
(2012) 08 SHI CK 0082
In the High Court Of Himachal Pradesh
Case No : CWP No. 6166 of 2012-G

Manmohan Gautam

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 06-08-2012

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2012) 08 SHI CK 0082

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Onkar Jairath, for the Appellant; Vivek Thakur, Addl. A.G. with Mr. Vikas Rathore, Dy. A.G. for respondents No. 1 and 2 and Mr. Bimal Gupta, Advocate for respondent No.3, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, Judge.

1. Petitioner was appointed as Lecturer Chemistry (School Cadre) under Himachal Pradesh Para-Teachers (Lecturer School Cadre), Para Teachers (T.G.Ts) and Para Teachers (C&V) Policy, 2003 in the Education Department. He was posted in Government Senior Secondary School, Diggall, District Solan. He was transferred from Government Senior Secondary School, Diggall, District Solan to Government Senior Secondary School (Girls), Nalagarh on 31.5.2010. Now, the petitioner has been transferred from Government Senior Secondary School (Girls), Nalagarh to Government Senior Secondary School, Sour, District Solan vide office order dated 26.7.2012. Petitioner has been replaced by respondent No.3, who has been appointed Lecturer Chemistry on regular basis vide office order 18.7.2012 (Annexure P-2). Initially, she was posted at Nalagarh against vacancy, however, office order dated 18.7.2012 was modified by issuing corrigendum on 27.7.2012 whereby G.S.S.S.(G) Nalagarh (Solan) was to be read instead of G.S.S.S. Nalagarh (Solan). Petitioner has been appointed in terms of a policy, which is not statutory. Conditions of service of respondent No.3 are

governed under the Recruitment and Promotion Rules framed under Article 309 of the Constitution of India.

2. The appointment of Para-Teachers is made under the Himachal Pradesh Para Teachers (Lecturer School Cadre) Para Teachers (T.G.T's) and Para Teachers (C&V) Policy, 2003. According to this policy, for engaging of Para-Teachers (School Cadre), Para Teachers (T.G.T's) and Para Teachers (C&V), the name of candidate is required to be registered with the local Employment Exchange. If any vacancy of a Teacher (Lecturer School Cadre, T.G.T. and C&V) exists in a school, the concerned Principal of a Senior Secondary School, Headmaster of the concerned High School and head of complex school in middle schools, as the case may be, would seek requisition of all eligible candidates in the minimum ratio of 1:3 from the nearest Employment Exchange for sponsoring the names of eligible candidates. It is only, if eligible suitable candidates are not available from the nearest Employment Exchange then names from adjoining/and of the District Employment Exchanges can be requisitioned. According to the policy, the candidate should be the resident of the same Sub Division where the school is situated. The Para-Teachers are only paid honorarium. Para-Teachers cannot seek regularization, though their appointment is made against the existing vacancy of Teachers (Lecturer School Cadre, T.G.T's and C&V).

3. It is, thus, evident that Lecturers (School Cadre), under the policy, are appointed by the Principal of a Senior Secondary School after seeking requisition of the candidates from the nearest Employment Exchange. The employment is restricted to a particular area and it is only if the suitable candidate is not available, names can be requisitioned from the adjoining/and of the District Employment Exchange. The zone of consideration is restricted to a particular area. The Lecturers (School Cadre), who are appointed on regular basis, their conditions of service are to be regulated under the Recruitment and Promotion Rules framed under Articles 309 of the Constitution of India. The candidate appointed as Lecturers (School Cadre) have to fulfill the minimum educational qualification prescribed under the Recruitment and Promotion Rules and thereafter the selection is to be made through the concerned recruitment agency. The teachers appointed regularly are entitled to regular pay scale and they acquire status since they are appointed against a post. Though, the minimum essential educational qualification for appointment as Para Teachers (School Cadre, T.G.Ts and C&V) is as per the criteria prescribed under the Recruitment and Promotion Rules but their engagement is purely temporary for a particular school and for a specific period and on fixed remuneration. The Para Teacher is to be selected by a Committee comprising of Sub Divisional Magistrate, Principal/ Head Master of the concerned school and subject expert.

4. Their Lordships of the Hon''ble Supreme Court in Brij Mohan Lal versus Union of India and others, (2012) 6 SCC 502 have held that right to a post is not a fundamental but is a civil or a statutory right. Their Lordships have further held that there are three kinds of posts that may exist in a cadre:

- I. permanent posts;
- II. temporary posts; and
- III. quasi-permanent posts

Accordingly, there can be a temporary employee, a permanent employee or an employee in quasi-permanent capacity. Their Lordships have further held that a person to have a right to the post, the post itself has to be a permanent post duly sanctioned in the cadre. It is only under these circumstances that such an employee gets a right to the post but even when a temporary employee is appointed against a permanent post, he could get a right to the post provided he had at least acquired the status of a quasi-permanent employee under the relevant rules. Where neither the post is sanctioned nor is permanent and, in fact, the entire arrangement is ad hoc or is for an uncertain duration, it cannot create any rights and obligations in favour of the appointees, akin to those of permanent employees. Their Lordships have further held that the origin of the Government servant is contractual but once appointed to his post or office, the Government servant acquires a status and his rights and obligations are no longer determined by the consent of both the parties, but by statute or statutory rules as framed and unilaterally altered by the Government. Their Lordships have held as under:

78. Normally, there are three kinds of posts that may exist in a cadre- (1) permanent posts; (2) temporary posts; and (3) quasi permanent posts. Accordingly, there can be a temporary employee, a permanent employee or an employee in quasi permanent capacity.

79. In the case of *Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd.*, , this Court, while elucidating upon the distinction between temporary and permanent employees stated that such distinction is well settled. Whereas a permanent employee has a right to the post, a temporary employee has no right to the post. It is only the permanent employee who has a right to continue in service till the age of superannuation. As regards a temporary employee, there is no age of superannuation because he has no right to the post at all.

80. Thus, it follows that for a person to have a right to the post, the post itself has to be a permanent post duly sanctioned in the cadre. The person should be permanently appointed to that post. Normally, it is only under these circumstances that such an employee gets a right to the post, but even when a temporary employee is appointed against a permanent post, he could get a right to the post provided he had at least acquired the status of a quasi permanent employee under the relevant Rules. Where neither the post is sanctioned nor is permanent and, in fact, the entire arrangement is ad hoc or is for an uncertain duration, it cannot create any rights and obligations in favour of the appointees, akin to those of permanent employees.

92. We must also notice another settled position of law, stated by this Court in the case of Union of India and Another Vs. Tulsiram Patel and Others, that the origin of Government services is contractual. There is an offer and acceptance in every case. But in other words, the legal position of a Government servant is more one of status than that of contract.

5. The appointment of the petitioner, as Para Teacher, is not under statutory rules. He has not been permanently appointed to any post. The appointment is temporary in nature and the conditions of service of Para Teachers cannot be compared with permanent employees.

6. Accordingly, there is no illegality in the transfer order Annexure P-3 dated 26.7.2012 whereby the petitioner has been transferred from Government Senior Secondary School (Girls), Nalagarh to Government Senior Secondary School, Sour (Solan). Consequently, we see no merit in the petition and the same is dismissed. Pending application(s), if any, also stands disposed of. No costs.