(2019) 12 SHI CK 0055

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 9945 Of 2014

K.G. Thakur & Ors APPELLANT

Vs

State Of H.P. & Ors RESPONDENT

Date of Decision : 19-12-2019

Acts Referred:
Constitution Of India, 1950 — Article 226

Citation : (2019) 12 SHI CK 0055

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Lalit K. Sharma, Vinod Thakur, Bhupinder Thakur, Divya Sood, Neel Kamal Sharma

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. Following substantive reliefs have been claimed in this writ petition:-

(i) That the action of the respondents whereby it is not placing the category of the petitioners under the regular budget head in order to meet out the salary and other allowances despite the direction issued by respondent No. 1 as contained in Annexures P-11 and P-12, may kindly be set aside and quashed and respondent No. 2 may be directed to implement the Annexures P-11 and P-12 in its letter and spirit.

(ii) That the respondent No. 2 may further be directed to allot the GPF account number, pension and other service benefits i.e. pay fixation, grade pay, benefit of 4-9-14 and promotional benefits forthwith.

2. The Executive Council of Himachal Pradesh in its meeting held on 16.06.1986, vide item No. 33 took a decision to establish Himachal Pradesh Science & Technology Entrepreneurs Park (for short 'HP-STEP') in Himachal Pradesh University (for short 'University').

3. The petitioners were appointed with HP-STEP in the year, 1998. On 17.02.1999, the University created regular budget head under part-II Development (Plan Budget) for HP-STEP. From the financial years 1999-2000 to 2006-07, the salary and administrative expenses of HP-STEP were regularized by the H.P. University as per budget provision. In the financial year 2007-08, the budget provisions were made against Head Part-III (Earmarked Special Fund) subject to receipt of fund from HP-STEP.

4. Aggrieved by this Action, the petitioners approached this Court by filing CWP No. 684 of 2007, which was disposed of on 02.05.2008 on the basis of the affidavit filed by the State Government wherein it had undertaken to resolve the issue raised by the petitioners.

5. The vice-Chancellor of the University who was also the Chairman of the Governing Body of the HP-STEP, recommended the proposal of the HP-STEP for functioning/merger with University and the State Government approved such merger on 02.07.2008. The Executive Council of the University approved the merger of HP-STEP with University in its meeting held on 31.01.2012 and notified the same on 18.02.2012. On 24.02.2012, respondents deployed all the petitioners in different offices/branches of the University and w.e.f. 07.03.2012, their date of joining was also notified. On 12.03.2012, the Vice-Chancellor constituted a Committee to initiate the process for taking over the assets of the HP-STEP. Pursuant to the meeting held on 05.05.2012, the University has taken over all assets of the HP-STEP amounting to Rs.74,92,889/-.

6. On 27.07.2012, the University submitted a comprehensive proposal with the State Government for additional grant of Rs. 10.00 lacs per annum to meet out the salary and other expenses of merged staff of HP-STEP. However, the State Government did not accede to this request and vide letter dated 11.09.2013 directed the University to meet out the expenditure from the budget provisions made for the current financial year. On 22.08.2014, the State Government again directed the University to adhere to the decision of 11.09.2013 by meeting out the expenditure from the budget provisions for the financial years 2013-14 and 2014-15.

7. Legal notice dated 09.10.2014 was issued by the petitioners calling upon the respondents to allot GPF account numbers to the petitioners from the date when they were placed on regular scale by the H. P. Government while serving the HP-STEP.

8. Notice was duly replied by the University wherein it was stated that as and when the grant of additional liabilities on account of salary, pension and other recurring expenditure in respect of the employees of the HP-STEP is received from the State Government as per decision of the Executive Council, the final order of merger of HP-STEP with the University and CPS Account Numbers would be issued accordingly. In reply filed to the writ, it was clarified by the University that as per the decision taken by the Executive Council vide Item No. 16 of its

meeting held on 31.01.2012, the HP-STEP was merged with the University subject to the condition that financial liabilities and other recurring expenses in respect of employees of HP-STEP would be borne by the State Government. The University thereafter took up the matter with the State, who in turn vide their letters dated 11.09.2013 and 22.08.2014 conveyed the advise of the Finance Department to the State Government to meet out the expenditure of the petitioners from the budget provisions made for the current financial year. Since, the grant for salary and other expenses were not released by the State Government the request for allotment of GPF numbers to the petitioners could not be taken up by the University.

9. The sum and substance of the reply is that the State Government had not acceded to the request of the University and, therefore, the grievance of the petitioners could not be redressed.

10. During the pendency of this writ petition, the University filed an application being CMP No. 4789 of 2016, wherein it was averred that the employees of the HP-STEP have not been subscribers of GPF Scheme prior to merger of their services in the University as ex-cadre w.e.f. 31.01.2012, however, after merger with the University, the petitioners will be brought up under CPS Scheme.

11. Thereafter during the pendency of the appeal, the petitioners moved an application for bringing on record the subsequent events on record, wherein, it was averred that the Executive Council of the University vide its meeting dated 29.04.2015, vide Item No. 7 agreed to bear the financial liability i.e. salary, pension and other allowances/expenditure of the staff so merged from HP-STEP with the University. In sequel thereto the University had released grade pay w.e.f. 24.09.2012 from the date when the services of the petitioners were merged with the University. Thus, the relief claimed in para15(i) of the writ petition has been partly satisfied while issuing notification dated 27.07.2015. In view of the subsequent development, it was prayed that the University be directed to revisit or re-look into the matter and allot GPF account number under old pension scheme to the petitioners.

12. University in its reply to the application has averred that the revised contributory pension scheme was implemented by the University on the analogy of the State Government instead of old pension scheme w.e.f. 15.05.2003 and since the services of the petitioners were merged with the University on 24.02.2012, therefore, the claim of the petitioners for allotment of GPF account number under the old pension scheme was not justified and also contrary to the rules and regulations applied from time to time.

13. Yet again the petitioners moved another application during the pendency of the case being CMP No. 14213 of 2019 for placing on record additional documents and this time the petitioners placed on record Notification dated 16.06.1988 to contend that under the programme of adult education and extension when the University Grant Commission (for short 'UGC') stopped the

financial assistance to the project/their staff, the State Government decided to bear the entire liability towards meeting the expenditure on the salary etc. of the staff appointed under the above programme and such persons were still continued in the service. The University contested this application by filing its reply wherein it again reiterated the stand taken in reply to CMP No. 11455 of 2018.

I have heard learned counsel for the parties and have gone through the records of the case.

14. It is not in dispute that the services of the petitioners were merged into the main stream of the University only on 24.02.2012 whereas, the revised Contributory Pension Scheme was implemented by the University on the analogy of the State Government, instead of old pension scheme w.e.f. 15.05.2003 notified vide notification dated 28.11.2006 and once that be so, then obviously the claim of the petitioners for allotment of GPF number under old pension scheme is definitely not tenable, more particularly, when the revised contributory pension scheme was not applicable to the petitioners while they were serving the erstwhile HP-STEP.

15. Faced with this situation, the petitioners would then bank upon the judgments rendered by this Court in CWP(T) No. 1033 of 2008, titled as Devi Dutt Sharma and others vs. H.P. University and others, decided on 25.05.2011 and CWP No. 162 of 2011, titled as Bandna Kumari vs. H. P. University and others, decided on 14.05.2015.

16. Adverting to Devi Dutt Sharma's case (supra), it would be noticed that the petitioners therein were working in Agro-Economic Research Centre of the Himachal Pradesh University and the expenditure of the Centre was borne by the Department of Agriculture, Government of India, Ministry of Agriculture. The Memorandum of Understanding was executed between the Union of India and the Registrar of the University, which come into force w.e.f. 01.04.1995. According to the terms and conditions incorporating in the said memorandum the staff of the Centre was to be considered at par with regular employees of the University for all the privileges enjoyed by the regular staff of the University i.e. pension, gratuity, provident fund, allotment of quarters, as per the existing rules, medical benefits, all other benefits etc., as applicable to the staff of the university. This establishment was declared permanent w.e.f. 21.05.1990.

17. It was on the basis of the Memorandum of Understanding that the Court while allowing the petition passed the following directions:-

i) It is declared that the Agro-Economic Research Centre, Shimla has integrated with the respondent-University on the basis of Memorandum of Understanding w.e.f. 01.04.1995 for all intents and purposes;

ii) The employees of the Agro-Economic Research Centre are to be treated at Par with the employees of the respondent-University for the release of all service benefits, including pensionary/retiral benefits etc.

iii) Respondent-University is directed to prepare a common seniority list of the employees of the Agro-Economic Research Centre with the employees of the University to enable them to get pay scales and to earn promotions etc.

iv) Respondent No. 3 is directed to keep on releasing the grant-in-aid to the Agro-Economic Research Centre towards payment of salary, including pensionary/ retiral benefits etc.

18. Indubitably, no such Memorandum of Understanding has been entered into between the HP-STEP and the University and, therefore, the aforesaid judgment in Devi Dutt Sharma's case (supra) is not at all applicable to the fact situation obtaining in the present case.

19. As regards Bandna Kumari's case (supra), the petitioners therein was appointed on ad hoc basis on consolidated salary of Rs.1500/- per month in H.P.U. Model School on 31.05.1997. A Committee comprising of the then Dean of Studies, CDC and Registrar of the University was held on 01.08.2002 in the Chamber of the Registrar wherein they made the following recommendations:-

"1 The post of Head Master be got created in the regular pay scale of Rs.7000-22-8100-275-10,300-340-10980 and against which Mr. Umesh Modgil who fulfils the requisite qualification may be considered for his regularization after he completes 4 years service as such with prospective effect.

2. The posts of the following teachers may be got created in the regular pay scale of Rs.4550- 150- 5000-160-5800-200-7000-220-7280 and against which the mentioned below teachers who have completed 4 years or more service as such may be considered for their regularization with prospective effect.

NAME & DESIGNATION TEACHERS

ACADEMIC QUALIFICATION

DATE OF JOINING

1.

Mrs. Avneeta Vaid

MA B.Ed. Prabhakar

10.7.1992

2.

Mrs. Neeta Ahluwalia

BD B.Ed. NTT

26.10.1992

3.

Mrs. Bandana Sharma

-do- MA

1.3.1993

4.

Mrs. Sunita Gupta

BA Bed.

26.7.1993

5.

Mrs. Vena Badhwal

BA B.Ed. M.Ed. M.Phil, PhD. (Education)

10.5.1995

6.

Mrs. Sunita Sharma

BA. Ned. M.Ed., M. Phil (Pol. Sc)

25.5.1995

7.

Mrs. Raj Bala Gaur

BA MA, B. ed.

5.6.1997

8.

Sh. Pushpender Sharma Arts Teacher

BA Diploma in Painting

21.7.1997

9.

Mrs. Reena Dhawan Teacher

B.Sc. Bed.

22.7.1997

10.

Sh. Suresh Verma

PGDCA, (Eco.) B.Ed.

09.09.1998

11.

Ms. Anjali Sharma

B.Sc. B.Ed.

21.10.1998

12.

Sh. Hans Raj Sharma

-do-

26.10.1998

13.

Sh. Rakesh Sharma

B.Sc. B.Ed. M.Com

26.10.1998

Their regularization and inter-se seniority will be regulated in accordance with the date of their initial appointment. After their regularization the head master and teaching staff of the school may be allowed.

3. The posts of the non-teaching staff i.e. Aya and peon of the school may be got created in the regular scale of Rs.2520-100-3220-110-3660-120-4140 (with initial start of Rs.2620/-) and against which the following may be considered for their regularization on completion of 8 years service as per instructions of the State Govt.

NAME & DESIGNATION TEACHERS

ACADEMIC QUALIFICATION

DATE OF JOINING

1.

Mrs. Pushpa Thakur Aya

Matric

3.1.1992

2.

Sh. Geeta Ram Sharma, Peon

Middle

26.9.1994

The financial liabilities of the above mentioned staff would be borne on the staff-strength of the University for first five years and thereafter the such liabilities shall be met out of the resources of the school as there is a proposal to construct a new building for the school for which the revenue/income of the school has been kept reserved for its utilization. In order to met the expenditure on account of salary etc. of the teachers/staff, it was recommended that 10% hike in fee may be made every year.

The services conditions of the staff of the school will be governed as per Act, Statutes and Ordinances of the University vis-a-vis rules, regulations and instructions as amended from time to time and as applicable to the teaching staff of the State Govt. The school will observe the vacation schedule at par with the State govt. The teaching staff including head master shall form their own separate cadre with a separate entity. The appointing authority of the teaching staff including the head master shall be the vice-chancellor of this University and their service record shall be maintained by the establishment branch."

20. It was in sequel to the recommendations made by the Committee that the Vice-Chancellor of the University created the posts of Headmasters and teachers in the regular pay scale of Rs.7000-10980 and Rs.4500-7200, respectively, subject to the approval from the Executive Council vide notification dated 05.09.2002. Accordingly, the petitioners therein who though were put in the regular pay scale but were not released the increments, were ultimately granted annual increment w.e.f. 01.09.2003 but on notional basis. Petitioners therein made several representations seeking GPF account number and the Executive Council vide resolution in its meeting held on 27.09.2008 approved the creation of one post of Head Master and 13 posts of teachers.

21. It was in this background that the Court held that since respondent-University had not permitted the petitioners therein to opt for GPF account number despite being requested before the cut off date i.e. 15.05.2003, the respondent-University was bound to permit them to opt for GPF account number instead of coercing the petitioners to opt for CPF account number.

Again this is not the fact situation obtaining in the instant case.

22. As observed above, the CPF scheme was implemented by the University on the analogy of the State Government on 15.05.2003 whereas the services of the petitioners were merged in the main stream of the University at later after nearly 9 years on 24.02.2012, therefore, no benefit can be derived by the petitioners on the basis of the judgment rendered in Bandna Kumari's case.

23. It is more than settled that only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by

the writ petitioner that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement on the basis of which writ jurisdiction is resorted to. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court.

24. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury, a "person aggrieved" must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. Hence, a person who raises a grievance, must show how he has suffered legal injury. (Refer:-Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra (2013) 4 SCC 465).

25. It is clearly evident from the aforesaid discussion that the petitioners have not suffered any legal injury whereby they can challenge the action/inaction of the respondents before this Court. There is no judicial enforceable right available to them since there is no breach of statutory duty on the part of the respondents. The petitioners, in fact, have no legal right to file the present petition as they have failed to show how they are suffered a legal injury.

26. Consequently, there is no merit in this petition and the same is accordingly dismissed, leaving the parties to bear their own costs.

