

(2010) 10 SHI CK 0296
In the High Court Of Himachal Pradesh
Case No : C.W.P. (T) No. 7011 of 2008

District Contract Teachers Primary Association	APPELLANT
Vs	
State of H.P. and Others	RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Citation : (2010) 10 SHI CK 0296

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Karol, J.—In this petition petitioner has prayed for the following reliefs:

- (i) That the impugned order dated 24.8.2000 (Annexure A-9) may be quashed and set aside.
- (ii) That the Contract JBT teachers working in Distt. Sirmour may be held entitled for the payment of their salary in the basic pay scale of JBT teacher i.e. 1200-2100 with Dearness Allowance revised from time to time.
- (iii) That the respondent No. 3 may be directed to continue paying the salary of Contract JBT teaches with Dearness Allowance.
- (iv) That the respondent No. 3 may be directed not to effect any recovery from the salary of the contract JBT teachers on account of the payment of Dearness Allowance paid to them.
- (v) That the respondents may be directed to produce the entire record pertaining to the case for the perusal of this Hon"ble Tribunal.
- (vi) Any other order or direction deem just and proper may also be passed in the interest of justice and fair play.

2. Facts are not in dispute. Vide order dated 31.8.1995 (Annexure A-2) State of Himachal Pradesh conveyed its decision to regularise C & V teachers against the

post of JBT/LTs teachers in the State. Relevant portion of the letter is extracted herein below:

(1) As per the decision conveyed earlier vide this department letter quoted above, the C & V teachers can be regularised against their respective posts. At present there are about 1227 C & V teachers working against the posts of JBTs and about 105 Shashtries (C & V) working against the posts of Language Teachers. There are no vacancies in the cadre of C&V against which such number of teachers can be regularised. Now it has been decided to regularize the services of the C & V teachers serving as JBTs & Language Teachers under the provisions of the Education Code. The C & V teachers who have put in 10 years service as JBTs/LTs in the Education Department shall be issued special JBT/LT certificates. On the basis of the certificates, the C&V teachers shall possess the professional qualifications which are essential for being appointed as JBTs/LTs. These C & V teachers who are serving as JBTs/LTs but do not fulfill the condition of 10 years service shall not be removed from service but they shall be issued the special certificate on fulfillment...conditions. The regularisation of C & V teachers shall be subject to their giving an option of their willingness to become JBTs/LTs. Such C & V teachers shall be placed at the initial of their scale on regularisation.

The condition of 35 years age for issuing special certificate is waived off so that the teachers less than 35 years can be posted in remote areas.

2. At present trained JBT teachers are not available in the State. There is a requirement of 4200 Primary Teachers for 2100 New Primary Schools being opened in the next three years. Besides this approximately 600 to 700 Primary School teachers retire every year.

A large number of trained B.Ed. teachers and C & V teachers are available within the State in all districts. So it has been decided that these teachers (B.Ed., Shastries, ... illegible ... and Drawing Masters) shall be appointed on contract basis against the posts of JBTs. For this separate district-wise panels of B.Ed. and C & V (except craft/music teachers) shall be prepared by inviting the names from employment exchanges. 60% appointments shall be made from amongst the B.Ed. teachers and 40% from amongst the C & V categories (except craft/music teachers). The merit will be determined on session-wise basis. Within a particular session, the merit will be on the basis of marks obtained in the professional qualifications. These teachers shall be offered appointment on contract basis for two years initially and thereafter in case the department required the services of these teachers and they are also willing to serve, the contract will be extended for further period but extension would be given for one year at a time. In case these teachers are selected against their own posts, they will be...illegible...to join the posts. During contractual appointments, they will be paid salary at the minimum of JBT scale with full allowances admissible from time to time but no increments shall be given.

3. You are, therefore, requested to take necessary steps in this behalf so that the decision of the Govt. could be implemented in letter and spirit. The implementation report may also be sent to this department.

(Emphasis supplied)

3. This decision was communicated by the Director of Primary Education, Himachal Pradesh to all the District Primary Education Officers, H.P. in terms of letter dated 12.9.1995 (Annexure A-3).

4. It is not in dispute that petitioners were offered appointment as JBT teachers on contractual basis in terms of office order (Annexure A-5).

5. From the perusal of all these annexures it is evidently clear that such of those persons who were appointed pursuant to the policy decision (letter dated 31.8.1995) were entitled to payment of honorarium at the minimum of JBT scale "with full allowances admissible from time to time but no increments shall be given".

6. It is also not in dispute that benefits in accordance with the policy decision were actually disbursed to the members of the petitioner association.

7. However, in the year 2000 the District Treasury Officer Nahan, District Sirmaur vide letter dated 24.8.2000 (Annexure A-9) conveyed to the Principal, Girls Senior Secondary School, Nahan that contract teachers were not entitled to payment of dearness allowance. It was however clarified that in case condition of payment of dearness allowance is mentioned in the copy of agreement the same be presented with the bill to the Treasury Office.

8. On 30.10.2000 following order was passed in the present petition:

Issue notice pending admission. Learned Addl. Advocate General waives service of notice on behalf of respondents/State. Reply to be filed within six weeks. List thereafter.

In the meantime, Annexure - A9 dated 30.8.2000, qua the applicant is stayed till further orders.

Undisputedly this order is in continuation till date.

9. Policy decision taken by the Government as conveyed vide Annexures A-2 and A-3 is unambiguously clear. Persons selected under the policy, during the period of their contractual appointment, were entitled to payment of salary with the minimum of JBT scale with full allowances admissible from time to time. The only exception was that of increments. It is not in dispute that otherwise JBT teachers are entitled to dearness allowance. Petitioners were selected in terms of policy decision. Their letter of appointment also entitles them for payment of all allowances except for increments. Consequently the stand taken by the respondents is untenable in law. Further nothing has been placed on record to show that the Finance Department took a decision to exclude persons who were

selected pursuant to the policy decision (Annexure A-2). During the pendency of the present petition petitioners have also been receiving the aforesaid amounts.

10. Consequently Annexure A-9 is quashed. Members of the petitioner association are entitled to payments of such salary and emoluments as they are entitled to, in accordance with the policy decision conveyed vide Annexure A-2.

11. For the aforesaid reasons the present petition stands allowed.