

(2011) 05 SHI CK 0201
In the High Court Of Himachal Pradesh
Case No : CWP No. 3308 of 2010

Anju Devi and Others

APPELLANT

Vs

Central Institute of Buddhist Studies and Others

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Citation : (2011) 05 SHI CK 0201

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Judgement

Deepak Gupta, J.—This petition was originally filed by nine Petitioners, out of which six have withdrawn from the case, therefore, the petition survives only on behalf of three Petitioners.

2. Briefly stated the facts of the case are that the Petitioners herein alongwith some other employees were working in the Baudh Darshan Sanskrit Vidyalaya, Keylong. This school was taken over by the Central Institute of Buddhist Studies, Leh on certain terms and conditions. The main condition, with which we are concerned, is condition No. 4, which reads as follows:

4. The existing academic and administrative staff will be appointed on contract basis initially for a period of six months with a fixed consolidated amount and their regular appointment will depend on their academic qualification and other experience as per Bye-laws of CIBS, Leh. It is further subject to performance in the interview likely to conduct shortly.

3. The Petitioners, who were the employees of the taken over school, contended that in terms of Clause 4 their services had to be taken over on contract basis for a period of six months and thereafter they were to be regularly appointed and that since the Petitioners are eligible they must be granted regular appointment. The stand of the Respondents is that according to the aforesaid clause the Petitioners were only to be offered contractual appointment for a period of six months and thereafter they were required to face a regular selection process.

4. I have heard Shri Y.K. Chandel, learned Counsel for the Petitioners and Shri Tashi Rabstan, learned Counsel for Respondent No. 1.

5. Shri Y.K. Chandel, learned Counsel for the Petitioners urges that once the college was taken over then the authority taking over the college must take over the services of the employees and the employees cannot be compelled to face another interview. On the other hand Shri Tashi Rabstan, learned Counsel for Respondent No. 1 contends that the Petitioners were employees of a small school, which they had joined on a fixed salary of Rs. 3,000/- per month when the student strength was very low. After taking over the school the number of students has increased dramatically and the salary has increased from Rs. 3,000/- to Rs. 17,000/- per month and therefore, the Petitioners must face the regular selection process.

6. The only question is with regard to the interpretation of clause - 4 quoted here-in-above.

7. In *State of Orissa and Another Vs. N.N. Swamy and Others*, , the Apex Court held as follows:

16. ..There may be no difficulty in accepting the position that Government can screen the teachers at the time of fresh appointment in Government service after taking over any institution from private management. The educational qualifications and teaching experience which may be insisted upon may be appropriately stringent having regard to the quality of education which Government intends to impart in the college after taking over the same from the private management. If the quondam private employees in the College did not fulfil the qualifications, experience and other requisite conditions, they may not be eligible for appointment since Government may not undertake to take over all the employees by maintaining the billabong of a status quo ante.

17. When a fairly well-recognised institution, run for more than a century, is completely taken over by the Government for management, it is not merely taking over the land and buildings, tables and chairs. It has to tackle, at the same time, a human problem, that is to say, the fate of the teachers and the staff serving that institution.

8. I am of the view that clause-4 clearly provides that after taking over the school the appointment of the Petitioners was to be for a period of six months on a consolidated salary. Thereafter, their case for regular appointment was to be considered. In case, the employees who were working at the time of taking over the school fulfilled all essential qualifications as per the bye laws of the Central Institute of Buddhist Studies, Leh then these persons were to be subjected to interviews and in case not found unsuitable they should have been regularized. The clause is worded in such a way that it is apparent that it did not envisage the holding a fresh open interviews. However, that does not mean that the Petitioners are to be automatically regularized. First of all the Respondents have to be satisfied that the Petitioners fulfill all requisite qualifications. In case the

Petitioners fulfill all the requisite qualifications they alone are to be called for the interviews and in case they successfully passed the interview then they would have to be regularized. However, if they are found unsuitable in the interviews then fresh selection from the open market can be held and the Petitioners can also take part in such process. Therefore, the petition is allowed to the limited extent and the Respondents are directed to consider the case of the Petitioners in light of the aforesaid observations. If the Petitioners fulfill all the academic qualifications then they alone may be called for interviews. In case, the Petitioners do not fulfill the requisite qualifications then they can have no claim to the post and need not be called for interviews. It is for the interview board to decide whether the persons called for interviews have passed the same or not.

9. The petition is disposed of in the aforesaid terms.

No order as to costs.