

(2023) 12 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 9711 Of 2023

Bishamber Dutt Bhardwaj

APPELLANT

Vs

State Of Himachal Pradesh And Another

RESPONDENT

Date of Decision : 04-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2023) 12 SHI CK 0011

Hon'ble Judges : Ranjan Sharma, J

Bench : Single Bench

Advocate : Daleep Singh Kaith, Rajan Kahol

Final Decision : Disposed Of

Judgement

Ranjan Sharma, J

1. Notice. Mr. Rajan Kahol, learned Additional Advocate General, appears and waives service of notice on behalf of respondents.

2. With the consent of the parties, the instant writ petition is taken up for disposal, at this stage, in view of the orders intended to be passed herein.

3. The petitioner, who was appointed as Lecturer (Commerce) (School Cadre) initially through Parents Teachers Association (PTA), under the H.P. Grant-in-Aid to PTA Rules, 2006, and as per the Government Policy was later brought on Government Contract; and was regularized on same post belatedly, has come up before this Court, seeking the following relief:-

“(i) Issue a writ of mandamus for directing the respondents to strictly implement policy decision dated 11.05.2018 and judgment dated 31.08.2022 passed in CWP No.342/2021 to regularize the services of the petitioner from due date or w.e.f. the date of their juniors/ contract teachers have been regularized i.e. 01.04.2018 alongwith all the consequential benefits for all intent and purposes.

(ii) Issue an appropriate writ, order or direction to the Respondents to fix the pay

of the Petitioner accordingly and to calculate & pay arrears of salary consequent upon regularization of service from due date alongwith seniority etc. in service.”

4. Case of the petitioner as submitted by Mr. Daleep Singh Kaith, learned counsel is, that being eligible, the petitioner was initially appointed and joined as Lecturer (Commerce) (School Cadre) on 24.09.2007 against sanctioned post under respondent No.2-Director, Elementary Education, Himachal Pradesh, in accordance with his eligibility under the Parents Teacher Association (Grant-in-Aid) Rules, 2006. Learned counsel further submits that as per the Government decision dated 16.08.2013, the teachers including the petitioner, who was appointed through PTA and had completed seven years of such services were brought on government contract, in the month of January, 2015.

5. He also submits that while working as Teachers, on contract basis, the State Government further took a decision on 11.05.2018, for regularizing the services of PTA contractual teachers on completion of three years of contractual service w.e.f. 01.04.2018 and though the respondents have granted the regularization to many other similarly placed and even junior incumbents from due date i.e. w.e.f. 01.04.2018, but the respondents were granted the benefit of regularization to the petitioner on 25.08.2020 belatedly has resulting in treating the equals as unequal which is violative of Articles 14 and 16 of the Constitution of India.

6. The learned counsel for the petitioner states that the matter in issue, as to whether the contractual PTA-incumbents were to be granted regularization on completion of three years of contractual service, in terms of the Government decision dated 11.05.2018 w.e.f. 01.04.2018, the date on completion of three years of contractual service as PTA, stands adjudicated by the Division Bench of this Court in CWP No.342 of 2021, titled as Yashwant Singh and others Versus The State of Himachal Pradesh and another alongwith connected matters, decided on 31.08.2022.

7. The learned counsel for the petitioner further submits that the SLP i.e. Special Leave to Appeal (C) No.6966 of 2023, titled as State of Himachal Pradesh Versus Yashwant Singh & Ors., filed by State Authorities stands dismissed by the Hon'ble Apex Court on 24.04.2023; and the judgment in the case of Yashwant Singh (supra), also stands implemented by the respondents.

8. In the backdrop of the facts mentioned in Paras-1 to 6 above, the learned counsel for the petitioner submits that once the respondents have granted the regularization to the teachers from the date of completion of three years of contractual service w.e.f. 01.04.2018 to many similarly placed incumbents, including juniors then, the denial of similar benefit of regularization from the date of completion of three years of contractual service to the petitioner w.e.f. 01.04.2018 [instead of granting him regularization w.e.f. 25.08.2020], is illegal, arbitrary, discriminatory and also violative of Articles 14 and 16 of the Constitution of India.

9. The denial of regularization to the petitioner w.e.f. 25.08.2020 has resulted in

depriving the petitioner of the benefits of higher pay and higher fixation w.e.f. 01.04.2018 in the unrevised scale and now in the revised scale after issuance of the HPCS (Revised Pay) Rules on 03.01.2023 and this has also resulted in denying the benefit of eligibility and grant of ACP on completion of four years of service from an earlier date i.e. w.e.f. 01.04.2022 and denial thereof is a recurring loss, every month, till day.

10. Per contra, Mr. Rajan Kahol, learned Additional Advocate General, at this stage, submits that the delay in granting regularization to the petitioner from due date was in view of the pendency of litigation in CWP No.6916 of 2011, titled as Pankaj Kumar Versus State of Himachal Pradesh & others, before the Hon'ble Apex Court, which was decided on 17.04.2020.

11. Be that as it may, in the peculiar facts and circumstances and the request, so made by the learned counsel, on instructions, prays for permission to make a representation to respondent No.2-Director, Elementary Education, Himachal Pradesh. The prayer being innocuous, is not opposed by the State Counsel also and needs to be granted.

12. Accordingly, this Court permits the petitioner to make a representation to respondent No.2-Director, Elementary Education, Himachal Pradesh, within three weeks from today; with further directions to the aforesaid respondent to consider/examine the case of the petitioner in light of the judgment, passed by this Court in the case of Yashwant Singh (supra); against which the SLP filed by State Authorities-Respondents stands dismissed and the judgment has been implemented in case of many others and even juniors, and then to pass appropriate orders without discriminating the petitioner, in accordance with law, within six weeks thereafter and not later than 31.01.2024.

13. Needless to say that, this Court has not adverted to the rival contentions and merits of the matter and all Questions of facts and law are left open.

In aforesaid terms, the writ petition as well as the pending miscellaneous application(s), if any, shall also stand disposed of, accordingly.