

(2021) 03 SHI CK 0184
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 3277 Of 2019

Manorama Devi And Others

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 23-03-2021

Acts Referred:

Citation : (2021) 03 SHI CK 0184

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Bhuvnesh Sharma, Dinesh Thakur, Sanjeev Sood, Kamal Kant Chandel, Divya Sood

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has prayed for the following substantive reliefs:-

"1. That writ of the nature of mandamus or any other appropriate writ order or direction be issued to respondents to treat notionally date of regularization of petitioners as 1.1.2003 or completion of five years service on contract basis instead of 1.4.2006 and grant them all service benefits regarding pay scales, annual increments, pay fixation, gratuity and all other consequential and incidental service benefits including arrears on them along with interest from due date i.e. 1.1.2003. As per Government decision dated 2.2.1999 i.e. annexure P-2 respondents were required to regularize the services of petitioners on 1.1.2003 or on completion of five years service on contract basis. Respondents were required to award JBT Special Certificate to petitioners strictly as per HP Education Code and their decision dated 2.2.1999 on completion of five years of service on contract basis. Now petitioners cannot be allowed to suffer for delay in regularization for not awarding JBT Special Certificate strictly on completion of five years of service. This is fault of respondents.

2. That writ in the nature of mandamus or any other appropriate order or direction be issued to respondents to give benefit of General Provident Fund Scheme to petitioners from due date i.e. 1.2.2003 after notionally treating date of regularization as 1.1.2003 or on completion of five years service on contract basis as per decision dated 2.2.1999. Petitioners are appointees prior to 15.5.2003. The Contributory Pension Scheme has been introduced by state government for its new appointees appointed on or after 15.5.2003. Even after 15.5.2003 petitioners were not given benefit of Contributory Pension Scheme till regularization of their services in year 2006. Respondents were required to regularize the service of petitioners on 1.1.2003. If delay in their regularization was not done by respondents they would come under old pension scheme. Now they cannot be allowed to suffer for delay in regularization. They may be given all service benefits and consequential benefits including arrears on them with interest treating their date of regularization as 1.1.2003 or on completion of five years of service on contract basis as the case may be. Respondents have deliberately made delay in regularization of petitioners only to protect state Government from financial burden which they would have if services of petitioners would have been regularized from due date i.e. 1.1.2003. Petitioners would get regular pension on old pattern if their services would have been regularized from due date i.e. 1.1.2003 or on completion of five years service on contract basis.

3. That writ in the nature of mandamus or any other appropriate writ order or direction be issued to respondents to give benefit of old pension scheme to petitioners which was applicable for state Government teachers appointed prior to 15.5.2003 after normally treating date of regularization as 1.1.2003 or on completion of five years service on contract basis. The Contributory Pension Scheme has been introduced by state government for its new appointees appointed on or after 15.5.2003. Even after 15.5.2003 petitioners were not given benefit of Contributory Pension Scheme till regularization of their services in the year 2006. Respondents initially gave benefit of General Provident Fund Scheme to petitioners but later converted it to Contributory Pension Scheme which is totally illegal and discriminatory. Respondents be directed to reconvert petitioners again to GPF scheme instead of Contributory Pension Scheme. Regularization of services of petitioners was deliberately delayed by respondents only to debar petitioners from getting benefit of regular pension scheme.

4. That writ in the nature of mandamus or any other appropriate writ order or direction be issued to respondents directing them to act and behave like model employer and adhere to obey and act as per its policies and express decisions.

5. That writ in the nature of certiorari or any other appropriate writ order or direction be issued to quashing and setting aside order dated 19.7.2010 i.e. annexure P-5.

6. That writ in the nature of mandamus or any other appropriate writ order or direction be issued to respondents to count period of contract services rendered

by petitioners for the purpose of qualifying service period for grant of regular pension as per old pattern.

7. That writ in the nature of mandamus or any other appropriate writ order or direction be issued to respondents for grant petitioners arrears of vacation salary for the period of services rendered by them on contract basis before regularization of their services. Claim of petitioners for vacation salary is covered by judgment delivered by Hon'ble High Court in CWP No. 415/2000 titled as Baldev Singh versus State of H.P. and others. Benefit of judgment passed in LPA 105/2010 be also given to petitioners.

8. That in alternative writ in the nature of mandamus or any other appropriate writ order or direction be issued to respondents to grant benefit of Contributory Provident Fund from the date of their initial appointments or grant them benefit of Contributory Pension Scheme from 1.1.2003. Both these benefits have been denied to them and similar benefits have been granted to teachers appointed on ad-hoc and to volunteer teachers those were appointed against the vacant posts of JBT teachers in the same education department from time to time. There cannot be discrimination in same department with teachers similarly situated having similar educational qualifications and performing similar duties mere on the basis of difference in nomenclature.

9. That in alternative writ in the nature of certiorari or any other appropriate writ order or direction be issued for quashing and setting aside memo dated 30.1.2006 i.e. annexure P-3 to the extent that date of regularization be treated as 1.1.2003 or completion of five years service on contract basis instead of 1.4.2006 qua petitioners. Cut off date of 1.4.2006 being illegal be quashed and set aside."

2. The case of the petitioners is that they were recruited against Himachal Pradesh Nursery Trained Teachers Scheme 1997 and their services were regularized after completion of 10 years service by awarding Special JBT Certificate to them against JBT posts in various Primary Schools in the State of Himachal Pradesh in the year 1998. According to the petitioners, an amendment was incorporated in Himachal Pradesh Education Code para 145 whereby the condition of 10 years of service for awarding Special JBT Certificate was reduced to 5 years of service and the amendment was made effective and applicable w.e.f. 1.8.1998. The contention of the petitioners is that in view of the amendment so carried out in Himachal Pradesh Education Code, they are also entitled for being awarded Special JBT Certificate after completion of five years service as JBT teacher alongwith consequential benefits including regularization.

3. The petitioners had earlier approached this Court by way of CWP No. 1780 of 2010, titled as Smt. Neelam Kumari and others vs. State of H.P. and others, which was disposed of by this Court vide judgment dated 05.05.2010 allowing the petitioners to submit individual representations to the department concerned and with further direction to the department to consider the case of the

petitioners and dispose of the same in the light of judgments of this Court in Duni Chand vs. State of H.P. and others, Latest HLJ 2010 (2) (HP) 138 and Paras Ram versus State of H.P. & Others, Latest HLJ 2009 (2) 887. Thereafter, it appears that the representation of the petitioners were dismissed by the Principal Secretary Education of the Government of Himachal Pradesh, which led to filing of the present petition.

4. When this writ petition was taken up for consideration, learned Counsel for the petitioner has submitted that the issue, subject matter of this petition, is no more res- integra because similarly situated persons have approached the erstwhile learned Tribunal praying for the same reliefs and the original application was allowed by learned Tribunal directing their regularization after award of Special JBT Certificate in their favour, post completion of five years service as from the date of their initial appointment, however, monetary benefits were restricted in view of decision of Hon'ble Supreme Court in Jai Dev Gupta vs. State of Himachal Pradesh and another, AIR 1998 Supreme Court 2819.

5. The order passed by learned Tribunal was assailed by the State before this Court and Hon'ble Division Bench of this Court vide judgment dated 06.11.2020, passed in CWP No. 3544 of 2019, titled as State of H.P. and Another vs. Surendra Sharma & Ors., upheld the order passed by learned Tribunal in the following terms:-

"3. The respondents have done one year condensed course of Nursery Teacher and were appointed against the post of JBT vide letter dated 19.09.1997. The Government of Himachal Pradesh vide letter dated 02.02.1999 had decided to regularize the services of the Nursery Trained Teachers on completion of five years instead of 10 years, as would be evident from the relevant portion of the letter, which reads as under:-

"I am directed to refer to your letter No. EDN-H(II)PRY(B) (6)2-1/97 dated 14.09.98 the subject cited above and to say that the matter with regard to the regularisation of the Nursery Trained Teachers has been considered by the Government and it has been decided that these Nursery Trained Teachers may also be treated on par with Volunteer Teachers. Therefore, their services may also be regularised after completion of the five years services instead of 10 years and JBT Special Certificate may be awarded to them on the pattern of Volunteer Teachers who are being regularised we.f. 1.8.98 after completion all formalities."

4. Since, the petitioners had been appointed on 19. 09.1997, therefore, in terms of letter dated 02.02.1999 they were entitled to be regularized in the year 2002. The learned Tribunal was absolutely right in restricting the financial benefits to three years prior to the filing of the petition, which directions are in tune with the judgment of the Hon'ble Supreme Court in HRTC vs. Jai Dev Gupta, AIR 1998 SC 2819.

5. It is more than settled that High Court does not act as a Court of appeal against the decision of the Tribunal and only exercise its power of judicial review.

There is no perversity in the order passed by the learned Tribunal.

6. Having said so, we find no merit in this petition and the same is accordingly dismissed, so also pending application(s), if any."

6. On these bases, learned Counsel for the petitioners submits that the petition be now disposed of in terms of the decision of Hon'ble Division Bench of this Court (supra).

7. Though, this prayer is resisted by learned Additional Advocate General, however, when confronted with the fact as to whether the writ petition filed by the State against the order passed by learned Tribunal in the case of similarly situated persons as the petitioners indeed stood dismissed by Hon'ble Division of this Court, learned Additional Advocate General very fairly submitted that he cannot make submissions contrary to record.

8. In this view of the matter, this writ petition is disposed of with the direction to the respondents, that as the issue of petitioners being entitled for regularization by conferment of Special JBT certificate after completion of 5 years service as Nursery Trained Teachers from the date of their initial appointment, is no more res-integra, to confer upon the petitioners said status after completion of 5 years service from the date of their initial appointment and as far as monetary benefits are concerned, the same shall be restricted upto three years prior to the filing of the writ petition by them. It is further clarified that in case arrears are paid by 31.07.2021, then respondents shall not be liable to pay any interest upon the same but if the payment of arrears is not made within said period, then respondents shall be liable to pay simple interest at the rate of 6% per annum on the due amount of arrears, as from the date of passing of this judgment.

The petition stands disposed of in above terms, so also pending miscellaneous application(s), if any.