
(1996) 01 SHI CK 0021
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 542 of 1995

Harinder Singh and Others	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 12-01-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1996) 2 ShimLC 116

Hon'ble Judges : Kumar Goel, J; Bhawani Singh, J

Bench : Division Bench

Advocate : Harish Bahl, in C.W.P. No. 542 of 1995 and R.K. Gautain, in C.W.P. No. 981 of 1995, for the Appellant; Om Parkash, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Arun Kumar Goel, J.—By this judgment, we propose to dispose of C.W.P. No. 542 of 1995 as well as C.W.P. No. 981 of 1995. Facts of both these cases are given hereinafter.

C.W.P. No. 542 of 1995:

2. Janta Middle School, Urla, Tehsil Jogindernagar was upgraded to High School vide notification dated 149-1992 (Annexure PT) issued by Respondent 1. Further facts as revealed from the petition are that this school was a Government Aided and Recognised School. Petitioners 1 to 4 had been engaged on different dates as teachers in this school and Petitioner 5 had been engaged as Peon in this school. Initially Petitioners 1 and 2 joined as Assistant Teachers in the year 1987. After Petitioners 1 and 2 had acquired the qualification of B.Ed. in the year 1990 and 1992 respectively, their names were sponsored by Sub-Employment Exchange, Jogindernagar. These Petitioners were duly interviewed by the Selection Committee and were appointed as Trained Graduate Teachers in the year 1992. Vide Annexure PA, Petitioner 1 passed a degree of B.Ed. with English and Social Studies as subjects. Similarly vide Annexure PB, Petitioner 2 passed the degree

of B.Ed with English and Mathematics as subjects. Requisition appears to have been sent (Annexure PC) by Respondent 4 to the Sub-Employment Exchange, Jogindernagar for sponsoring the names of suitable candidates as there was a post lying vacant in Government Aided School, Urla and in response thereto (Vide Annexure PD), name of Petitioner 1 was sponsored. Thereafter it appears that vide Annexure PE name of Petitioner 2 was also sponsored alongwith other candidates Both these Petitioners were duly selected by the Selection Committee and were appointed as Trained Graduate Teachers. Petitioner 1 submitted his joining report on 2-5-1992 (Annexure PH) and Petitioner 2 submitted his joining report on 18.11-1993 (forenoon). This was followed by two applications seeking approval for the post of Trained Graduate Teacher (Arts) submitted by Respondent 4 in respect of Petitioner 1 (Annexure P1), and in respect of Petitioner 2 (Annexure PK) addressed to Respondent 3.

3. Petitioner 3 is a B.Sc. (Non-Medical) and he acquired the degree of B.Ed. in the year 1993 vide Annexure PL, and again it appears that requisition was sent in response thereto vide Annexure PM Names of candidates were sponsored by the Sub-Employment Exchange, Joginder nagar. For the purpose of conducting interviews to the post of B.Sc, B.Ed. (Non-Med.), Respondent 3 was requested vide Annexure PN to pre side over or send any representative for the said interviews which was fixed for 3.2 1993. Respondent 3 was further informed that interview letters have already been issued to all the candidates as per list sponsored by the Sub-Employment Exchange, Jogindernagar. Respondent 3 neither cared to preside over, nor sent any representative for the interviews. Petitioner 3 was duly selected as Trained Graduate Teacher, B.Sc. (Non-Med.) and he submitted his joining report on 414992 (forenoon). Petitioner 4 is a Graduate Shastri. Since the vacancy was there, again requisition appears to have been sent for sponsoring the names of suitable candidates. Number of candidates were sponsored as is evident from Annexure PQ, letter from Sub-Employment Exchange, Sundernagar addressed to respon dent 4. Petitioner 4 is also one of the candidates sponsored and his name figures at Sr. No. 5 in the list attached to Annexure PQ, after his selection, he submitted his joining report on 13-11-1991 (forenoon) and continued to work till the upgraded school was taken over by Respondents 1 to 3.

4. Name of Petitioner 5 was also sponsored by Sub-Employment Exchange, Jogindernagar for the post of Peon and he was duly selected and accordingly he also joined the service.

5. From the narration of the above facts, it is clear that so far as Petitioners 1 to 4 are concerned, they are duly qualified and eligible teachers for being appointed to the posts held by them at the time when the Government Aided High School, Urla was upgraded and taken over.

6. The factum of the school being recognised in the year 1994-95 is reflected by Annexure PW. The school was being duly inspected by the officials of the Education Department, Himachal Pradesh is also evident from Annexure PX.

Amongst other things, it is clearly detailed in Annexure PX i.e. Inspection Report that all the Petitioners and one Shri Prem Singh, Matriculate are working in the school. For ready reference, the relevant extract of Annexure PX is reproduced hereinbelow:

Date of employment according to Sub- Employment Exchange.

1. Sh. Harvinder Singh. 1-5-1992. M.A.BEd. 2. Sh. Karan Singh. 3-2-1992. B.Sc.B.Ed. 3. Sh. Lal Singh, 16-11-1993. B.A.B.Ed. 4. Sh Ramesh Sharma 12-11-1993. O.T. 5. Sh. Prem Singh, 18.11-1989. Matric, Clerk. 6. Sh. Surinder Kumar, 29-9-1987. Peon

7. In the State of Himachal Pradesh, there were number of private schools which were aided as well as recognised by the Government and on the demand of the public at large as in the present case, the Government of Him Pradesh had been taking over the privately-managed classes/Institutions and had framed policy regarding taking over of classes/staff in private-managed schools.

8. In the present case also, as stated hereinabove, Government Aided High School, Urla was taken over by Respondent 1 on the demand of the public of the area and in, fact, w.e.f. 1-4-1995; Government Aided High School, Urla was upgraded, and started functioning. In this context, it may be mentioned that till 31-3-1995, Petitioners to 4 were working as teachers and Petitioner 5 was working as Peon in the said school. However, while taking over the school alongwith its building etc., services of Petitioners 1 to 5 were not taken over who were left high and dry. It appears from record that Respondent 4 had informed the Director of Education, Himachal Pradesh (Respondent 2) vide Annexure PV regarding the staff that was working and had further informed him that since the appointments of these teachers were in accordance with the rules, their services may be taken over. Respondent 4 further informed Respondent 2 that the staff is qualified. However, no response appears to have been received by Respondent 4 from Director of Education, Himachal Pradesh, Respondent 2 to Annexure PV. Case of the Petitioners further is that whenever interviews were fixed, Respondent 3 not only was duly informed by Respondent 3 to either preside over such interviews or to nominate a person, but also regarding their appointments from time to time by Respondent 4. But he chose to abstain. Case of the Petitioners is that there is no lapse on their part and the laxity, if any, is on the part of Respondents 1 to 3 and at no point of time, any objection was raised against their appointments.

9. Petitioners by way of present writ petition have challenged the action of the Respondents in not taking over their services, while upgrading and taking over the Government Aided High School, Urla w.e.f. 1-4-1995, as according to them, the said action is not only illegal, but is also arbitrary, unjust and deserves to be struck down.

C.W.P. No. 981 of 1995:

10. In this case, the case of the Petitioner is that he is 9th Class pass and belongs to Girth community which is a recognised Backward Class in Himachal Pradesh and he does not belong to creamy layer. He further avers that a society was formed by the villagers of village, Jahu, Tehsil Bhoranj, District Hamirpur, H.P. which was duly registered with the Registrar of Societies, Himachal Pradesh under the Societies Act, 1860 under the name and style of "Narindera Nath Mohan Memorial High School, Jahu". According to the Petitioner, this Committee started 9th and 10th Classes in the Government Middle School, Jahu w.e.f. 1981 and the staff recruited in this school was employed through Employment Exchange. The Petitioner was employed as a Peon/Chowkidar w.e.f. 1-10-1992 vide Annexure PD. It appears that before employing the Petitioner a requisition was sent by the Committee of the school and as many as seven names were sponsored by the Employment Officer, Bhoranj out of whom two candidates appeared and Shri Jandu Ram son of Shri Sukhia Ram declined the offer because the terms offered by the Committee were not acceptable to him and resultantly only the Petitioner was the sole candidate who was duly appointed. Offer of employment was sent to the Petitioner by the Manager of the school vide Annexure PF on 8-2-1994 and pursuant to this, it appears from record that he joined the service of the school in question. The school was upgraded vide Annexure PG to a 1-ugh School. However, while taking over the school in terms of Annexure PG, services of the Petitioner have not been taken over by the Respondents and in this background, the Petitioner has challenged the impugned action of the Respondents in not taking over his services, Respondents though have tiled the reply, but the same is vague, cryptic and uncertain. The only thrust: in the reply is that this is a case of upgradation of Government Middle School, Jahu to Government High School and therefore, upgradation does not involve taking over as claimed by the Petitioner and the Petitioner is not entitled to relief claimed.

11. At the very outset, we may mention that as far back as 1973, Respondent I had framed policy regarding the taking over of classes/staff in privately managed schools which for ready reference is reproduced hereinbelow:

No. 13-8/72.EDU (PLAN)

DIRECTORATE OF EDUCATION

HIMACHAL PRADESH.

Dated: Shimla-1, the 5th July, 1973.

To

All the District Education Officers in Himachal Pradesh.

Sub: POLICY REGARDING TAKING OVER OF CLASSES/STAFF IN PRIVATELY MANAGED SCHOOLS.

The matter regarding taking over of private classes/Institutions and the staff

posted therein has remained under consideration of Government for the past some time. It has now been decided by the State Government to regulate the taking over of Private Classes/Institutions and the staff posted therein in accordance with the following terms and conditions:

- (i) That the privately run institutions/classes are recognised by the Department.
- (ii) That the Management hands over all assets.
- (iii) That no liability is to be accepted by Government.
- (iv) That only qualified staff will be taken over in accordance with the posts which are sanctioned by Government in prescribed scales.
- (v) That no superannuated untrained or unqualified staff will be taken over.
- (vi) That only such staff will be considered for taking over as was in position in the school at least one year prior to the date of taking over of School/Classes by Government.
- (vii) That after the school is taken over it be known as Government Primary/Middle/High School as the case may be.
- (viii) That members of the staff who are taken in Government service shall be treated as new entrants for all purposes.
- (ix) That appointments of staff with requisite qualifications who have been in service for one year or more in the institutions already taken over or are going to be taken over by the Education Department need not be referred to be State Public Service Commission. For this purpose a clause may be added in H.P. Public Service Commission Exemption for Consulation Regulations.

As regards sub-para (ix) above, the matter is under consideration of Government and you will be informed of the action taken in due course of time.

Meanwhile, it is requested that wherever schools have been opened/ upgraded by Government and parallel classes run by private managements are in existence, formal requests from the Managements where they so like, for the taking over of such classes/Institutions by Government may be obtained together with full particulars of assets and staff etc.

The formal requests together with the particulars of the staff may please be sent to the Assistant Director of Education (Schools), within a fortnight of the receipt of this memorandum for further necessary action.

It may be added that Government will accept no liabilities in respect of staff etc. prior to their date/s of appointment/s in the Department subject to the availability sanction of the post/s. The staff for newly opened/upgraded institution/s is likely to be sanctioned in the following pattern. This may kindly be kept in view while entertaining applications:

Primary Schools: J.B.T. Teacher. =1 Middle Schools: (1) Trained Graduate in Sc. =1 (2) Trained Graduate in Sc. =1 (3) O.T. (Sanskrit). =1 (4) L.T. (Hindi). =1 (5) PTI (C.P. Ed.). =1 (6) Art and Craft Teacher. =1 (7) Peon. =1 High Schools: (1) Headmaster. =1 (2) Trained Graduate Arts. =1 (3) Trained Graduate Science. =1 (4) Clerk. =1 (5) Peon. =1

For D.E.O. Sirmour: This also disposes of his Memo No. 32/Soni (OP and UP) 4997, dated 15-6-1973.

Sd/ DIRECTOR OF EDUCATION HIMACHAL PRADESH.

This policy appears to have been further modified vide policy of the State Government dated 7-7-1985, which is to the following effect:

(1) That the privately run institutions/classes should be recognised by the Government/Department.

(2) That no liability is to be borne/accepted by the Government.

(3) That the management hands over all the assets.

(4) That only qualified staff will be taken over, in accordance with posts sanctioned by Government, in the prescribed scales.

(5) That the services of superannuated, untrained or unqualified members of the staff are not taken over by the Government.

(6) That only such staff will be considered for taking over which was in position in the school at least for one year prior to the date of taking over of privately managed school/classes by the Government.

(7) That after the school is taken over, it will be known as Government Primary/Middle/High School as the case may be.

(8) That members of the staff who are taken over in Government service shall be treated as new entrants to all intends and purposes.

(9) That the cases of appointees of staff with requisite qualifications, who have been in service for one year or more in the institution already taken over or are going to be taken over by the Education Department, need not be referred to the H.P. Public Service Commission.

(10) That the Government shall not accept any liability in respect of the staff etc. Prior to their date(s) of appointment(s) in the Education Department which is subject to the availability or sanction of posts.

(11) That the pattern of staff for the newly opened/upgraded/taken over school is sanctioned as below:

(i) Primary School. J.B.T. Teacher 1. (ii) Middle School. (1) Trained Graduate 1. Teacher Science. (2) Trained Graduate Teacher (Arts). 1. (3) OT (Sanskrit) 1. (4) LT(Hindi). 1. (5) PTI (CP Ed) 1. (6) Arts and Crafts Teacher. 1. (7) Peon. 1. (iii)

High School. (1) Headmaster. 1. (2) Trained Graduate Teacher (Arts). 1. (3) Trained Graduate Teacher (Science). 1. (4) Clerk. 1. (5) Peon. 1.

(12) In addition to the aforesaid norms the teachers appointed by Management of the Privately managed Schools must be of the same or earlier sessions of training as of those who are being appointed in Government service (by the Department) at the State or District levels/cadres on regular basis.

(13) The names of the candidates to be appointed in the Privately run/managed schools must be sponsored through the employment exchange.

(14) The selections/interviews committees of the privately managed schools must have the District Education Officer or his representative in that selection/interview Committee or Board.

(15) That the appointments made in the aforesaid manner must be approved by the concerned District Education Officer.

(16) That there must be formal request from the Management of privately run/managed school for handing over the school/ classes.

(17) That the formal deed is executed by the management for handing over their school/classes with the clear undertaking covering and complying with all the above and other essential requirements.

12. Learned Counsel for the Petitioners submit that the cases respective Petitioners are not only covered by the policy of 1973, but are also squarely covered by the subsequent policy of 1985. In addition to the fact that although the services of the staff of the school are not to be taken over by the Government mechanically and automatically, while taking over the school as such and for doing so, certain norms had been laid down which have to be followed. Such norms have been enumerated in the preceding para of this judgment.

13. On the other hand, stand of the State is that in the year 1992, Government Middle School was upgraded on the demand of the public and 9th and 10th Classes were recognised. It has further been argued by Pt. Om Parkash, learned Additional Advocate General that this is a case of up- gradation and not taking over. He argued that the services of the Petitioners cannot be taken over as the Government never asked the management of the privately run schools to hand over the building to the Government and in case the management has done it gratis that does not mean that the staff f the school har to be taken over Not only this, but according to him, in case of upgradation of a Government school, the staff of the privately managed school is not to be taken over. Other material facts as detailed in the writ petition (C.W.P. No. 542 of 1995) vis-a-vis qualifications of the Petitioners as well as Respondent 3 having been called upon when the teachers i.e. Petitioners 1 to 4 were going to be interviewed by Respondent 4 after their names were sponsored by the Employment Ex change, have not been specifically denied in its reply by Respondents 1 to 3, In fact, reply filed by the Respondents is totally vague and does not controvert the averments

made in the writ petition made on behalf of the Petitioners. In the face of this situation, all those facts shall be deemed to have been admitted by the Respondents. Similar is the position of pleadings in C.W.P. No. 981 of 1995.

14. Learned Counsel for the Petitioners in both cases have submitted that the case of the Petitioners is squarely covered by the decision of this Court and he has referred to 1995, Vol. II, Sihmla Law Cases, 427. *Som Dutt v. State of H.P. and Ors.*, as well as other unreported judgments of this Court in *Shanti Chauhan v. State of H.P. and Ors.* C.W.P. No. 193 of 1983 and *Dhandev v. State of H.P. and Ors.* C.W.P. No. 190 of 1994, and others besides the judgment of the Hon'ble Apex Court in *State of Orissa and Anr. v. N.N. Swami and Anr.* 1977 SC 1237 ; *Sri Rabinarayan Mohapartra Vs. State of Orissa and others*, and *M.S. Mudhol and Another Vs. S.D. Halegkar and Others*, .

15. Three decisions of this Court referred to above clearly cover the present case. Relevant extract in the case of *Smt. Shanti Chauhan (supra)*, is reproduced hereinbelow:

On the facts and in the circumstances of the case, it appears to be just and proper to direct that the Petitioner be regularly appointed in such vacancy. The Petitioner, who is M.A., B.Ed. was appointed as Trained Graduate Teacher in a privately managed High School at Dhamandari, Tehsil Theog, District Shimla on March 1, 1982. The name of the Petitioner was sponsored by the Employment Exchange, Theog and she was selected after an interview by the Managing Committee of the School. Be it stated that under the memo issued on July 18, 1979 to all the District Education Officers in Himachal Pradesh, (Annexure RB 1) the officer to be nominated by the District Education Officer to participate in the meetings of the Managing Committee was required to ensure that the appointment of the Trained Graduate Teachers was made on sessions wise basis after having been sponsored through the Employment Exchange. Besides, the District Education Officer was required to approve every such appointment in order to ensure that there was no deviation from those instructions. In the present case, there was a lapse on the part of the concerned authorities in enforcing those instructions. The school in question in which the Petitioner was appointed as a Trained Graduate Teacher was taken over by the Government sometime in the first half of 1983. However, the services of the Petitioner were not taken over on the ground that Trained Graduate Teachers of earlier sessions were available. The instructions dated July 5, 1973 (Annexure RA) issued by the Director of Education in regard to the taking over of the staff of the privately managed schools does not lay down any such requirement. The material requirement therein prescribed is that only such qualified staff, who was in position in such schools at least one year prior to the date of taking over, will be considered for being taken over alongwith the school. The Petitioner satisfies the said requirement. As earlier pointed out, at the stage of the initial appointment of the Petitioner, the lapse, if any, was on the part of the District Education Officer in not enforcing the Government policy with regard to the sessionswise

recruitment and the Petitioner cannot be penalised therefore by not taking over her services although she is otherwise qualified. The Petitioner has shown that in other districts, services of the Trained Graduate Teachers of private schools have been taken over although their initial recruitment was not made on sessionswise basis. In light of all these facts and circumstances, we have given the direction aforesaid regarding the Petitioner's appointment being made on a regular basis.

16. The cases were thoroughly and carefully examined and we are of the considered opinion that these writ petitions, inter alia, deserve to be allowed. In this context, certain uncontroverted facts are that the Petitioners were working with the respective schools much before the schools in question were upgraded/taken over by the Respondents 1 to 3. Respondents have also not controverted the allegations made by the Petitioners regarding Petitioners 1 to 4 (in C.W.P. No. 542 of 1995) being duly qualified and eligible for being appointed as Teachers and other Petitioners are also working as a Peons in respective schools. Not only this, the Petitioners being employed in the concerned schools before and at the time of their being taken over by Respondents is further established from the record of the cases, which material facts have remained uncontroverted by the Respondents. Services of the Petitioners ought to have been taken over by Respondents at the time of taking over of both the schools and by not doing so, all of them have been materially prejudiced, in addition to the fact that the action of the Respondents is highly unjust and arbitrary as it denies them the right to enter the public employment and is thus violative of Articles 14 and 16 of the Constitution of India. It may not be out of place to mention here that the Petitioners in the facts and circumstances of their respective cases are a class by themselves and their cases have to be considered separately and not at par with other persons as stated by the Respondents. Similarly, the plea raised during the course of the arguments on behalf of the Respondent State that the recruitment has to be made on sessionswise basis is not justifiable and cannot be pressed into service to defeat the claim of the Petitioners. This question has been squarely, aptly and appropriately dealt with by the Division Bench of this Court in case of *Som Dutt and Ors. v. State of H.P. and Ors.* (supra). Needless to clarify here that all the Petitioners were selected by duly constituted selection committee and if Respondent 3 (in C.W.P. No. 542 of 995) did not chose to either preside over or nominate a person to such proceedings of the Committee, the Petitioners cannot be blamed for this lapse on the part of the said Respondent. Not only this, but information was duly sent to the said Respondent 3 regarding the selection of the Petitioners and no objection at any point of time was raised Had there been anything wrong and/or the selection and appointment of the Petitioners 1 to 4 (in C.W.P. No. 542 of 1995) been not in accordance with Jaw, in the ordinary course of things, Respondent 3 would have immediately objected to it.

17 Looking to the totality of the facts and circumstances of both the cases as explained hereinabove, we see no merit in the contentions raised on behalf of the Respondents. Although the services of the Petitioners need to be taken over from

the date the schools were taken over in both the cases, however, due to laxity as well as inaction on the part of the Officers of Respondent I, they have been deprived of this benefit for no fault of theirs. In order to obviate any com in the matter regarding their placement in seniority and disturbing other persons, as also not to put the State Exchequer to unnecessary financial burden, it is ordered that the services of the Petitioners may be taken over within a period of two months from the date of this judgment and their seniority will be determined from the date of joining and it is ordered accordingly. No other contention has been raised by the learned Counsel for the parties.

18. Both the writ petitions are accordingly allowed in the aforesaid terms. No costs.