
(2013) 01 SHI CK 0059

In the High Court Of Himachal Pradesh

Case No : Civil Write Petition No's. 2979 of 2012-H and 4977 of 2012

Prem Lal

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 01-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 1 ShimLC 379

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Sunita Sharma, for the Appellant; J.S. Guleria, Assistant Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—Since common questions of law and facts are involved in these writ petitions, these were taken up together for hearing and are being disposed of by this common judgment. However, in order to maintain clarity, the facts of C.W.P. No. 2979 of 2012 have been taken into consideration. Petitioner in CWP No. 2979 of 2012 was appointed as Volunteer Teacher under the Scheme framed in 1985. He joined his duties on 05.01.1987. He was regularized on 06.01.1996. Petitioner in CWP No. 4977 of 2012 was appointed as volunteer Teacher under the Scheme framed in 1985. He has been regularized on 06.01.1996.

2. The respondent-State has framed a Scheme in 1985 to fill up the posts of Volunteer Teachers in Primary Schools. The purpose of the Scheme framed in 1985 was to provide an additional teacher in single teacher Primary Schools and also to provide an honorarium to the un-employed persons for a short period. The process of selection was to commence at least three months in advance of the expiry of the two years period for which the existing batch has been given appointment in order to ensure that the future appointments are made well in time. According to the mode of appointment, the following Selection Committee was constituted for filling up the post of volunteer teacher:

1. District Primary Education Officers

..Chairman

2. Principal/Headmaster of the High and Higher Secondary School at District Headquarter

...Member

3. Block Primary Education Officers at District Headquarters a nearest to it.

..Member

According to the criteria, only those candidates whose names were registered in the employment exchange covering their permanent place of residence were eligible for appointment as Volunteer teachers and the candidates belonging to a place within five Kms. from the School where a vacancy of Volunteer Teacher exists were eligible. The posts of Volunteer Teachers were to be advertised in the leading newspapers in the area and were also required to be notified in the area of the Gram Panchayats and also through All India Radio. There was provision for incorporating the waiting list for anticipated or un-anticipated vacancies. The selection was to be made purely on merit. 45 marks were carved out for educational and professional qualification out of 100 marks. 15 marks were to be given to the candidates, who were residing within a radius of five kms., 20 marks for experience and 2 marks for each year experience. The petitioners were appointed under the Scheme framed in 1985. The respondent-State has framed another Volunteer Teacher Scheme on 4th May, 1991. Certain amendments were carried out in the Scheme and a consolidated Scheme was framed on 09.08.1991, according to which, the Selection Committee of following officers was constituted:

1. District Education Officer

...Chairman.

2. One Headmaster to be nominated by the Director, Primary Education

Or

Primary Education Officer

...Member(s).

The appointments were to be made strictly as per the merit. 45 marks were to be allocated for educational/professional qualification and 25 marks for interview.

3. The respondent-State has issued a letter, dated 26.10.1994, whereby the following decisions were taken:

1. The cases of the volunteer teacher appointed under the Scheme 1991, may be scrutinized within stipulated period of 2 months, those who do not possess the requisite criteria of the rules should be reviewed.

2. The Volunteer Teacher, who were appointed under the Scheme-1991 may be accommodated & appointed under the Scheme formulated in the year 1985 and Scheme formulated in the year 1991 may be abolished accordingly. The necessary action to this effect may be issued to the respective officers under intimation to this department.

4. Thus, it is evident that the Scheme framed in 1991 was abolished and the teachers were to be accommodated and appointed under the Volunteer Teacher Scheme framed in the year 1985. A conscious decision was taken by the respondents on 15.12.1995, whereby the Volunteer Teachers who have completed 10 years continuous service in Government Primary School and those who have worked in literacy campaign for two years were to be granted special J.B.T. certificates. The special JBT certificate was issued to the petitioner in CWP No. 2979 of 2012 on 02.05.1996 and he was regularized w.e.f. 06.01.1996. Thereafter, an amendment has been carried out in the Education Code on 11.12.1998. The relevant text of letter, dated 11.12.1998 reads thus:

J.B.T. Special Certificate may be granted to teachers who have put in approved continuous service in Primary Department of a recognized school for not less than five years on the day of submission of application. The awardee should have at least passed Middle Standard Examination and he/she should be a teacher of good moral character duly certified by the Head of Office.

This provision shall be effective from 1.8.1998.

You are, therefore, requested to consider awarding Special Certificates to the eligible Volunteer Teachers numbering 4159 who will be regularized, with effect from 1.8.1998. After regularization, they will be subjected to all the terms and conditions which are applicable to newly recruited J.B.T. teachers, as on fresh appointments, like, under-going medical examination, character verification, probation and application of reservation roster etc.. Further, their first appointment shall not be less than 25 kilometers from their permanent place of residence. They shall have to undergo refresher course/condensed course as per the instructions of the Government issued from time to time.

5. A corrigendum was also issued by the respondent-State on 21.12.1998, whereby it was clarified that the provision of Education Code was amended to the extent that eligibility condition for the award of Special JBT certificate was reduced from 10 years to 5 years. But, the holder of the Special JBT certificate was required to satisfy one of the qualifications prerequisite under the R & P Rules for regularization and the other condition as per R & P Rules for the JBT post, i.e., possession of Matric/Higher Secondary qualification.

6. The petitioner made a representation seeking regularization immediately after completion of five years. The Secretary Education, Government of Himachal Pradesh has sent a communication to the Director, Elementary Education, Government of Himachal Pradesh on 17.12.2009, requesting him to furnish the number of the candidates appointed as Volunteer Teachers in Primary Schools

under both the policies alongwith financial implications involved. Thereafter, the respondent No. 2 has sent a letter to all the Deputy Directors, including the Deputy Director (Elementary Education), Una, H.P. on 20.02.2010. The text of the letter, dated 20.02.2010, reads thus:

This is to be intimated that according to the policy notified in the year 1986 the period for issuing special JBT certificates to the Primary Volunteer Teachers was ten years. This policy was amended in the year 1992 and according to this policy the time period for issuing special JBT certificates was five years and the teachers who were appointed in between year 1986 to 1989 were deprived of its advantage and they became junior to the teachers who served for five years and obtained special JBT certificates.

In this connection the Government of H.P. Dept. of (Eld. Edn) vide letter No. EDN C.B. (15)-22/09, dated 17th Dec, 2009 has desired the number of the candidates appointed as volunteer teachers in primary schools under both policies alongwith financial implications involved if the volunteer teachers appointed under VT Policy formulated in the year 1986 are given benefit of regularization from completion of their 5 years service.

You are therefore requested to furnish the above information on the prescribed proforma enclosed herewith to this Directorate so that the same could be furnished to the Government. An early action in the matter is required please.

7. The fact of the matter is that the representation made by the petitioner, was rejected vide Annexure R-1 on 30.03.2011. The reason assigned for rejecting the case of the petitioner is that seniority and monetary benefits could be granted only after the candidate obtained Special J.B.T. certificate and not from the date of appointment.

8. Ms. Sunita Sharma, learned Counsel for the petitioner has vehemently argued that action of the respondents to deny regularization to the persons, who have been appointed under 1985 Volunteer Teacher Scheme after five years regular service is illegal, arbitrary, discriminatory, unjustified, thus, violative of Articles 14 and 16 of the Constitution of India. She also argued that according to letter, dated 26.10.1994, the Volunteer Teachers, who were appointed under 1991 Scheme were to accommodated and appointed under the Scheme formulated in the year 1985 and the Scheme formulated in the year 1991 was abolished. In other words, her submission is that the 1991 Scheme has merged in 1985 Scheme. She also contended that the persons who have been appointed under 1985 Scheme were regularized after ten years and the persons who have been appointed under 1991 Scheme have been granted JBT certificate after five years and have also been regularized after five years. She also contended that the classification made after abolition of 1991 Scheme by the respondents for regularization, is bad in law. She also submitted that all the Volunteer Teachers constitute a homogeneous Class and they could not be further divided/classified only on the basis of cut off date, i.e., 01.08.1998. She also contended that cut

off date, i.e., 01.08.1998 fixed in Annexure P-4, dated 11.12.1998, is discriminatory. She lastly contended that few persons who were appointed under 1991 Scheme now rank senior to the persons who were appointed under 1985 Scheme.

9. Mr. J.S. Guleria, learned Assistant Advocate General has vehemently argued that the persons who have been appointed under 1985 Scheme, have rightly been regularized after ten years. He has justified the cut off date, i.e., 01.08.1998.

10. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

11. The petitioners have been duly selected under the Scheme framed in the year 1985. Thereafter another Scheme was framed in the year 1991, as noticed hereinabove. The provisions of both the Schemes, more or less, are the same. The State Government has taken a conscious decision to abolish 1991 Scheme as per letter, dated 26.10.1994, and the incumbents who were appointed under the 1991 Scheme were accommodated/appointed under the Scheme formulated in the year 1985. In other words, they were treated at par with the persons who were appointed under 1985 Scheme. The State Government has taken a decision on 15.12.1995 to award Special JBT certificates to the Volunteer Teachers who have completed 10 years continuous service in Govt. Primary Schools and those who have worked in literacy campaign. Petitioner in CWP No. 2979 of 2012 was issued Special JBT Certificate on 02.05.1996. He was regularized w.e.f. 06.01.1996. An amendment has been carried out in the Education Code by the respondent-State on 11.12.1998, whereby the period of awarding Special JBT certificate has been reduced from ten years service to five years. This provision has been made effective from 01.08.1998. This notification has helped about 4159 Volunteer Teachers, who were to be regularized w.e.f. 01.08.1998. A clarification was also issued on 21.12.1998, whereby it was clarified that the candidate must possess minimum educational qualification prescribed, i.e., Matric/Higher Secondary.

12. Now, what emerges from the facts enumerated hereinabove, is that the petitioners and similarly situate persons, who were appointed under 1985 Scheme, have been regularized after ten years and the persons, who were appointed under 1991 Scheme, have been regularized after five years. There is no reason assigned in Annexure P-4 and Annexure P-5 why the period has been reduced from ten years to five years for the purpose of awarding Special JBT certificate. All the Volunteer Teachers appointed either under 1985 Scheme or under 1991 Scheme, constitute a homogeneous class. They were to be treated alike. However, the respondents-State, on the basis of Annexure P-4, has created a class within a class. The petitioners and similarly situated persons have worked continuously for ten years and thereafter, they have been awarded Special JBT certificates. The period has been reduced from ten years to five years as per letter, dated 11.12.1998, and the incumbents who have been appointed under

1991 Scheme, were made eligible to get the Special JBT certificate after five years. The petitioners were required to be treated at par with the persons, who were appointed under the 1991 Scheme by restricting the period of awarding Special JBT certificate to them also after five years followed by regularization. Now, on the basis of letter, dated 11.12.1998, the persons with five years service were to be regularized and the petitioners were to be regularized after putting in ten years of regular service.

13. Assuming hypothetically, a person who has been appointed under 1985 Scheme in 1990, would be eligible for the grant of Special JBT Certificate in 2000 and would be regularized in 2000 and the candidate who has been appointed in 1992 under 1991 Scheme would be eligible for the grant of Special JBT certificate and regularization in 1997. There are no reasons assigned, as noticed above, either in the reply or in the notifications, dated 11.12.1998 and 21.12.1998 why the period has been reduced from ten years to five years and why it has not been made uniformly applicable to the candidates who were appointed under 1985 Scheme by restricting the period of grant of Special JBT certificate from ten years to five years and regularization also after five years.

14. The respondents (State) has equated equals as unequals. The Volunteer Teachers constitute a homogeneous class, whether appointed under 1985 Scheme or under 1991 Scheme. There is no nexus with the object sought to be achieved, as far as fixing of cut off date, i.e., 01.08.1998 is concerned. The purpose of issuing letter, dated 11.12.1998, was to grant Special JBT certificate to the Volunteer Teachers, who have put in five years service to make them eligible for regularization after five years. This could not be restricted alone to the candidates appointed under 1991 Scheme. This concession ought to have been given to the candidates appointed under 1985 Scheme also. The respondent (State) was alive to the situation and the Principle Secretary, Education, Government of Himachal Pradesh, has sought information from the Director, Elementary Education, Himachal Pradesh as per Annexure P-8 on 17th December, 2009. The Director has also sought information from the Deputy Directors on 20.02.2010. The Director has specifically mentioned in the letter, dated 20.02.2010, that the teachers who were appointed between 1986 to 1989 were deprived of its advantage and the persons who have served for five years and obtained Special JBT certificates, have become senior to them. However, while finally dealing with the matter, the case of the petitioner has been rejected as per Annexure R-1, dated 30.03.2011. The justification given for rejecting the case of the petitioner is contrary to the facts and law. The Principal Secretary, Education while rejecting the case of the petitioner has not taken into consideration that the persons who were appointed under 1985 Scheme have been discriminated against vis-a-vis the teachers appointed under 1991 Scheme. The candidates appointed under 1985 Scheme have waited for 10 years for Special JBT Certificates and regularization and the candidates appointed under 1991 Scheme have been granted Special JBT certificates after five years and regularized after five years. The persons appointed between 1986 to 1990 have

become junior to the persons who have been appointed in 1991 and 1992. This action of the respondents is arbitrary and unreasonable.

15. Their Lordships of the Hon"ble Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), have held as under:

58. Now if the choice of date is arbitrary, eligibility criteria is unrelated to the object sought to be achieve and has the pernicious tendency of dividing an otherwise homogeneous class, the question is whether the liberalized pension scheme must wholly fail or that the pernicious part can be severed, cautioning itself that this Court does not legislate but merely interprets keeping in view the underlying intention and the object, the impugned measure seeks to sub-serve? Even though it is not possible to oversimplify the issue, let us read the impugned memoranda deleting the unconstitutional part. Omitting, it the memoranda will read like this:

At present, pension is calculated at the rate of 1/80th of average emoluments for each completed year of service and is subject to maximum of 33/80 of average emoluments and is further restricted to monetary limit of Rs. 1,000/- per month. The President is, now, pleased to decide that with effect 31st March, 1979 the amount of pension shall be determined in accordance with the following slabs.

If from the impugned memoranda the event of being in service and retiring subsequent to specified date is served, all pensioners would be governed by the liberalized pension scheme. The pension will have to be recomputed in accordance with the provisions of the liberalized pension scheme as salaries were required to be recomputed in accordance with the recommendation of the Third Pay Commission but becoming operative from the specified date. It does therefore appear that the reading down of impugned memoranda by severing the objectionable portion would not render the liberalized pension scheme vague unenforceable or unworkable.

16. The matter is required to be considered from another angle. The decision has already been taken by the respondent (State) to the effect that the person who were appointed under 1991 Scheme, shall be deemed to have been appointed under the 1985 Scheme. In view of this, the persons appointed under 1985 Scheme or under 1991 Scheme, could not be discriminated against for the purpose of awarding Special JBT certificates and regularization. Accordingly, the writ petitions are allowed. Annexure R-1, dated 30.03.2011, in CWP No. 2979 of 2012 is quashed and set aside. The cut off date, i.e., 01.08.1998 is struck down after applying the principle of severability. The petitioners will be deemed to have been granted Special JBT certificates immediately after completion of five years and would also be deemed to have been regularized after five years of service with all consequential benefits to bring them at par with those teachers, who were appointed under 1991 Volunteer Teachers Scheme. The pending application(s), if any, also stands disposed of. No costs.