

**(1989) 09 SHI CK 0016**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Writ Petition No. 411 of 1987**

Padma Sharma and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

**Date of Decision :** 04-09-1989

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 14(1), 15, 15(1), 3  
Constitution of India, 1950 — Article 136, 226

**Citation :** (1990) 1 ShimLC 1

**Hon'ble Judges :** N.M. Kasliwal, C.J.; V.K. Mehrotra, J.; Bhawani Singh, J

**Bench :** Full Bench

**Advocate :** M.L. Sharma, for the Appellant; M.S. Guleria, Assistant A.G., for the Respondent

## Judgement

V.K. Mehrotra, J.—In a memorandum dated July 20, 1983, the Director of Education, Himachal Pradesh, outlined a Scheme for one year Junior Basic Training Condensed Course for Nursery qualified candidates of the State. This Scheme was communicated through a letter of July 23, 1983 from the office of the District Education Officer, Bilaspur (HP) to the Headmasters and Heads of some institutions mentioned in the letter. The Scheme contained in the memorandum mentioned several conditions, after giving out the eligibility, the age limit and the authorities and the criteria of selection for admission to the Course. Condition No. 3, amongst those mentioned at the end of the memorandum, said that:

After successful completion of training, employment will be provided to the candidates on their turn subject to availability of posts and they shall have no claim for appointment as a matter of right for recruitment. They shall have to appear before the prescribed selection board in case their names are sponsored by the Employment Exchanges. The cost of the training will have to be borne by the candidates.

2. Padma Sharma and 53 other Petitioners came to this Court on September 19,

1987, seeking a direction that they be also admitted to one year Junior Basic Training Condensed on the basis of their qualification as diploma holders in Nursery and Infant Training Course. They said that prior to the year 1983 the Nursery trained teachers were all admitted to the aforesaid J.B.T. Course on the basis of being qualified in the Nursery Teachers Training Course but, thereafter, the Petitioners, who had qualified in the Nursery Training Session 1983-84, had not been admitted to the Course. The writ petition came up before a Division Bench on September 24, 1987, for preliminary hearing. Thereafter, some orders were passed in it from time to time. However, an objection was taken on behalf of the Respondents, namely, the State of Himachal Pradesh, its Director of Education and District Education Officers, by the learned Advocate General that the petition could not be entertained by this Court. It had to be transferred for disposal to the Himachal Pradesh State Administrative Tribunal. The learned Advocate General brought to the notice of the Court the fact that some petitions of a similar nature had been sent by this Court for disposal to the State Administrative Tribunal. According to him, orders of that nature had been passed in Civil Writ Petition No. 1009 of 1985 Jai Singh v. State of H.P. and Ors. on January 2, 1987; Civil Writ Petition No. 442 of 1987 Krishan Kumar v. State, on November 2, 1987 and Civil Writ Petition No. 482 of 1987 Rita Sharma v. State on November 10, 1987. It was, however, fairly stated that the orders were not of a speaking nature and no reasons were given by the Division Benches for taking the view that the cases were cognizable only by the Himachal Pradesh State Administrative Tribunal.

3. The objection of the learned Advocate General was founded on the provisions of Section 15 of the Administrative Tribunals Act, 1985 (briefly "the Act"). The objection did not find favour with the Division Bench before which it was taken in the present writ petition. The Bench felt that the subject matter of the present writ petition was not such which could be said to be covered by the provisions of Section 15 of the Act. By an order dated June 8, 1988, the Bench directed that the papers of the case be placed before Hon"ble the Chief Justice for constituting a larger Bench for determination of the question "whether this Court has jurisdiction to entertain and consider petitions like the present, or the matter should go before the State Administrative Tribunal".

4. This is how the matter came up before this Full Bench.

5. Section 15 of the Act deals with the jurisdiction, powers and authority of the State Administrative Tribunals. Sub-section (1) of Section 15, which alone is material, reads:

(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court under Article 136 of the Constitution) in relation to:

(a) recruitment, and matters concerning recruitment, to any civil service of the

State or any civil post under the State;

(b) all service matters concerning a person not being a person referred to in Clause (c) of this sub-section or a member, person or civilian referred to in Clause (b) of Sub-section (1) of Section 14 appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in Clause (b), being a person whose services have been placed by any such local or other authority or corporation or other body as is controlled or owned by the State Government at the disposal of the State Government for such appointment.

6. The Administrative Tribunal for the State is to exercise jurisdiction in relation to recruitment and matters concerning recruitment" to any civil service of the State or any civil post under the State. This is clear from clause (a) of Sub-section (1). Clause (b) is not attracted for, according to its definition in Section 3(q), "service matter" mean "all matters relating to the conditions of service of a person". It is the common case of the parties that the question of any "service matter" does not arise in the present petition.

7. Recruitment to a service or a civil post connotes the idea of enlistment, acceptance, selection or approval for appointment to a service or to a civil post. It embraces within its ambit any step taken by the employer towards enlistment, acceptance, selection or approval for appointment to a service or a post. It is clear that unless the employer initiates the process towards the aforesaid, it is not possible to say that he has taken any steps towards recruitment to a service or post. In service jurisprudence the phrase "recruitment" to a service or a civil post has acquired a definite meaning. According to Webster's Third New International Dictionary at page 1899, "recruitment", means the act or process of recruiting or an act of offering inducement to qualified personnel to enter a particular job or profession. This is the basic characteristic of the term "recruitment" in the context of service jurisprudence. We share the view expressed by a Division Bench of the Punjab and Haryana High Court in *Basant Lal Malhotra Vs. State of Punjab and Others*, when it says : "the term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment....

8. The Administrative Tribunals Act 1985 was enacted as "an Act to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts...." The concept of the word "recruitment", as used in Section 15(1)(a) of the Act, can be no different from the one which it bears in service jurisprudence as understood in this country.

9. The Scheme provides that after successful completion of training, employment will be provided to the candidates on their turn subject to availability of posts and they shall have no claim for appointment as a matter of right for recruitment. This condition clearly rules out any claim, on the part of the person who is admitted to and obtains training in one year Junior Basic Training Condensed Course, to appointment to any service or civil post under the State of Himachal Pradesh by virtue only of having received such training. The J.B.T. Condensed Course only enables a person admitted to it to acquire eligibility for being considered for recruitment to a service or a civil post and no more.

10. The acquisition of eligibility for appointment, by itself, does not amount to recruitment as understood in service law. Moreso, having regard to the terms of the Scheme.

11. An attempt was made to urge that the acquisition of eligibility for being considered for recruitment, by admission to the J.B.T. Condensed Course, was one of the "matters concerning recruitment" within the ambit of clause (a). It is difficult, however to accept this submission. Merely because the Condensed Course had been started to enable ineligible persons to become eligible for appointment as trained teachers and had been started by the Government with a view to enable such persons to be considered for recruitment, though not necessarily leading to their appointment, the admission to the Condensed Course cannot be treated as a matter concerning recruitment within the meaning of clause (a). If the submission made on behalf of the Respondents is accepted, it would amount to giving a meaning to the word "recruitment", which would not be in consonance with the accepted meaning of that term as understood in the service jurisprudence.

12. Before a matter can be treated to be one concerning recruitment, it should be shown to be related with the act or process of recruitment or an act of offering inducement to a qualified person to enter a particular job or profession. In other words, it should be a part of a step for enlistment, acceptance, selection or approval for appointment to a service or a civil post. Unless, the employer initiates a process towards enlistment, selection or approval for appointment, it is difficult to say that he has taken any step towards recruitment to a service or a post. Till the process is so initiated, the mere fact of affording facility to an ineligible person to acquire eligibility for consideration for appointment to a service or a civil ( post cannot be characterised as a matter concerning recruitment.

13. The Scheme expressly mentions that the successful completion of the training will not give rise to a claim for appointment as a matter of right. The matter was put beyond any shadow of doubt by the Director of Primary Education, Himachal Pradesh, by intimating all the District Primary Education Officers through his letter of November 27, 1986, that it had been decided by the Government that 50% of J.B.T. vacancies, which were earlier filled up by them, shall thereafter be filled up by the Himachal Pradesh Public Service Commission.

It is clear, therefore, that the candidates who successfully complete the one year Junior Basic Condensed Course will have to seek employment only through the Public Service Commission. The fact of having obtained the training would not give them any right, whatsoever, of seeking employment merely because they were admitted to the one year Junior Basic Training Condensed Course and had successfully completed it.

14. We are of opinion that a petition like the present where the Petitioners are seeking redress in the matter of their admission to the J.B.T. Condensed Course does not deal with a matter concerning recruitment to a civil service or a post under the State of Himachal Pradesh. It cannot be directed to be transferred for consideration to the Himachal Pradesh State Administrative Tribunal. The Petitioners are entitled to consideration of their petition under Article 226 of the Constitution by this Court.

15. With this answer, let the petition be now listed before the appropriate Bench for further orders.