
(2009) 09 SHI CK 0017
In the High Court Of Himachal Pradesh

Pooja Devi and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Grant-in-Aid to Parents Teacher Association Rules, 2006 — Rule 3

Citation : (2009) 3 ShimLC 13

Hon'ble Judges : R.B. Misra, Acting C.J.;Rajiv Sharma, J

Bench : Division Bench

Judgement

Rajiv Sharma, J.—The following CWPs have been wrongly connected/tagged with these petitions. These petitions pertain to appointment to the post of Anganwadi Workers/PAT. These are de-linked and are directed to be listed in due course:

CWPs No. 2336/2008, 905/2008,932/2008, 105/2009, 2345/2009, 2470/2009, 2576/2009, 454/2009, 73/2009, 789/2009, 791/2009, 928/2008 and 976/2009.

2. Since common questions of law and facts are involved in these petitions, the same are taken up together for hearing to decide the preliminary issue whether the present petitions are maintainable or not against the State of Himachal Pradesh.

3. In order to decide this issue the facts of CWP No. 2070/2008 were taken into consideration to avoid repetition of referring the pleadings.

4. The post of Lecturer (Political Science) was advertised in the daily Edition of "Divya Himachal" by respondent No. 6 to be filled in the Government Senior Secondary/School, Kujji, Tehsil Pachhad, District Sirmaur, Himachal Pradesh. The applications were invited upto 15.9.2007. The date fixed for interview was 20.9.2007. The petitioner submitted application and was interviewed on the date fixed. The appointment letter was issued to the petitioner for the post of Lecturer (Political Science) by the Parent Teacher Association on 21.9.2009. She joined her duties on 22.9.2007. Thereafter on the basis of the recommendations made

by the Committee, the inquiry was held against the appointment of the petitioner. The Committee submitted the report to the Parent Teacher Association dated 22.9.2008. The petitioner had, inter alia, prayed for quashing the report submitted by the Special Secretary to the State of Himachal Pradesh dated 7.3.2008 and also for quashing notification dated 27.5.2008 whereby the Committees were constituted to look into the manner in which the petitioner and similarly situate persons were appointed. The petitioner has also assailed the inquiry report dated 22.9.2008. She has also sought direction to respondents No. 1 to 4 to release the grant-in-aid.

5. The learned Advocates appearing on behalf of the petitioners have vehemently argued that since the State Government exercises deep and pervasive control over the entire selection process and also releases the grant-in-aid to the teachers, the writ petitions are maintainable.

6. The learned Advocate General has vehemently argued that the arrangement of appointing the teachers by the Parent Teacher Associations is purely a private affair.

7. In order to see whether the writ petition is maintainable or not as canvassed by the respondents, it is necessary for us to deliberate upon the entire gamut from the very beginning the manner in which the petitioner was appointed on Parent Teacher Association as per the procedure prescribed under the Himachal Pradesh Education Code. The Himachal Pradesh Education Code has come into force with effect from 26.7.2001. It was approved by the Government vide letter No. Shiksha-II-Chha (5)-16/96 dated 26.7.2001. The Regulations of the Himachal Pradesh Education Code apply to all the Government Aided Educational Institutions affiliated to the Himachal Pradesh Board of School Education and those institutions recognized by the State Government before 15.7.1996. Para 1.33 of the Himachal Pradesh Education Code defines Parents Teacher Association as under:

Parents Teachers Association is a non-political body for better co-ordination and interaction between parents and teachers for improvement in academic standards and infrastructure in a school.

8. Para 2.33 prescribes the objectives of Parent Teacher Association. These read as under:

2.33.1 - Objectives of Parent Teacher Association-

1. To revive the relationship between the parents and teachers.
2. To create the healthy education environment in schools.
3. To arrange time to time discussions with the elder persons of the society and to incorporate their suggestions for the improvement of the educational standard in the schools.
4. To suggest ways so that the students education is promoted.

5. To make a collective efforts to improve the conduct of the students and also to restrict the entry of anti-social elements in school campus.
6. To inform the parents/guardians about the performance of their wards from time to time, and to make arrangement for the parents to meet the concerned staff once in a quarter.
7. To make arrangements for teachers, etc., when there is shortage of staff in the institution as a temporary measure.
8. To make the parents aware of various schemes of the Government in the area of education and also to give information about various activities and programmes of the department at school, district and state level.
9. To make the collective effort for the overall development of the organization and students, by arranging at least one meeting of P.T.A. executive quarterly and that of its general house once in a year, giving topmost priority to students' welfare.

9. The forming of the Parent Teacher Association is provided under para 2.33.2. The Director Education, Himachal Pradesh has issued instructions to all the Deputy Directors of Education on 3.5.2006 whereby he has apprised them of the desire of the Hon'ble Chief Minister that the persons who were working on P.T.A. basis against sanctioned posts in all the backward areas may not be filled through promotion or by the appointments till further decision. Thereafter the Joint Secretary Education has sent communication to the Director Education on 23.6.2006. He has emphasized that before issuing the posting orders of teachers for filling up the vacant posts, it should be ascertained whether any teacher is working against the vacant post on contract basis or whether the Parent Teacher Association has made available the services of a teacher. It is further mentioned therein that in case contract/PTA teachers are available, the vacancy may not be filled immediately and the teacher available for posting should be posted where there is no contract/PTA teacher. The State in its own wisdom has issued the notification dated 29.6.2006 whereby it has framed the rules called "the Grant-in-Aid to Parents Teacher Association Rules, 2006." Rule 3 provides that these rules shall be applicable to determine the eligibility and the quantum of grant-in-aid and release thereof to PTAs who make available teachers to an educational institution for the purpose of imparting education to its students. The release of grant-in-aid has been made sole discretion of the State Government as per Rule 4. The procedure in which the application has to be submitted for the release of grant-in-aid is provided under Rule 5. The limit of grant has been dealt with under Rule 6. Rule 7 lays down educational qualification and quantum of grant-in-aid is provided under Rule 8. Rule 10 provides that the Principal of an educational institution may, at his sole discretion, allow teachers made available by the PTA to enter the premises and teach the students of the educational institutions. The teachers shall be under the control of the Principal of the educational institutions. The grant-in-aid is to be released to those teachers whose work and conduct is

found satisfactory by the Principal of educational institutions. The grant-in-aid is to be sanctioned by the Director or other officer authorized by him. The State Government has the power to relax the rules under Rule 14.

10. The State Government has issued clarification/administrative instruction to the Grant-in-Aid to Parent Teacher Association Rules, 2006 on 19.8.2006. The State Government has stipulated constitution of Selection Committee as per the clarification/administrative instructions issued on 2.8.2006. The appointment letter is required to be issued by the Parent Teacher Association. The Director of Education has issued the following letter, dated 19.10.2006 to all the Principals, Government Colleges in Himachal Pradesh, which reads thus:

The Grant-in-Aid to Parent Teacher Association Rules-2006 were notified by the Govt. vide Notification No. EDN-A (Kha)7-3/2006 dated 29.6.2006, the copies of which had been forwarded to you also. Subsequently, the Director of Higher Education issued certain clarifications/administrative instructions vide letter No. EDN-H(8)17(2)46/2006-P.T.A. dated 19th August, 2006 and subsequent of even number dated 16 September, 2006 and 27 September, 2006.

In this context an O.A. No. 2919/2006 was filed by Jasbir Singh and Ors. v. State of H.P., before the Hon'ble H.P. Administrative Tribunal. In its interim order dated 29.9.2006 the Hon'ble Tribunal ordered as under:

(i) Continuation of teachers already appointed by the PTA shall be subject to the final decision of the original application.

(ii) The teachers appointed/selected/provided by the PTA hereafter without the process of advertising the posts and selecting the people on competitive basis shall not be permitted by respondents No. 1 and 2 to function as teachers in the Government Schools.

(iii) Similarly, no unqualified person who does not fulfill at least minimum education qualification shall be permitted to function as a teacher in the Government Schools.

In view of the above, you are directed to ensure full compliance with the Hon'ble Tribunal's Orders. In particular, the teachers should be appointed by the PTAs after advertisement. The PTAs should therefore display the vacancy position and venue/date of interview in the notice board of the concerned school, the PTA's office, notice board of the Gram Panchayat concerned as well as the adjoining Panchayats. If PTAs have sufficient funds, they may even consider publicity through press advertisement. Sufficient time should be given to desirous candidates to apply. The dates of interview should be decided in advance, for example the 5th and 20th of each month could be earmarked for holding interviews by the PTAs so that desirous candidates have information about interview dates. In case these dates happened to fall on a holiday, interview should be held on next working day. The PTAs are further advised that the candidates should be selected on the basis of merit by adopting an objective competitive

basis. Only those candidates should be selected who fulfill requisite educational and professional qualifications as per Recruitment & Promotion Rules for that post.

While conveying the name of the selected candidate to the Principal the PTA should clearly indicate that the directions of the Hon''ble Administrative Tribunal have been complied with.

11. Thereafter the Deputy Secretary Higher Education has sent the communication to the Director of Education, Himachal Pradesh and also to the Director of Elementary Education on 21.2.2007 whereby he has issued further clarification in respect of Grant-in-Aid to Parent Teacher Association Rules, 2006. The communication dated 21.2.2007, reads thus:

I am directed to invite your attention to Rule 9 of the Grant-in-Aid to PTA Rules, 2006 which provides that no grant shall be admissible to the PTA's for teachers made available by them for the period of vacations unless specifically allowed by the Principal of the Institution for reasons recorded in writing. This rule may be strictly enforced.

I am further directed to state that the teachers made available by PTAs before the vacations should normally be continued after the vacations also unless there are sufficient reasons to discontinue them. In other words, the PTA provided teachers will continue automatically in the next session. Needless to say, there is no need for the PTAs to go through the selection process once again.

I may be ensured that the above instructions are conveyed to all the Principals of Schools/Colleges for strict compliance.

12. The petitioners have undergone the selection process before their appointments, as discussed hereinabove. They have started discharging their duties in sequel to their selection.

13. The State Government has issued letter dated 28.1.2008 whereby Sh. Deepak Sanan was directed to inquire into the complaints of irregularities in the appointments of teachers by the Parent Teacher Association. He prepared the report and furnished the same to the State Government on 7.3.2008 vide Annexure P-18. In sequel to the report furnished by Sh. Deepak Sanan, the State Government issued notification dated 27.5.2008 whereby Committees were constituted to inquire into the cases of irregularities of the teachers appointed by the PTAs. Thereafter the appointment of the petitioner was also gone into by the Sub-Divisional Magistrate, Rajgarh, District Sirmaur. He made the recommendations on 22.9.2008. The copy of the recommendations was sent to the PTAs.

14. We have gone through the pleadings carefully.

15. What emerges from the above enumerated facts is that the appointments by the Parent Teacher Association are regulated by the Himachal Pradesh Education

Code. It has been approved by the Government on 26.7.2001. It is specifically provided under sub-para 7 of para 2.33.1 that it is the duty cast upon the PTA to make arrangements for teachers etc. when there is shortage of staff in the institution as a temporary measure. The State Government has framed the Grant-in-Aid to Parent Teacher Association Rules, 2006. These rules have been amended from time to time. The detailed procedure has been prescribed the manner in which the posts are to be filled in by the Parent Teacher Association and for submission of application for the release of grant-in-aid. The grant-in-aid is to be sanctioned by the Director after the work and conduct of a teacher is found satisfactory by the Principal of the educational institution. The State Government has also issued letters placed on record vide Annexures P-I and P-2 dated 3.5.2006 and 23.6.2006. It has also issued clarification on 19.10.2006 and 21.2.2007. The State Government by releasing the grant-in-aid and by issuing clarification/instructions exercises deep and pervasive control on the appointment of teachers by the Parent Teacher Association. The State Government releases the necessary grant-in-aid for disbursing the salary to the teachers. The exercise has been taken by the State Government to control the functioning of the teachers appointed by the Parent Teacher Association to improve and maintain the standard of education. Initially, it appears that the appointments of the teachers were to be carried out by the Parent Teacher Association. However, with the passage of time the State Government has started exercising its control in larger public interest. The teachers though are entitled to salary through grant-in-aid, however, their work and conduct is to be verified by the Principal. The administrative control is exercised by the Principal once the teachers are appointed by the Parent Teacher Association in a particular school. The teachers appointed by the Parent Teacher Association discharge public duty by imparting education to the children. It is only in those cases where the State Government is not able to meet the ever increasing demand of the teachers that the appointments are made through the agency of the Parent Teacher Association. It is exception and not a rule while appointing the teachers in the Government colleges and schools through the agency of the Parent Teacher Association.

16. The State Government was also seized of the matter whether the appointments of the petitioner and similarly situate persons was in accordance with the procedure prescribed or not. The State Government had directed Sh. Deepak Sanan, Principal Secretary (Health) to look into the complaints of irregularities in the appointments of teachers by the Parent Teacher Association. He prepared the report and submitted the same to the State Government. He has made the following recommendations:

In view of the infirmities in selection procedure it is suggested that a new scheme, which addresses the key objectives of ensuring enhanced accountability and availability of competent teachers selected through a process which is both fair and seen to be fair, be framed. New policy and selection process should bridge the gaps outlined in the existing GIA Rules.

This can be done by using Rule 4 of the GIA Rules which provides as follows:

4. Sole discretion of Government. Government, at its sole discretion, may give grant-in-aid to PTAs on such terms and conditions it considers appropriate.

In effect, Government can lay down a fresh procedure for filling vacancies of teachers and state that the GIA admissible would be given on that basis. Existing PTA appointees would be eligible to apply under the new scheme and if selected under the new procedure would be supported as per the terms and conditions of the new scheme. Those left out would be left to PTAs to support on their own if they wish to do so.

In some representations received during the course of inquiry, it is alleged that even those candidates were appointed by the PTAs who did not fulfill essential minimum qualifications for the post. In case such appointees have been paid emoluments out of grant-in-aid the grant so paid should be recovered from the PTAs after holding inquiry in all such cases.

17. He has also made certain suggestions as per para 9 of the report. He has summarized the report at page 90 of the paper-book. He has suggested selection criteria in Annexure-B of the report. The State Government issued notification dated 27.5.2008 whereby the Committees were constituted to look into the complaints and the Deputy Commissioners of the concerned District or his nominee i.e. A.D.C./A.D.M. for a college or for a group of Colleges. The Principals of the College, the Principal of the Senior Secondary School and Headmaster of the High School were required to re-check the educational qualifications of all the teachers offered by the Parent Teacher Association and verify whether their educational qualifications were as per the requirement of the Recruitment and Promotion Rules of the post against which they were appointed. The factum of constitution of the High Power Committee by the State Government discloses deep and pervasive control/superintendence the manner in which the petitioner and similarly situate persons were appointed. The State Government has constituted the Committee to bring transparency and fairness in the appointment procedure as and when the teachers are appointed by the Parent Teacher Association. The Committee has suggested new methodology for appointing the teachers by the Parent Teacher Association. The constitution of the Sanan's Committee coupled with further constitution of Committees at the district level or sub-division level shows the deep concern and control of the State Government over the appointments by the Parent Teacher Association. In these circumstances, we cannot accept the submission of the learned Advocate General that it is purely a private arrangement between the teachers appointed and the Parent Teacher Association. The State Government plays a very active role the manner in which the teachers are to be appointed by the Parent Teacher Association and their services can be dispensed with. The State Government has ensured that suitable persons are appointed by the Parent Teacher Association and for that purpose the qualification and the constitution of the Selection Committee has been provided. The manner in which the application for the

release of grant-in-aid has to be processed and the sanction by the Principal have been provided. The State Government had been issuing instructions the manner in which the teachers are to be appointed or replaced. The instructions have been issued, as noticed above, by the Chief Minister to mitigate the hardship faced by the teachers appointed by Parent Teacher Association when they were being replaced.

18. The Himachal Pradesh Education Code has the status of law. The Apex Court in *State of H.P. Vs. H.P. State Recognised and Aided Schools Managing Committees and Others*, while interpreting the Grant-in-Aid to Parent Teacher Association Rules provided in the Himachal Pradesh Education Code has upheld the parity in the pay and allowances of the teachers appointed in the Government aided private schools with their counter-parts in the Government schools. This is no more *res Integra* that the State's action whether legislative/administrative or quasi-judicial is open to judicial review in case the same is contrary to fairness or violative of Articles 14 and 16 of the Constitution of India. There has to be fairness in action of the State in every field. Every decision/action of the State, if it violates the fundamental rights and legal duties, is assailable under Article 226 of the Constitution of India. It is the duty cast upon the State Government and its functionaries to ensure that their actions conform to Constitution and are within the limits prescribed under law.

The upshot of the above discussion is that:

(i) Though the Parent Teacher Association is purely a non-political body, however, it discharges the duty of great public importance. It provides teachers where the Government cannot provide teachers. There is a strict procedure the Parent Teacher Associations have to follow while appointing the teachers. These teachers have been put under the control of the Principals of the schools concerned;

(ii) The release of the grant-in-aid is further subjected to verification of the work and conduct of the teacher appointed by the Parent Teacher Association by the Principals. The State Government has the discretion to release the grant-in-aid to the teachers appointed by Parent Teacher Association. However, once the case stands recommended by the Principal, the grant-in-aid is generally to be released;

(iii) The suitability of the teachers is adjudged by the Selection Committee. The Selection Committee comprises one of the experts in the subject. The appointment is made by the Parent Teacher Association; however, the entire selection process is closely supervised by the State Government from appointment till their removal;

(iv) The plea of Mr. R.K. Bawa, learned Advocate General that the appointment of teachers by the Parent Teacher Association is purely a private affair cannot be accepted. If it is so, there was no occasion for the State Government to constitute a Committee to look into the complaints of irregularities while

appointing the teachers by the Parent Teacher Associations. The State has accepted the recommendations submitted by the Committee, which further led to laying down the methodology of recruitment of the teachers by the Parent Teacher Association and the manner in which the appointments were to be scrutinized by the committees constituted at district and sub-divisional level;

(v) The Parent Teachers Associations for discharging public duties are also paid grant-in-aid by the State Government. Their actions are further subject to review by the State functionaries. The State exercises deep and pervasive control over the manner in which the Parent Teacher Associations appoint teachers their conduct and removal; and

(vi) The State Government has been issuing effective directions/instructions/clarifications from time to time for regulating/governing the conditions of service of the teachers appointed by the Parent Teacher Association. Since these directions/instructions/clarifications are issued by the State Government, the persons affected/aggrieved by the issuance of these directions/instructions/clarifications can file a petition under Article 226 of the Constitution of India.

19. Accordingly, in view of the observations made hereinabove, it is declared that the present petition is maintainable against the action of the State Government and the petitions are to be heard on merits individually.