

(2021) 10 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No.7906 Of 2019

Bhadur Singh And Others

APPELLANT

Vs

State Of H.P And Others

RESPONDENT

Date of Decision : 08-10-2021

Acts Referred:

Citation : (2021) 10 SHI CK 0019

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Prakash Sharma, Raju Ram Rahi

Final Decision : Disposed Of

Judgement

Vivek Singh Thakur, J

1. Petitioners herein have approached this Court seeking (a) directions to respondents to frame a policy for conferring contractual status to teachers working through School Management Committee (in short 'SMC') under Local Fund/Student Welfare Fund basis in the Government Schools and for their regularization in due course of time; (b) to declare the petitioners entitled to continue in service from due date i.e. 1.9.2010 and 22.11.2011 respectively with all consequential benefits; (c) direction to release the grant-in-aid in favour of petitioners from due dates i.e. 1.9.2010 and 22.11.2011 respectively along with interest on market rate; and also, (d) in alternative, direction to treat the petitioners in continuous service in view of notification dated 17.7.2012 extended from time to time with all consequential benefits.

2 However, learned counsel for petitioners has restricted the claim of petitioners in present petition, only for seeking direction to respondents to release the grant-in-aid in favour of petitioners from the due dates i.e. 1.9.2010 and 22.11.2011 and alternatively, to release the grant-in-aid w.e.f. 16.8.2014, the date of notification extending the applicability of SMC Policy to all schools including the school of petitioners.

3 Therefore, without adjudicating other prayers of petitioners, leaving those issues open to be decided in appropriate petition, if so preferred, in the present petition claim of petitioners for their entitlement to grant-in-aid is being adjudicated.

4 Undisputed facts in present petition are that for vacancy of posts of Physical Education Teacher (PET) and Drawing Master (DM) in Government Middle School, Devthal under complex GSSS Nainidhar, Tehsil Shillai, District Sirmaur HP, petitioners were engaged by respondent No.4, Headmaster, Government Middle School, Devthal as PET and DM on SMC basis w.e.f. 1.9.2010 and 22.11.2011 respectively and since then they are continuing as such.

5 Claim of petitioners is that they are fully eligible to be appointed as PET and DM respectively fulfilling essential qualification prescribed under Recruitment and Promotion Rules (R&P Rules) to these posts and after their appointment, respondents/State has formulated a Policy dated 17.7.2012 with respect to grant-in-aid to teachers appointed on SMC basis for tribal and difficult areas and said Policy as notified vide communication dated 20th September, 2014 was extended to all schools which were upgraded during academic sessions 2013 and 2014 irrespective of area in which they fell and to all those sanctioned posts of teaching cadre which were vacant since more than two years from the date of issue of notification dated 16.8.2014. Resultantly, the area of GMS Devthal also came in the area for which Policy to engage teacher(s) through SMC was extended.

6 The respondents/State have filed reply stating therein that during the course of appointment of petitioners by concerned PTA (now named as SMC) neither interview was conducted nor post in question was advertised in order to provide equal opportunities to all eligible and curious candidates to apply for the post in reference and further that petitioners were not engaged as per provisions contained in SMC Policy and, therefore, they are not entitled for grant-in-aid from respondents/State, and thus, petition deserves to be dismissed.

7 Learned counsel for petitioners has also contended that present case, on the issue being agitated, is squarely covered by judgment passed by Coordinate Bench of this Court in CWP No. 2467 of 2015, titled as Villam Singh vs. State of H.P. and others, wherein direction was issued to respondents to release grant-in-aid to petitioner therein who was similarly situated to present petitioners and in the said case, not only LPA No. 53 of 2018, preferred by respondents department, was dismissed by the Division Bench of this Court vide judgment dated 26.11.2018, but also SLP (c) No. 19103 of 2019 preferred by respondents' department was dismissed by the Supreme Court vide judgment dated 9.8.2019.

8 In Villam Singh's case, Villam Singh was appointed as Lecturer (Political Science) under SMC policy in the school concerned. He was otherwise eligible for appointment as Lecturer fulfilling the essential qualification prescribed in R&P Rules to such post. The SMC Policy was formulated by State on 17.7.2012 and it

was made applicable to all schools including the school wherein Villam Singh was appointed vide notification dated 16.8.2014.

9 Taking into consideration aforesaid facts in Villam Singh's case, a Coordinate Bench of this Court had observed that only reason to deny the petitioner's grant-in-aid was that he had been engaged prior to the notification dated 16.8.2014 read with SMC Policy dated 17.7.2012 and, therefore, he was not entitled to claim the benefit under SMC Policy. It was observed by the Court that it was not the case of respondents department that petitioner's appointment was in any manner illegal or contrary to law or that he was not qualified.

10 The facts of present case are similar. Petitioners were appointed prior to notification dated 16.8.2014 whereas SMC policy dated 17.7.2012 was made applicable to school of petitioners vide notification dated 16.8.2014.

11 In Villam Singh's case, it was concluded by the Coordinate Bench of this Court that action of respondent in not paying the grant-in-aid to petitioner w.e.f. 16.8.2014 was illegal and arbitrary and, therefore, same could not be countenanced or sustained and thus petition was allowed with direction to respondent-State to release grant-in-aid in favour of petitioner in accordance with Rules w.e.f. 20th September, 2014.

12 I am in agreement with Coordinate Bench and present case is squarely covered by judgment of the Coordinate Bench passed in Villam Singh's case, referred supra. Therefore, conclude that in present case also, action of respondents in not paying grant-in-aid to petitioners w.e.f. 16.8.2014 is illegal and arbitrary and not sustainable

13 In view of above, respondents are directed to release grant-in-aid in favour of petitioners in accordance with relevant Rules w.e.f. 16.8.2014 except for their appointment prior to issuance and extension of SMC policy in their school, petitioners are otherwise eligible for grant-in-aid. Arrears of grant-in-aid of petitioners shall be paid as expeditiously as possible preferably before 31st December, 2021.

Petition stands disposed of, as aforesaid including all pending miscellaneous application (s), if any.