monalisa Kosaria, Adv.

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

- 1 Delay condoned.
- 2 We have heard Mr Sajan Poovayya, learned Senior Counsel appearing on behalf of the Bengal Engineering Group and Centre, the petitioner in the Special Leave Petitions arising out of SLP (C) Diary No 24505 of 2020, with Mr Abhinav Agrawal, learned counsel, Mr Naresh Kaushik, learned counsel appearing on behalf of Army Welfare Education Society¹, petitioner in the Special Leave Petition arising out of SLP(C) Diary No 26155 of 2020 and Mr Gopal Sankaranarayanan, learned Senior Counsel appearing on behalf of the caveators.
- 3 The submission which has been urged by the learned counsel appearing on behalf of the petitioners is that the Bengal Engineering Group and Centre had entered into a lease agreement with the Institute of Brothers of St. Gabriel in respect of the land, which is a B-3 class land under the Cantonment. A School was being conducted by St Gabriel's Academy. After the term of the lease came to an end, a decision was taken to run a school under the auspices of AWES. AWES runs about 139 schools all over the country. On 28 February 2012, a letter was addressed to the staff of the school indicating that those among the teachers who are eligible in terms of CBSE guidelines would be considered for appointment on *ad hoc* basis for one year and would have to appear and qualify in a written test under AWES Rules and the teachers will be paid salary at par with the service conditions applicable to other teachers of the Army Public Schools. This gave rise to the filing of a writ petition before the High Court of

1 “AWES”

Uttarakhand. The Single Judge allowed the writ petition by issuing a mandamus to the petitioners not to vary the service conditions of the teaching and non-teaching staff to their disadvantage. During the pendency of the proceedings before the Division Bench in appeal, an order was passed by the High Court on 6 January 2016. Paragraphs 3 and 4 of the order read as follows:

“3. BEG has decided to run the institution as an Army School under the Army Welfare Education Society (AWES), which has also come up in appeal against the judgment. According to AWES, it is running 134 schools all over India. They have a complaint that, at present, for the past two years since 1st April 2012, they are collecting fees at the rates they are collecting in the other Army Public Schools and, yet, they have been compelled to pay the salary, which is being paid to the teachers earlier by St. Gabriel’s, which was in fact collecting far more fees and there is a huge deficit. According to them, they will not terminate the services of the teachers and non-teaching staff, if AWES is permitted to take over; but, they will be paid the salary in terms of the standards, which they have in respect of the other Army Public Schools. It is their case that they are prepared to allow the teachers and non-teaching staff to continue, provided some modalities are complied with, relevance of which may not present itself immediately. According to the teachers and non-teaching staff, they have a right to continue as such.

4. We would think that the interest of justice requires that the arrangement, which has been ordered by the Court in Writ Petition No. 776 of 2015 (M/S) must be modified. Accordingly, we modify the order and direct that AWES can take over the management of the school and the teaching and other non-teaching staff will be allowed to continue, however, with the modification that the pay will be such as they would be entitled to treating it as another Army Public School. This arrangement will be provisional and subject to the result of the litigation and without prejudice to the contentions of the parties. The Committee will handover the management to the AWES upon production of a certified copy of this order. The accounts, etc., will also be handed over to the Principal of the school. We record the submission of the learned counsel appearing for St Gabriel's that they will handover the amount representing gratuity, earned leave encashment and the installment of the sixth pay commission directly to the teachers and other non-teaching staff. We make it clear that the school can be run in terms of the Rules of AWES otherwise. The payment of salary as per AWES can commence from 1st

January, 2016.”

- 4 The Division Bench eventually dismissed the Special Appeal against the judgment of the Single Judge, which has given rise to the proceedings before this Court under Article 136 of the Constitution.
- 5 On behalf of the petitioners, it was submitted that the teaching and non-teaching staff were employees of St Gabriel’s Academy and since the erstwhile management has ceased to conduct the school, the staff would have no claim as against AWES which is conducting the school, at present.
- 6 In order to resolve the dispute, a suggestion has been made by learned counsel for the petitioners to the effect that the teaching and non-teaching staff of the erstwhile school which is continuing with the present school, which is conducted by AWES, would be continued on a permanent basis. However, it has been submitted that their conditions of service will be those which are applicable to the teaching and non-teaching staff of Army Public Schools. It has been submitted that under the judgment of the High Court the petitioners would be obligated to provide service conditions at par with the teaching and non-teaching staff which was recruited by the erstwhile management which would involve an outlay which the Army Public School will not be in a financial position to meet. That apart, it has been submitted that there cannot be two sets of service conditions in respect of the same school.
- 7 Responding to the above submissions, Mr Gopal Sankaranarayanan with Mr B Shravanth Shanker, learned counsel, submitted that there are two areas which would require to be resolved, namely,:

- (i) Seniority of the teaching and non-teaching staff due to the past service should be taken into account; and
 - (ii) In computing their terminal dues, benefit of the past service should be taken into reckoning.
- 8 We find prima facie that the suggestions which have emerged from both the sides are fair and proper in their own way, in order to resolve the dispute amicably. If the dispute is eventually resolved amicably, it would be ensured that, on the one hand, the teaching and non-teaching staff of the erstwhile school would not be displaced and continue to get employment in the present school and, at the same time, their service conditions are at par with those which are applicable to the employees of the Army Public Schools.
- 9 In order to enable the Court to give the parties an opportunity to resolve the dispute finally, we are of the view that a meeting should be held between the concerned authorities of the School as well as the representatives of the employees in the presence of the learned Senior Counsel so that agreed terms for resolving the dispute finally can be presented before this Court.
- 10 To facilitate this, we stand over the proceedings by a period of four weeks. The proceedings shall now be listed on 22 March 2021. In the meantime, we request all the parties to ensure that a meeting is convened within a period of one week from today so that progress can effectively be made towards a satisfactory resolution of the dispute in a spirit of dialogue in which the parties have addressed the Court.
- 11 We direct that no further steps shall be taken in the contempt proceedings till the next date of listing.

- 12 The services of the teaching and non-teaching staff who are continuing in the management of the Army Public School at Roorkee, at present, shall not be disturbed in the meantime.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER