

(2010) 11 SHI CK 0200
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 5524 of 2008

Kuldip Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Citation : (2010) 11 SHI CK 0200

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

Bench : Single Bench

Judgement

V.K. Sharma, J. 1. The petition has been filed for grant of the following substantive reliefs vide para 7(i) to (v):

7(i) That the respondents may be directed to give the benefit of the service rendered by the applicant w.e.f. 1.11.1983 to 30.5.1985 towards the qualifying service for the purpose of pensionary benefits forthwith.

(ii) That the respondents may be directed to give the benefit of the proficiency increment to the applicant after 8/18 years of service after reckoning the same w.e.f. 1.11.1983 forthwith.

(iii) That the respondents may be directed to give continuity in service to the applicant w.e.f. 1.11.1983, till day forthwith, after taking over his services as TGT (Arts) w.e.f. 3.5.85 retrospectively forthwith.

(iv) That the respondents may be directed to give the pay and allowance for the period of illegal termination of the service of the applicant between 3.5.1985 till his reemployment as TGT (Arts) on 25.5.88 forthwith.

(v) That the respondents may be directed to give interests on the delayed payments the proficiency increment and salary and allowance for the period mentioned above @ 18% per annum forthwith.

2. In the reply, filed on behalf of respondents, the following stand has been taken

in paras 3 to 6:

3. That Govt. vide notification N. EDN-H(7)-1-6/ 84-Dev., dated 16.1.1985 has upgraded its own Govt. Middle School, Thill (Kangra) to the standard of High School and not taken over the privately managed institution Janta High School, Thill (Kangra) copy annexed as AnnexureRA.

4. That the Hon''ble Supreme Court of India in Civil Appeal No. 6211-6212 of 1997 (arising out of SLP No. (c) vs. Harvinder Singh and Anothers has held that the High Court has committed an error in taking the view that the respondents were earlier employed in privately Middle Schools which were upgraded and taken over by the State Govt. The Apex Court has further held that the respondents have not been able to show any orders of State Govt. regarding taking over the privately managed schools in which respondents were employed. The judgment of the High Court was set aside. The order of the Hon''ble Supreme Court of India is annexed as Annexure-RB.

5. That so far as the averments relates to the appointment of Shri Amar Singh, Peon are concerned, it is respectfully submitted that the applicant can not seek the appointment on the basis of wrong appointment. The Hon''ble Supreme Court of India in the case of State of Haryana vs. Surinder Kumar and others reported in State of Haryana Vs. Surinder Kumar and others, para 5 has held that:

This Court has also pointed out in State of Haryana v. Jasmer Singh in that behalf. If any illegal actions have been taken by the officers after recruitment, it would be a grave matter of indiscipline by the officers and the higher authorities are directed to look into the matter and see that such actions are rectified, but that would not be a matter and see that such actions are rectified, but that would not be a matter for this court to give legitimacy to illegal acts done by the officers and to grant relief on the basis of wrong or illegal actions of superior officers. The appropriate authority would look into and take suitable disciplinary action against the erring officers and submit the report of the action taken and the result thereof to the Registry of this Court.

6. That in view of the judgment of Apex court *ibid*, present Original Application deserves to be dismissed solely on the ground that Govt. has not taken over the privately managed Janta High School, Thill (Kangra) and has upgraded its own Govt. Middle School, Thill to High School. Therefore, in the event of upgradation of Govt. Middle School, Thill (Kangra) taking over of services of employees of privately managed school does not arise.

3. In view of the above reply, in case the petitioner still has any surviving grievance with regard to the factual and legal position, he may point out the same by way of an appropriate representation before the second respondent within one month from today alongwith copy of this judgment and the second respondent shall decide the representation within another period of three months after giving an opportunity of being heard to the petitioner, if so desired and to make submissions on factual and legal aspects of the matter.

4. In view of the above, the petition stands disposed of.