
(2012) 08 SHI CK 0029
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 5572 of 2012-H

Ajay Kumar Thakur and Others	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (2012) 08 SHI CK 0029

Hon'ble Judges : V.K. Sharma, J; R.B. Misra, J

Bench : Division Bench

Advocate : Jyotsna Rewal Dua, Mr. Avneesh Bhardwaj, Mr. Mohit Thakur and Mr. Onkar Jairath, for the Appellant; R.K. Sharma /Senior Additional Advocate General with Mr. J.S. Rana, Assistant Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Justice R.B. Misra, J.—The petition has been filed on the following prayers vide para 7 (i) and (ii):-

- i) For issuing a direction to the respondents not to regularize the services of Para Teachers.
- ii) For directing the respondent State to regularize the services of the petitioners/ similarly situated persons on the posts being held by them.

Or in the alternative respondents may kindly be directed not to regularize the Para Teachers without recognizing the prior and preferential right of the petitioners to be regularized against the posts of Lecturers/TGTs/C&V teachers.

During the course of hearing Mr. Avneesh Bhardwaj, Mr. Mohit Thakur and Mr. Onkar Jairath, Advocates have prayed for impleading the applicants as party-respondents, however, since the petition is being heard and decided on question of maintainability of the present writ petition, therefore, prayer of learned counsels cannot be allowed.

2. The learned counsel for the petitioners has submitted that the petitioners are teachers, appointed in the year, 2009 onwards on contract basis in accordance to the provisions of Recruitment and Promotion Rules through a duly selection process followed on the pattern of regular appointment during the period when State Government was not able to make regular appointments. Petitioners' case is that Para Teachers (Lecturer School Cadre), Para Teachers (T.G.T's) and Para Teachers (C&V) were appointed in the year, 2003 onwards in contravention to the Recruitment and Promotion Rules and in violation of Articles 14 and 16 of the Constitution of India without advertising the vacancies, and for all purposes, the petitioners are in possession of essential qualifications and their selection has been made by following the procedure laid down for selection to the teachers on regular basis, moreso, the petitioners are discharging duties as regular employees. Whereas, the appointments of Para Teachers are not like regular teachers and for all purposes, they are inferior to the petitioners, but by virtue of their appointments in the year 2003 onwards, the State Government has started process and is going to finalize the scheme for their regularization. It has also been submitted on behalf of the petitioners that the petitioners are to be regularized, whereas, Para Teachers have no legal right of being considered for regularization, in view of decision of Supreme Court (Constitution Bench) Secretary, State of Karnataka and Others Vs. Umadevi and Others, , where the adhoc/contractual/casual/daily waged employees have no legal right to be regularized and the casual employees have no right to the regular posts, as such type of appointments are to be made do horse the procedure and Rules made under Article 309 of the Constitution of India. According to the petitioners, in view of the decision of this Court dated 1.9.2008 passed in CWP No. 415 of 2000, Baldev Singh and others Vs. State of H.P. and others and connected matters, this Court (Division Bench) has given directions to the State Government to regularize the services of incumbents only by following the Recruitment and Promotion Rules with further observation that the Court has no power to direct the State Government to frame policy of regularization. It has further argued on behalf of the petitioners that the present petition under Article 226 of the Constitution of India has rightly been presented before this Court, because petition under Article 226 can be presented not only when the legal rights of petitioners have been invaded already but also when they have been threatened with an immediate peril, in view of the decision of Supreme Court in The Bengal Immunity Company Limited Vs. The State of Bihar and Others, as well as in Kavalappara Kottarathil Kochunni Moopil Nayar Vs. The State of Madras and Others, .

3. On the other hand Mr. R.K. Sharma, Senior Advocate/Senior Additional Advocate General has argued that the present writ petition is not maintainable, as the petitioners are not representing the whole cadre of contractual teachers of the Education Department. The Para Teachers have not been made party/respondents and the petitioners have not been able to show that how petitioners are superior to Para Teachers. Mr. Sharma has also argued that nothing has been

brought by the petitioners on record to show that how they are being discriminated vis-à-vis Para Teachers, when apparently the petitioners have been appointed in the year 2009 and onwards, whereas, Para Teachers were appointed in the year 2003 and onwards, in view of the Para Teachers Policy, 2003, as such, the writ petition alone can be rejected on the sole point that the Para Teachers have not been made party, in respect of whom the petitioners are seeking relief. According to Mr. Sharma, no effective order by the State Government has been passed regarding regularization of Para Teachers and the assurance to take steps or adopting some process in respect of regularization of Para Teachers cannot be treated an effective order and, as such, in absence of any order or decision regarding regularization of Para Teachers, no cause of action has arisen to the petitioners seeking direction by way of restraining the State Government and its Authorities not to regularize the Para Teachers, as such, the writ petition is premature and relief sought cannot be granted. It has also been argued on behalf of the State that in the facts and circumstances the directions issued by this Court (Division Bench) in Baldev Singh and others Vs. State of H.P. and others (supra) are not helpful to the petitioners, as the facts and circumstances of the present case are different and distinguishable to the facts of Baldev Singh and Ors. (supra).

4. In view of judgment of this Court dated 21.10.2010 passed in CWP No. 2880 of 2010, Dhananjay Saini Vs. State of H.P. and others along with connected matters, while considering the core issue raised to the question as to whether Para Teachers can be equated and similarly treated as the contract teachers for the purpose of emoluments, this Court had observed in its judgment dated 21.10.2010 as follows:-

....We do not think that the issue requires consideration of any factual or legal issue in view of the stand already taken by the Government as borne out of the communication dated 7.4.2007 Annexure P-1, which reads as follows:-

I am directed to state that the matter regarding bringing Para Teachers working in the Elementary & Higher Education Directorates at par with contract Teachers in the matter of emoluments was engaging the attention of the Government for some time.

Now, after consideration, it has been decided that the Para Teachers working in the Elementary or Higher Education Directorates be given the same emoluments as is being paid by the Government to the Contract Teachers (i.e. initial of the pay scale of the category concerned plus dearness pay @ 50% thereon). This will be effective w.e.f. 1st April, 2007.

This issue with the prior concurrence of the Finance Department obtained vide their No. Fin(C)B 7/2003, dated 7.4.2007.

2. There is no change of policy either reviewing or recalling annexure P-1. Once the Government has already taken policy decision and equated Para Teachers for all purposes with the Contract Teachers, it is only just, proper and reasonable as

far as Contract Teachers" emoluments are concerned, they are treated at par with the Contract Teachers.

Mr. Sharma has argued that in the light of above observations made by this Court in Dhananjay Saini Vs. State (supra), the petitioners are at par with Para Teachers regarding their emoluments.

5. We have heard learned counsel for the parties and have also perused the record. The petitioners have asserted that they are appointed on contract basis, therefore, in view of the verdict of Supreme Court in Uma Devi's case (supra), the petitioners too have no right to seek directions of this Court for regularization at this stage, in absence of any rules or scheme specifically framed for them. For argument sake, if in view of the decision of this Court (Division Bench) in Dhananjay Saini's case (supra), the petitioner are treated similarly situated to that of Para Teachers, in such eventuality, the petitioners having been appointed in the year, 2009 and onwards, shall have no legal right and claim over and above the Para Teachers who were appointed in the year, 2003 and onwards. The petitioners are seeking their regularization, however, nothing has been brought before us that under which Rules or Scheme, they are entitled for regularization. Petitioners have prayed for restraining the State Government not to regularize the Para Teachers, whereas, no Para Teachers are before us, as the petitioners have not made even a single Para Teacher as party/respondent, even in the representative capacity even for the group of Para Teachers. As such a writ under Article 226 cannot be issued against a person who is not impleaded as an opposite party to the proceedings, in view of decision of Supreme Court in State of Rajasthan and Another Vs. H.V. Hotels Pvt. Ltd. and Another, and Superstar Education Society Vs. Stats of Maharashtra and Others, . No direction can also be issued against such parties who are not before us as none other than those who are parties would be bound by any order made in the present writ petition, in view of the decision of Supreme Court in Rasbihari Vs. State of Orissa, AIR 1969 SCC 414 , Cumbum Roadways (P) Ltd. Vs. Somu Transport (P) Ltd. and Others, . No order adversely affecting any person can be passed behind his back, in view of the decision of Supreme Court in Prabodh Verma & Ors. Vs. State of U.P. & Ors., AIR 1985, SC 167; Ishwar Singh & Ors. Vs. Kuldeep Singh & Ors., 1955 (Supp) 1, SCC 179 ; Bhagwanti and Ors. v. Subordinate Services Selection Board, Haryana and Anr., 1995 Supp (2) SCC 663,; Central Bank of India Vs. S. Satyam and others, ; J. Jose Dhanapaul Vs. S. Thomas and Others, ; Arun Tewari & Ors. Vs. Zila Mansavi Shikshak Sangh & Ors., AIR 1998 SC 331 ; Azhar Hasan and Others Vs. Distt. Judge, Saharanpur and Others, ; Ram Swarup and Others Vs. S.N. Maira and Others, ; Shri L. Chandrakishore Singh Vs. State of Manipur and Others, ; Mohd. Riazul Usman Gani and Others Vs. District and Sessions Judge, Nagpur and Others, ; Nirmal Anand Vs. Advent Corporation (P) Ltd. & Ors., AIR 2002 SC 2090 ; M.P. Rajya Sahkari Bank Maryadi Vs. Indian Coffee Workers" Co-operative Society Ltd. and Others, ; Ramrao and Others Vs. All India Backward Class Bank Employees Welfare Association and Others, ; and Tridip Kumar Dingal and Others Vs. State of West Bengal and Others, .

6. Since the petitioners have not made Para Teachers as party-respondent, as such, no relief can be granted to them against Para Teachers. During the course of hearing, the attention of learned counsel for the petitioners was invited by this Court, several times regarding the fact that as to why the Para Teachers, against whom relief has been sought, has not been made party. Neither any request was made by and on behalf of the petitioners nor any application was moved to implead them or even no one of the Para Teachers as party-respondent in representative capacity was made, whereas, Para Teachers are necessary parties. As such, in view of the decision of Supreme Court in *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, as well as *V.P. Shrivastava and Others Vs. State of M.P. and Others*, . The petitioners are not entitled to relief as prayed for.

7. Nothing has been brought before this Court that how the legal rights of petitioners have been threatened or their legal rights regarding regularization is in immediate peril, whereas, the petitioners have no legal right of being regularization at present, as such, decision of Supreme Court in *K.K. Kochunni and Bengal Immunity Co. Ltd. (supra)* are not helpful to the petitioners.

8. In our considered view, nothing has been brought before this Court that the petitioners are in all respects similarly situated and equal to Para Teachers. For the sake of arguments, if, it is presumed that in view of decision of this Court in *Dhananjay Saini (supra)*, on the point of similarity of emoluments of Contract Teachers and Para Teachers, the petitioners being Contractual Teachers are similarly situated to Para Teachers, in that case also no instance has been highlighted by the petitioners as to how they are being discriminated. Article 14 applies where there is discrimination amongst equals. Unequals cannot claim equality as Supreme Court in *Madhu Kishwar and others Vs. State of Bihar and others*, has observed that every discrimination does not necessarily fall within the ambit of Article 14 of the Constitution. In our considered view, discrimination means an unjust, unfair action in favour of one and against another.

9. Keeping in view the prayer of the petitioners the present writ petition is futile writ, and the Courts are not to issue the futile orders or writs, wherein the petitioner is not likely to get any relief, in view of the decision in *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, and *S.L. Kapoor Vs. Jagmohan and Others*, .

10. Analyzing the present petition, it appears that the same is also not maintainable, as the petitioners cannot said to be the persons aggrieved. A person, who suffers from legal injury, only can challenge the act/action/order etc. Writ petition under Article 226 of the Constitution is maintainable for enforcing a statutory or legal right or duty on the part of the authorities. Therefore, there must be a judicially enforceable right for the enforcement of which the writ jurisdiction can be resorted to. The Court can enforce the performance of a statutory duty by public bodies through its writ jurisdiction at the behest of a person, provided such person satisfies the Court that he has a legal right to insist on such performance. The existence of the said right is the

condition precedent to invoke the writ jurisdiction, in view of decisions of Supreme Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, ; *Mani Subrat Jain and Others Vs. State of Haryana and Others*, ; *State of Kerala Vs. Smt. A. Lakshmikutty and others*, ; *Rani Laxmibai Kshetriya Vs. Chand Behari Kapoor and Others*, ; *State of Kerala and Others Vs. K.G. Madhavan Pillai and Others*, ; *Rajendra Singh Vs. State of Madhya Pradesh and others*, ; *Utkal University Vs. Dr. Nrusingha Charan Sarangi and Others*, ; *Laxminarayan R. Bhattad and Others Vs. State of Maharashtra and Another*, ; and *Tamilnad Mercantile Bank Share Holders Welfare Association Vs. S.C. Sekar and Others*, .

11. In *Thammanna Vs. K. Veera Reddy and Others*, , Hon"ble Supreme Court has observed that although the meaning of expression "person aggrieved" may vary according to the context of the Statute and facts of the case, nevertheless, normally, a person aggrieved must be a man who has suffered a legal grievance; a man against whom a decision has been pronounced which has wrongly deprived him of something or wrongfully refused something, or wrongfully affected his title to someone. In *Dr. Duryodhan Sahu and Others Etc. Etc. Vs. Jitendra Kumar Mishra and Others Etc. Etc.*, , Hon"ble Supreme Court rejected the claim of a stranger to maintain a writ petition even in Public Interest. In *M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others*, , Hon"ble Supreme Court considered the matter at length and placed reliance upon a large number of its earlier judgments including the *Chairman, Railway Board & Ors. Vs. Chandrima Das (Mrs.) & Ors.*, AIR 2000 SC 998; and has observed that the Court must examine the issue of locus standi from all angles and the petitioner should be asked to disclose as what is the legal injury suffered by him.

The "person aggrieved" means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. "Person aggrieved" means a person who is injured or he is adversely affected in a legal sense, in view of decision of Hon"ble Supreme Court in *K.N. Lakshminarasimaiah Vs. Secretary, Mysore S.T.A.T.*, (1966) 2 Mys.L.J. 199.

Whether a person is injured in strict legal sense, must be determined by the nature of the injury considering the facts and circumstances involving in each case. A fanciful or sentimental grievance may not be sufficient to confer a standi to sue upon the individual. There must be injuria or a legal grievance, as the law can appreciate and not a "stat pro ratione valuntas reasons.

12. In our considered view, in view of the above observations of Hon"ble Supreme Court, the petitioners have failed to convince this Court that any of their legal or fundamental rights have been infringed. Therefore, in facts and circumstances, the Court may not invoke its discretionary jurisdiction under Article 226 of the Constitution to entertain the present writ petition, if the petitioner fails to highlight that any of his legal or fundamental right has been infringed. The purpose of the writ Court is not only to protect a person from

being subjected for violation of law but also to advance justice and not to thwart it. The Constitution does not place any fetter on the power of the extraordinary jurisdiction but leaves it to the discretion of the Court and in exercise of discretionary powers, the Court has to balance the interest of petitioners, keeping in view the interest of justice and Para Teachers against whom the relief is being sought behind their back. Therefore, in present case, this Court is not invoking the writ jurisdiction in view of the observations made by Supreme Court from time to time in *Champalal Binani Vs. The Commissioner of Income Tax, West Bengal and Others*, ; *Ramniklal N. Bhutta Vs. State of Maharashtra*, (1977) 1 SCC 134 ; *Chimajirao Kanhojirao Shirke and Another Vs. Oriental Fire and General Insurance Co. Ltd.*, ; *Shama Prashant Raje Vs. Ganpatrao and Others*, ; *Life Insurance Corporation of India and Others Vs. Smt. Asha Goel and Another*, ; *Roshan Deen Vs. Preeti Lal*, ; *S.D.S. Shipping Pvt. Ltd. Vs. Jay Container Services Co. Pvt. Ltd. and Others*, and *Chandra Singh Vs. State of Rajasthan and Another*, .

13. For the foregoing reasons, the writ petition is not maintainable, as such, the same is dismissed. The petition, so also the pending application(s), if any, stand disposed of.