

(2010) 12 SHI CK 0147
In the High Court Of Himachal Pradesh
Case No : CWP No. 7653 of 2010

Balbir Singh

APPELLANT

Vs

The State of H.P. and Another

RESPONDENT

Date of Decision : 06-12-2010

Acts Referred:

Citation : (2010) 12 SHI CK 0147

Hon'ble Judges : Kurian Joseph, C.J;V.K. Sharma, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The writ petition is filed with the following prayers:

(i) That writ in the nature of certiorari may very kindly be issued and the impugned amendment to the effect of passing +2 examination under the Science stream may very kindly be quashed and set aside being ultra vires to the Constitution of India.

(ii) That writ in the nature of mandamus may very kindly be issued and the Respondents may very kindly be directed to relax the condition of passing +2 examination in the Science stream, in the alternative, in the case of the Petitioner.

2. It is seen that this Court has considered similar issue in the matter of Arts and Crafts teachers leading to the judgment dated 29.11.2010, in CWP No. 7423 of 2010. The relevant text of the judgment reads as follows:

The Petitioners are aggrieved since they are made ineligible to apply for the posts of Arts & Craft Teacher in view of the recent amendment introduced in the Himachal Pradesh Elementary Education Department/Arts and Craft Teacher (Class III Non-Gazetted) Recruitment and Promotion Rules, 2010. As per the said amendment, it is now prescribed that the applicant for the post should have minimum of 50% marks in the 10+2 examination. It is the contention of the Petitioners that either when they joined the Course or at the time when they

passed the Diploma Course in Arts & Craft and also having undergone the study of two years, there was no such requirement. It is also submitted that as per the pre-amended Rules thousands of teachers have been recruited in Himachal Pradesh and they are continuing in service as such. Still further it is submitted that even if such amendment is introduced, it should apply only in respect of the vacancies which arose after the amendment. Yet another submission is that hundreds of vacancies which arose in the past years have been accumulated and recruitment presently sought to be made is in respect of those vacancies only. In other words, had the Respondents taken timely action to make the recruitment every year in respect of the vacancies available in those years, the Petitioners could have applied and they could have been considered for appointment. Therefore, it is submitted that in any case, the effect of amendment regarding 50% marks in 10+2 should apply only in respect of the vacancies which arise after the amendment, which came into effect only w.e.f. 17.5.2010.

2. Learned Counsel for the Petitioners placed reliance mainly on three decisions of the Supreme Court.

3. One in Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others, wherein at para 9, it is stated as follows:

9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the Petitioners in the two representation petitions who ranked higher than Respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules.

4. The second decision is in A. A. Manoharan and Others Vs. Union of India (UOI) and Others, wherein at para 25, it is held as follows:

25. furthermore, the Regulations have been amended only with effect from 11.8.2004. It would have a prospective effect. It cannot be applied retrospectively. Any vacancy which has arisen prior to coming into force of the said amended Regulations must be filled up in terms of the law as was existing prior thereto. State of Rajasthan Vs. R. Dayal and Others,

5. The third decision is in Arjun Singh Rathore and Others Vs. B.N. Chaturvedi and Others, wherein at paras 5 and 6, it is held as follows:

5. Mr. Calla, the learned Senior Counsel for the Appellants has argued that the matter was fully covered by the judgment of this Court in *State of Rajasthan Vs. R. Dayal and Others*, wherein it had been held that the vacancies to be filled by promotion were to be filled under the rules which were in operation on the date when the vacancies had occurred. Relying on and referring to an earlier judgment in *Y.V. Rangaiah and Others Vs. J. Sreenivasa Rao and Others*, it was opined as under: (SCC p. 422 para 8).

8. ... This Court has specifically laid (sic) that the vacancies which occurred prior to the amendment of the Rules would be governed by the original Rules and not by the amended Rules. Accordingly, this Court had held that the posts which fell vacant prior to the amendment of the Rules would be governed by the original Rules and not the amended Rules. As a necessary corollary, the vacancies that arose subsequent to the amendment of the Rules are required to be filled in accordance with the law existing as on the date when the vacancies arose.

6. The above legal position has not been seriously disputed by the learned Counsel for Respondents 6 and 7. We are therefore of the opinion that the vacancies which had occurred prior to the enforcement of the Rules of 1998 had to be filled in under the Rules of 1988 and as per the procedure laid down therein. We are therefore of the opinion that the judgment of the learned Single Judge needs to be restored. We order accordingly.

6. Having heard the learned Counsel on both sides, we are of the view that the Petitioners be granted an opportunity to approach the Government, so that the Government will be in a position to advert to these aspects before finalizing the selection process. In the above circumstances, this writ petition is disposed of as follows:

7. In the event of the Petitioners filing appropriate representation(s) before the first Respondent within three days from today, the same shall be considered by the first Respondent, advertent to the submissions made in the representation(s) and also the legal position as pointed out in the representation(s). We are informed that the last date for submission of the applications as per the present schedule is 3rd December, 2010 and batch-wise interviews are starting from 23rd November, 2010. Therefore, it is only appropriate that the Government takes a decision before the said date and even before finalizing batch-wise appointments also. In the unlikely event of the Government requiring more time, we make it clear that appropriate steps will also be taken to safeguard the interest of the Petitioners herein in case the Government takes a decision in their favour so that they are also in a position to participate in the present selection process.

3. In case the Petitioner is similarly situated as the Petitioners referred to in the judgment, as above, similar treatment shall also be extended to the Petitioner, herein, as extended to the Petitioners in CWP No. 7423 of 2010, titled *Puran Chand Chauhan and Ors. v. State of H.P. and Anr.* CWP No. 7423 of 2010.

4. With these observations, the petition stands disposed of, so also the pending

application(s), if any.