
(2010) 11 SHI CK 0332
In the High Court Of Himachal Pradesh
Case No : C.W.P.-T No. 2114 of 2008

Mukesh Manhas and Others

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 03-11-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 11 SHI CK 0332

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Deepak Gupta, J.—The 94 petitioners filed an Original Application before the erstwhile H.P. State Administrative Tribunal. On abolition of the Tribunal, the said Original Application was transferred to this Court in terms of the Himachal Pradesh Administrative Tribunal (Transfer of Decided and Pending Cases and Applications) Act, 2008, and registered as CWP-T No. 2114 of 2008.

2. All the 94 petitioners are working as DPEs in the Senior Secondary Schools. They are basically Physical Education Teachers. The undisputed facts of the case are that the Plus Two Classes, i.e. 11th and 12th, are taught only in Senior Secondary Schools. The case of the petitioners is that whereas all the other teachers teaching all other subjects to the plus one and plus two classes in the Senior Secondary Schools are designated as Lecturers (School cadre) and paid the scale of a lecturer (Rs. 6400-10600/-), whereas the petitioners are not designated as Lecturers (School cadre) and are given pay in the scale of Rs. 5480-8925/-.

3. The petitioners, for a long time, have been claiming that they fulfill all requisite qualifications for being appointed as Lecturers in Physical Education and hence, should be designated as such. It would be pertinent to mention that the petitioners rely upon the notification dated 3rd September, 2001, issued by the

National Council For Teacher Education, which includes the National Council for Teacher Education (Determination of Minimum Qualifications For Recruitment of Teachers in Schools) Regulations, 2001 (hereinafter called as "the Regulations"). Regulation 2 lays down that the Regulations shall be applicable in all formal schools established, run or aided or recognized by Central or State Government. As such, there can be no dispute that these Regulations are applicable in the State of Himachal Pradesh also. The Regulations lay down the following minimum qualifications for recruitment of Physical Education Teachers:

LEVEL MINIMUM ACADEMIC AND PROFESSIONAL QUALIFICATIONS

I. Elementary (i) Senior Secondary School certificate or intermediate or its equivalent; and

(ii) Certificate in Physical Education (C.P. Ed.) of a duration of not less than two years or its equivalent

II. Secondary/High School Graduate with Bachelor of Physical Education (B.P. Ed.) or its equivalent

III. Senior Secondary (Physical Education as an elective subject) M.P.E./M.P. Ed. (2 year duration)

note:

1. Some of the States are having certificate in physical education courses of one year duration only, while in some other States students passing secondary level examination are admitted to certificate in physical education courses. Such States may, by 2005, conduct certificate in physical education programmes of a duration of not less than two years with admission being open to Senior Secondary/Intermediate pass candidates. In the meantime candidates who have undergone certificate courses in physical education of one year duration or were admitted to such programmes after passing secondary level examination only may be given employment in the concerned States only.

4. The case of the petitioners is that as per these Regulations, only those persons who have obtained a Master Degree in Physical Education of two years duration are entitled to be appointed in the senior secondary schools. It is also not disputed that in all other subjects being taught in the senior secondary schools by the lecturers, the minimum qualification prescribed is a Master Degree in the relevant subject with Bachelor of Education or its equivalent, i.e. M.A., B. Ed. or a two years integrated M. Sc. Ed. Course. The petitioners submit that the State, for reasons best known to it, has not amended the minimum educational qualifications for Physical Education teachers and the DP Es are being continued in the lower scale of pay even though they are teaching plus two classes.

5. The stand of the State is that the State has not amended the Rules and different rules are applicable to DP Es and other school Lecturers and the DP Es are being paid strictly as per the Recruitment and Promotion Rules applicable to

them.

6. The matter is not so simple. I have perused the entire record. The petitioners have obtained the notings under the Right to Information Act and a perusal of the notings, which have been quoted in the petition, clearly shows that at every level the case of the petitioners has been accepted to be correct. A proposal was mooted to upgrade 118 posts of DP Es to those of Lecturer (Physical Education) in the school cadre to bring them in conformity both with the Punjab pattern and the Regulations of the NCTE referred to above. Initially, the Financial Department did not grant approval. Thereafter, fresh proposal in this behalf was made. In one of the notings, it is clearly stated that the Director of Higher Education had informed that there are only 118 DP Es, who possessed the Degree of M.P.E./M.P. Ed./M.A. (Physical Education) and, therefore, recommended that the matter be taken up with the Finance Department for up-gradation of the posts to those of Lecturers (Physical Education). In fact, the Finance Department also given its concurrence to this proposal on 24th April, 2007 and concurred with the proposal of the Administrative Department (Education) for up-gradation of 118 posts of DP Es in the pay scale of Rs. 5480-8925/- of Government Senior Secondary Schools to the posts of Lecturers (Physical Education) in the pay scale of Rs. 6400 -10640/- on the condition that approval of Cabinet should be obtained. Thereafter, detailed note was put up for approval of the Cabinet and the matter was placed before the Cabinet in its meeting held on 05.10.2007, but the proposal was not approved. Therefore, the petition.

7. A perusal of the notings clearly show that the Administrative as well as Finance Department had recommended that 118 posts of DP Es be up-graded to those of Lecturers and had supported the recommendations with reasons. The cabinet rejected this proposal. Normally, this Court would not interfere in policy matters. But in case, there is arbitrariness and discrimination which violates Article 14 of the Constitution of India, then this Court is bound to interfere.

8. It is not disputed that the teachers teaching all other subjects in plus one and plus two classes are in the cadre of Lecturers (School Cadre) in a higher pay scale. It is also not disputed that Physical Education is also one of the elective subjects in plus one and plus two classes. If a student chooses Physical Education as his subject, he has to pass the same like any other student, who may choose History or Geography or any other Science subject. The NCTE has laid down the minimum standards which clearly show that to be eligible to teach Physical Education to the students of plus one and plus two classes, the teacher must have a Post Graduate degree in Physical Education. The State Government is bound by such regulations. Merely because the State Government has not amended its Recruitment and Promotion Rules to bring them in line with the minimum eligibility criteria laid down in the Regulations framed by NCTE, in my considered view, is not sufficient to withhold the benefit of higher scale from those Physical Education Teachers, who are teaching plus one and plus two classes and fulfill the minimum educational qualifications laid down by the NCTE.

9. The action of the respondents in not giving the benefit to such teachers is totally violative of Article 14 of the Constitution of India. When teachers teach the same level of classes and the minimum eligibility criteria is similar and in all other subjects, they are governed by one pay scale of Lecturers (School Cadre), there is no ground to discriminate those Physical Education Teachers, who possess the Post Graduate qualification in Physical Education, as mandated by the NCTE.

10. In view of the aforesaid discussion, the writ petition is allowed and the State is directed to grant the scale of School Lecturers to those Physical Education Teachers, who possess the minimum educational qualifications laid down by the NCTE and are teaching plus one and plus two classes in the Senior Secondary Schools of the State. The benefit of grant of such scale should be given to all the eligible teachers, whether they are petitioners in this case or not, w.e.f. 01.06.2008, since the petition was filed in the Tribunal on 26.05.2008. The arrears shall be paid / credited to the accounts of the person, so found eligible on or before 30th April, 2011, failing which the State shall be liable to pay interest @ 12 per cent per annum.

11. The writ petition is disposed of in the aforesaid terms. No order as to costs.