

(2013) 06 SHI CK 0025

In the High Court Of Himachal Pradesh

Case No : LPA No. 178 of 2010 a/w CWP No. 649 of 2011 and CWP No. 2198 of 2012-J

Chief Executive Officer

APPELLANT

Vs

Rakesh Kashyap and Others
 Kumari Surekha Sharma
and Another Vs Secretary Education and Another

Shakti Prasad Bhardwaj Vs State of H.P. and Others

RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:

Citation : (2013) 06 SHI CK 0025

Hon'ble Judges : A.M. Khanwilkar, C.J.;Kuldip Singh, J

Bench : Division Bench

Advocate : Tara Singh Chauhan in LPA No. 178 of 2010 and Mr. S.D. Gill in CWP No. 649 of 2011, CWP Nos. 2198 and 2199 of 2012-J and 9509 of 2012-A, for the Appellant; S.D. Gill, Advocate, for respondents No. 1 and 2, Mr. Shrawan Dogra, Advocate General, with J.K. Verma, D.A.G., for respondent No. 3, Ms. Sunita Sharma, Advocate, vice Mr. G.D. Sharma, Advocate, for respondent No. 4, Mr. Sandeep Sharma, Assistant Solicitor General of India, for respondent No. 5, Mr. S.C. Sharma, Advocate, as Conciliator in LPA No. 178 of 2010, Mr. Shrawan Dogra, Advocate General, with J.K. Verma, D.A.G., for respondent No. 1, Mr. Tara Singh Chauhan, Advocate, in CWP No. 649 of 2011, Mr. Shrawan Dogra, Advocate General, with J.K. Verma, D.A.G., for respondent No. 1, Mr. R.K. Gautam , with Mr. Vikrant Chandel, Advocate, for respondent No. 2, Mr. Sandeep Sharma, Assistant Solicitor General of India, for respondents No. 3 and 4 in CWP No. 2198 of 2012-J, Mr. Shrawan Dogra, Advocate General, with J.K. Verma, D.A.G., for respondent No. 1, Mr. R.K. Gautam , with Mr. Vikrant Chandel, Advocate, for respondent No. 2, Mr. Sandeep Sharma, Assistant Solicitor General of India, for respondents No. 3 and 4 in CWP No. 2199 of 2012-J, Mr. Shrawan Dogra, Advocate General, with J.K. Verma, D.A.G., for respondent No. 1, Mr. R.K. Gautam , with Mr. Vikrant Chandel, Advocate and Mr. Sandeep Sharma, Assistant Solicitor General of India, for respondents No. 3 and 4 in CWP No. 9509 of 2012-A, for the Respondent

Final Decision : Disposed Off

Judgement

A.M. Khanwilkar, C.J.—We have heard all these matters together as the same involve similar issues. The leading appeal is directed against the judgment of the learned Single Judge of this Court, dated 14th July, 2010, in CWP No. 486 of 2009. The learned Single Judge allowed the writ petition filed by the respondents and issued following directions:

In view of the abovestated position, writ petition is allowed and respondent No. 2 is directed to continue with the services of the petitioners, until teachers on regular basis, that is to say not on contract basis, are appointed in their place. This order, however, does not mean that the petitioners cannot be removed or they will be entitled for renewal of contract, even if they commit any act of misconduct or their performance is not satisfactory.

2. Counsel for the Union of India points out that the Department in respect of the School at Kasauli has since decided to create five regular posts, which will have to be filled up in accordance with law.

3. In view of this statement, nothing more requires to be done in the leading appeal, except to observe that the appellant would be free to proceed with the selection process for filling up the newly created regular posts in Kasauli School. So long as the selection process is not completed and appointment orders issued to fill up the regular posts, the appellant would be bound by the direction contained in the impugned decision extracted hitherto.

4. On this basis, the appeal is disposed of.

5. As regards the companion writ petitions, the same pertain to Schools other than Kasauli School. The grievance of the petitioner is identical to that of the contract teachers, who were petitioners in CWP No. 486 of 2009. Therefore, we are inclined to dispose of these writ petitions on the same terms as directed by the learned Single Judge vide order, dated 14th July, 2010, in particular, para 5 thereof.

6. Counsel for the petitioners would submit that even in respect of the Schools referred to in the respective writ petitions, the department must create regular posts and make appointment after following selection process in accordance with law. That is a matter to be considered by the department.

7. We are not examining the correctness of the submission made by the learned Assistant Solicitor General of India that insofar as Schools referred to in the writ petitions, the possibility of creating regular posts may be impractical and perhaps not possible. As aforesaid, it is for the department to take a call on that issue, but so long as the said Schools continue to appoint teachers on contract basis, the direction contained in the order, dated 14th July, 2010, in CWP No. 486 of 2009, will squarely apply even to these cases.

8. Counsel for the petitioners submits that as per the contract executed between the parties, while filling up the regular vacancies, the petitioners, who have been appointed on contract basis, can also be considered, subject to eligibility. It is not

necessary to dilate on this aspect any further having observed in the earlier part of this judgment that the regular posts to be created in the stated Schools, if any, will have to be filled in accordance with law. The writ petitions are disposed of accordingly.