
(1998) 11 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 214 of 1998

Puran Singh Thakur

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 16-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 ShimLC 379

Hon'ble Judges : D. Raju, C.J.; L.S. Panta, J

Bench : Division Bench

Advocate : Bhubnesh Sharma, for the Appellant; M.L. Chauhan, D.A.G. for Respondents 1 and 2, Subhash Sharma, Vice Counsel and Neel Kamal Sharma, for the Respondent

Final Decision : Dismissed

Judgement

D. Raju, C.J.—The above writ petition has been filed seeking for the relief in the nature of a direction to the second Respondent-Director of Education, Himachal Pradesh to release 95% grant-in-aid to the 3rd Respondent towards alleged arrears of salary due to the Petitioner for the period from 1.4.1993 to 7.8.1996.

The case of the Petitioner is that he has passed B.A. from Himachal Pradesh University in the year 1988 and B.Ed from the University of Kashmir at Srinagar during the Academic Session in 1989 and that subsequently passed M.A. in Economics from the Himachal Pradesh University. He was said to have got himself registered with the Employment Exchange at Una since October, 1990 for suitable employment. Though he was initially appointed as Trained Graduate Teacher (Arts) by the Managing Committee-third Respondent-school on 21.10.1990 and pursuant thereto he joined his duties on 1.11.1990, again he claims when selection and appointments of the staff in the school were made through District Education Officer by inviting candidates through Employment Exchange, he was selected again and appointed by an order dated 14.6.1993. The grievance expressed by the Petitioner is that the Department has not

released the 95% grant-in-aid vis-a-vis the Petitioner that such 95% grant-in-aid was released towards the salary of the other staff of the school from 1.4.1993 to 31.3.1997. The Petitioner in substance challenges the decision taken by the Director of Education, Himachal Pradesh in his proceedings dated 29.7.1997 filed as Annexure-P-10. Admittedly, the Petitioner has been paid arrears of his salary from 8.8.1996 to 31.3.1997 when one Shri Sukh Dev Sharma resigned from the school. The Petitioner would contend that it is not his concern with reference to the posting of Shri Sukh Dev Sharma who was appointed as Headmaster in the school and not as Trained Graduate Teacher (Arts). The Petitioner also contends that there was no maladjustment in the appointment inasmuch as the Petitioner and one Santosh Kumar were the only two Trained Graduate Teachers (Arts) in the School and Shri Sukh Dev Sharma who was appointed as Headmaster has been wrongly treated as Trained Graduate Teacher (Arts) while releasing the 95% grant for the school for the period from 1.4.1993 to 7.8.1996.

2. On notice being ordered the Respondents 1 and 2 filed their common counter-affidavit in which at the threshold it has been said that there is no letter of the District Education Officer whereunder the appointments of the Petitioner was approved and in the absence of approval in writing from the District Education Officer, and therefore the Petitioner cannot assert any rights or claim in this writ petition. Reference is also made to the provisions contained in Article No. 47(2) of the Himachal Pradesh Education Code (hereinafter referred to as the Code) which provides for the staffing pattern for privately run but recognized school. After noticing the factual details with reference to the entitlement of the school, the appointment by the Management of M/s. Santosh Kumar, Trained Graduate Teacher (Arts) and Shri Puran Chand, Trained Graduate Teacher (Arts) in what is described to be High Unit and Mr. Sukh Dev, TGT (Arts)-Headmaster and Mr. Rajinder Kumar, TGT(Science) in what is described to be as Middle Unit is adverted to and it is explained further as hereinunder while pointing out the illegalities and infirmities in the appointment made:

It is submitted that in privately managed High School Solasingi as already stated above has Classes from VIth to Xth are running. For the purpose of staffing, the school cannot be divided into two units i.e. High and Middle, rather it has to be taken as one and the staff is required to be appointed as submitted (supra). Shri Sukh Dev, TGT (Arts) was shown as Headmaster in Middle School. This was not considered, as this school is considered as one Unit and there is no post of Headmaster in Middle Wing. Shri Sukh Dev along with Santosh Kumar were considered against the posts of TGT (Arts) being senior in service than the Petitioner. The Petitioner was considered against the post of TGT (Arts) w.e.f. 8.8.96 onward, when Shri Sukh Dev resigned the post. In view of this Petitioner cannot be considered w.e.f. 1.4.93 to 7.8.96 having been appointed in accordance with the staffing pattern as is being followed in the Government run schools in the State.

5. That the contents of this para do not relate to the replying Respondents.

However, it is stated that inspection of the school has nothing to do with the release of Grant-in-aid. Earlier the 95% grant-in-aid was not released and therefore, the staffing pattern was not adhered to strictly. However, after the decision of the Hon'ble Supreme Court regarding payment of 95% grant-in-aid, the staffing pattern and other conditions are strictly adhered to. The position with regard to the staffing pattern has been submitted in the preceding para.

The 3rd Respondent who seems to have been acting and running the Institution by considering itself to be law into itself has chosen to file a reply contending that the appointment of the Petitioner was properly brought to the notice of the Education Department when made in June, 1993 and that he actually worked against the post of Trained Graduate Teacher (Arts), though one post of Trained Graduate Teacher (Science) remained vacant in the School and inasmuch as the salary payable to Mr. Sukh Dev who according to the 3rd Respondent was working as Headmaster was set off for the grant-in-aid purpose as against Trained Graduate Teacher (Arts) which is claimed to be wrongly so done by the 3rd Respondent, and this Respondent supports the claim of the Petitioner. The 3rd Respondent would also contend that the Petitioner worked in the school without any complaint and his salary has to be paid from the grant-in-aid to be released by the Department. It is contended for the 3rd Respondent that the Petitioner can have no claim against the 3rd Respondent and that the 3rd Respondent-Management cannot pay from its own funds. Reference is also made to the 3rd Respondent having sent representation to the Education Department for sympathetic consideration and it is claimed by this Respondent that since Shri Sukh Dev Sharma also worked as Headmaster the Department must consider the claim sympathetically.

3. Heard Mr. Bhunesh Sharma, learned Counsel for the Petitioner Mr. Chauhan, learned Deputy Advocate General for Respondents 1 and 2 and Mr. Subhash Sharma, learned Counsel for 3rd Respondent. The learned Counsel appearing on either side reiterated the stand taken in the respective pleadings filed on their behalf. In the teeth of the undisputable material on record that the Petitioner though appointed by the 3rd Respondent was at their risk and responsibility, his appointment not having been approved by the competent authority of the State in the Education Department, he can have no legitimate claim against the department and particularly any legally protected right which he can even attempt to project in these proceedings under Article 226 of the Constitution of India. On this ground alone, the claim is liable to be rejected. Even that apart the relevant portion in the reply filed by Respondents 1 and 2 which has been extracted in this order (supra) would go to show that there was no scope in law or on facts to appoint the Petitioner in the Institution as TGT(Arts) as long as Shri Sukh Dev TGT (Arts) continued and was not legally and properly appointed as Headmaster in the Middle School. Therefore, it is futile for the Petitioner to contend in the writ petition which is projected before us also at the time of arguments that it is not his concern as to the fate of Shri Sukh Dev inasmuch as in our view the fate of the Petitioner depends very much upon the fate of the

said person Shri Sukh Dev Sharma who was only TGT (Arts) and there was no scope for appointing one more teacher (Arts) in the Institution. We are not only surprised but shocked at the attitude of the 3rd Respondent who is projecting a role of dictation to the Department itself, despite having committed a grave irregularity in appointing as Headmaster in the Middle School when there is no scope for doing so, and even without "a factual vacancy and in a self created vacancy appointing the Petitioner without seeking or getting any formal order of approval, but calling upon the departmental authorities to adjust the post of the Petitioner against the TGT (Science). Such claims and stand taken by the 3rd Respondent only reflect the sorry state of affairs in which the Institution is being run without his being conscious of the fact that a TGT (Arts) and TGT (Science) is to discharge different duties and their qualifications itself have to be specially different for such appointment. We are equally surprised at the indifferent attitude of the departmental authorities in blindly turning their eyes away from such irregularities without taking any stern action against the 3rd Respondent except merely denying the grant only, which as we have already held cannot be released in favour of either the Petitioner or the 3rd Respondent. The 3rd Respondent if he had extracted any work from the Petitioner it is the 3rd Respondent who is to meet the claims of the Petitioner and the plea that the 3rd Respondent-Institution is not an economically viable Institution and has no funds, is no answer. It is for the Petitioner even if the Institution as such has no funds to proceed against the Management who appointed him unlawfully and extracted service from him to recover salary if any, but whatever may the justification or otherwise to do so there is absolutely no justification for the Petitioner to demand from the Public funds any grant to be released for the period from 1.4.1993 to 7.8.1996 to the credit of the Petitioner. Equally misconceived is the plea of the Petitioner that merely because in the periodical inspection there was no objection raised by the inspecting authorities the appointment of the Petitioner must be deemed to have been ratified. It calls for a probe by the State Government as also the Director for action against such erring officers also who have been either pretending to be oblivious to their responsibility and they are to be equally proceeded against departmentally, to avoid recurrence of such malfunctioning.

4. On a careful consideration of the submission made, we are of the view that there is no sustainable claim in law for the Petitioner to be countenanced by us in this writ petition and therefore, for the reasons stated above, the writ petition fails and it is dismissed as such. Before parting with this case we are constrained to place on record the sorry state of affairs in which the authorities manning the Education department are supervising and controlling the effective running of the Educational Institutions to which 95% grant-in-aid is said to be made from the public funds. This case atleast should open wide the eyes of the Department as also the Government in our view to gear up the administrative machinery to be more careful and effective in enforcing the law and not console themselves and feel happy that they were able to atleast deny the grant alone but to take severe

action for maladministration and running of such private Institutions, which are recognized and aided, and prevent them from being run as a private business enterprise for satisfying the whims and fancies of some managing such Institutions. The first and second Respondents are directed to conduct an inquiry into the acts of the 3rd Respondent-Institution in addition to inquiring into the lapses and defaults on the part of the Inspecting authorities also who inspected the Institution from time to time and if need be consider taking over such erring Institutions. By paying another 5% more grant the State Government cannot only take the credit running the Educational Institution itself as a Government Institution and ensure effective and proper running of the school also on sound and legal lines.

5. Copy of this judgment be sent to Respondents 1 and 2 for appropriate action.