
(2011) 03 SHI CK 0052
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 14349 of 2008

Kamlesh Thakur

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Citation : (2011) 03 SHI CK 0052

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—The petition has been filed on the following substantive prayers vide para 7 (i) to (iii):

(i) That the impugned rejection order dated 23rd Jan, 06 (Annexure A-1) may kindly be quashed and set aside.

(ii) That the Respondents may directed to include the name of applicant in the panel prepared for the promotion of BPEO and consider her name for her promotion as such with all consequential benefits on the basis of her seniority and eligibility.

(iii) That the Respondents may kindly be directed to decide retrospective promotion as HT/CHT from the date her juniors have already been promoted with its consequential benefits.

2. In reply, the Respondents have taken the following stand vide Para 3:

That the present original application filed by the applicant against the order dated 23.1.2006 i.e. Annexure A-1 as annexed by the applicant with the present original application which has been decided in compliance to the order of the Hon"ble Tribunal dated 8-11-2005 passed in O.A No. (M) 265/05 titled as Kamlesh Thakur v. state of H.P. and Ors. is not maintainable because the same has rightly been decided by the relying Respondent on the basis of the documents produced. The applicant was promoted as Head Teacher on 21st

October, 1995 and posted at Govt. Primary school, Bagan, but the applicant did not join in Govt. Primary School Bagan and requested for extension of time. As per the request of the applicant four-months extension was given by the Director of Primary Education on 21 November 1995 but even after the expiry of four months extension time i.e. till 21.3.1996 the applicant did not join her duty as Head Teacher at her posting place and thus her promotion stood forfeited for three years as per terms and condition of promotion. Her name was again considered for promotion as Head Teacher on 25.9.1998 when she was found fit for the promotion as Head Teacher and on promotion she was posted as Head Teacher at Govt. Primary School, Badhai where she joined on 26.9.1998. Subsequently she was promoted as centre Head Teacher on 05.0.2001 and was ordered to be posted as such at Nirmand-I, but she did not join her duty as CHT in Govt. Primary School, Nirmand -1 within stipulated period. However, as per order dated 20.10.00 the applicant was deputed as Head Teacher in DPEP on the post of CRC by the District Project Co-ordinator. As per the order dated 5.10.2001 the applicant was promoted as CHT and had to join her duty within a period of 30 days from the issue of the promotion order failing which the incumbent had to be debarred for further promotion order failing which the incumbent had to be debarred for further promotion which was clear from the condition of the office order dated 5.10.2001 as annexed as annexure A-8 by the applicant with the present original application. Since, the applicant did not join her duty, as CHT on her promotion at a place where she was posted and then in view of this fact the applicant was not entitled for further claim of promotion. However, as per record the District Primary Education officer, Kullu vide his office order dated 30.10.2001 modified here previous order dated 5.10.2001 and gave proforma promotion to the applicant as CHT w.e.f. 5.10.2001. The said date of proforma promotion was modified to 30.10.2001 by the director Primary Education vide his order dated 7.6.2005. In view of these facts the applicant has been promoted as HT and CHT rightly and no modification in these orders is required. It is also ordered that she was promoted on proforma/notional basis w.e.f 30.10.01, therefore, the applicant as per Rule is not entitled for any kind of financial benefits. Therefore, modification order dated 7.6.2005 are consistent to that extent that the applicant will be entitled for seniority w.e.f 30.10.2001. The detailed facts and submissions are given in order dated 23.1.2006. The same may also be read as part and parcel of the reply to this original application.

3. Rejoinder refuting the above stand on behalf of the Respondents and reiterating the averments set up in the petition has been filed.

4. In the facts and circumstances of the case, the petition is disposed of with a direction that subject to the Petitioner making a detailed representation supported by documents along with copy of this judgment to Respondent No. 1 within one month from today, the same shall be considered and decided by the said Respondent in accordance with law within the next three months, after affording the Petitioner an opportunity of being heard, if so desired. Needless to say that consequential benefits, if any, would follow the decision of the

representation.

5. The petition as also the pending CMP(s), if any, stand disposed of.