
(2010) 03 SHI CK 0036
In the High Court Of Himachal Pradesh
Case No : CWP-T No. 2273 of 2008

Ms. Kamlesh Gupta

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 30-03-2010

Acts Referred:

Citation : (2010) 03 SHI CK 0036

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Material facts necessary for the adjudication of this petition are that Petitioner joined her duties as untrained teacher in the Education Department on 23.12.1959. She qualified the Junior Basic Trained Teacher training at Solan and was appointed as Junior Basic Trained Teacher (hereinafter referred to as "the JBT teacher" for brevity sake). She remained posted in Government Primary School, Mohari (Mahasu District). The JBT teacher cadre initially was State cadre. It became district cadre somewhere in the year 1968. Petitioner was transferred to Government Primary School, Nalagarh in District Shimla from Government Primary School, Mohari (Mahasu). Solan District was created in the year 1972. Seniority list of JBT teachers, as it stood on 31.1.1985, was issued vide Annexure A-1. Petitioner's name figured at Sr. No. 179. She was promoted as Head Teacher in the year 1985 and was posted in the Government Primary School, Garkhal (Solan District). She was promoted as Centre Head Teacher vide order dated 30.1.1992. She was informed on 25.4.1992 that since she was transferred from Mahasu District to Shimla District and she took over the charge on 9.5.1967, therefore, her seniority was to be counted from 9.5.1967. She submitted reply that she was transferred from Government Primary School, Mohari, Mahasu District to Government Primary School, Nalagarh as JBT teacher on 9.5.1967 and at that relevant time, cadre of JBT teachers was State cadre. Reply submitted by the Petitioner was not taken into consideration

and she was informed on 25.5.1992 that her seniority will be counted from the date of joining in Shimla District, i.e. 9.5.1967. Office order dated 30.1.1992 whereby Petitioner was promoted to the post of Centre Head Teacher was also withdrawn on 28.5.1992. Respondent No. 2 sent a communication to the District Primary Education Officer, i.e. Respondent No. 3, to permit the Petitioner to join her duties on promotion in Government Primary School, Sanawar Gaon or Sanawar (Solan) on 10.5.1994. Respondent No. 3 did not comply with the order dated 10.5.1994. Respondents promoted Head Teachers junior to the Petitioner to the post of Centre Head Teacher vide Annexure P-6.

2. Mr. H.K. Paul has vehemently argued that Petitioner's seniority was to be counted from the date of her initial appointment in District Mahasu, i.e. 23.11.1959. He then contended that Petitioner has been promoted to the post of Head Teacher and thereafter Centre Head Teacher on the basis of seniority list issued vide Annexure A-1. He lastly contended that Petitioner has never given her consent to be transferred from Mahasu District to Shimla District and no notice was ever issued to her before the issuance of office order dated 31.1.1992.

3. Mr. Rajinder Dogra, learned Additional Advocate General has vehemently argued that since the Petitioner has given her consent at the time of her transfer from Mahasu District to Shimla District in the year 1967, her seniority was to be dovetailed. He has supported the issuance of Annexure P-4 dated 28.5.1992.

4. I have heard the learned Counsel for the parties and have perused the pleadings carefully.

5. Petitioner's initial appointment was in District Mahasu as JBT Teacher. She was transferred to Government High School, Nalagarh (Shimla District) on 9.5.1967 as JBT teacher. In the final seniority list of JBT teachers, as it stood on 31.1.1985, Petitioner's name was reflected at Sr. 179. Her date of appointment has been shown as 23.12.1959. She has been promoted initially to the post of Head Teacher and thereafter as per Annexure P-2 to the post of Centre Head Teacher vide office order dated 30.1.1992. Petitioner has brought to the notice of Respondents that her seniority should be counted from her initial date of appointment in District Mahasu, i.e. 23.12.1959. This plea of Petitioner was not taken into consideration and office order dated 30.1.1992 was withdrawn.

6. Respondent-State was directed to produce the records to see whether Petitioner had ever given her consent for her transfer from Government Primary School, Mohari, Mahasu District to Government Primary School, Nalagarh, Shimla District. Record was produced by the Respondent-State and the same was perused. It was evident from the records that Petitioner has not given her consent at the time of her transfer from Government Primary School, Mohari, Mahasu District to Government Primary School, Nalagarh, Shimla District. The Court had directed the Respondents to re-look into the matter on 22.7.2009. In sequel to this direction, Deputy Director of Education has issued instructions to the office of the learned Advocate General on 12.3.2010. These instructions were

contrary to record. The Deputy Director of Elementary Education was directed to explain why she has given instructions to the office of the learned Advocate General contrary to record. She appeared in person on 16.3.2010 and fairly admitted that the information supplied to the office of the Advocate General was contrary to the record. She has also tendered unconditional and unqualified apology vide office order dated 19.3.2010.

7. The fact of the matter is that Petitioner had joined in Mahasu District on 23.12.1959 and was transferred to District Shimla on 9.5.1967. Since she had not given her consent to be transferred from Mahasu District to Shimla District, her seniority could not be dove tailed as indicated in Annexure P-3 dated 25.5.1992. In other words, her seniority was to be counted with effect from 23.12.1959. Seniority has been correctly assigned to the Petitioner vide Annexure P-1 on the basis of which she was promoted to the post of Head Teacher and thereafter to the post of Centre Head Teacher. The action of Respondents of issuance of Annexure P-3 to Petitioner informing her that her seniority was to be dovetailed is contrary to law.

8. Petitioner has been promoted to the post of Centre Head Teacher vide office order dated 30.1.1992. This office order was withdrawn on 25.5.1992 without hearing Petitioner. Petitioner has suffered civil and evil consequences and Annexure P-4 could not be issued without hearing her. Moreover, the basis of issuance of Annexure P-4 was contrary to law since the seniority of Petitioner was to be counted with effect from 23.12.1959 and not with effect from 9.5.1967. A bare perusal of Annexure P-5 reveals that Respondent No. 2 had directed Respondent No. 3 to permit the Petitioner to join her duties of the higher post. Respondent No. 3 has not complied with the orders passed by Respondent No. 2 to post the Petitioner in Government Primary School, Sanawar Gaon or Sanawar (Solan). The effect of issuance of Annexures P-3 and P-4 is that persons junior to Petitioner as per Annexure P-5 stood promoted to the post of Centre Head Teacher. It is also made clear that at the time of issuance of Punjab Re-organization Act, Nalagarh was in District Shimla and it was only in 1972 that District Solan was created.

9. Respondents have admitted in the reply that initially there was State cadre of JBT teachers. Even as per Annexure R-1 dated 8.5.1967, there is no averment that Petitioner had given consent to be transferred from Government Primary School, Mohari (Mahasu) to Government Primary School, Nalagarh, Shimla District. Petitioner could loose her seniority only if she had given consent for her transfer from Government School, Mohari (Mahasu) to Government Primary School, Nalagarh, Shimla District.

10. Mr. Rajinder Dogra has argued that Petitioner has since retired after attaining the age of superannuation, no relief can be granted to her at this stage. There is no merit in this contention. Petitioner was promoted as per Annexure P-2 on 30.1.1992. Respondent No. 2 directed Respondent No. 3 to permit the Petitioner to join her duties as per Annexure P-5 on 10.5.1994. She has been prevented

from discharging the duties of Centre Head Teacher. In view of this, Petitioner will be deemed to be regularly promoted and is held entitled to all the monetary benefits.

11. Mr. Rajinder Dogra lastly contended that Petitioner cannot be paid salary for the period she has not worked on the higher post on the principles of "equal pay for equal work". This contention is also liable to be rejected. Petitioner has been prevented from discharging the duties of higher post as Centre Head Teacher after her promotion vide office order dated 30.1.1992.

12. This question is no more res integra in view of the definitive law laid down by their Lordships of the Hon^{ble} Supreme Court in Union of India Vs. K.V. Jankiraman, etc. etc., . Their Lordships have held as under:

We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

13. Accordingly, the petition is allowed. Annexures P-3 and P-4 are quashed and set aside. Petitioner is declared to be regularly promoted to the post of Centre Head Teacher with all the consequential benefits with effect from 30.1.1992. Respondents are directed to release the monetary benefits to the Petitioner and also to work out the pension against the post of Centre Head Teacher. Needful be done within a period of eight weeks from today. No costs.