

(2011) 10 SHI CK 0023
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 11916 of 2008

Sh. Mehar Singh	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Citation : (2011) 10 SHI CK 0023

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Judgement

Justice Sanjay Karol, J. (Oral)

1. The Petitioner has prayed for the following reliefs:

1. Annexure A-4 dated 29.1.2005 may kindly be quashed and set-aside.
2. The relief claimed in the earlier OA No. 3577/03 may kindly be granted i.e. selection grade w.e.f. 1.4.81 with interest and consequential benefits and equal pay as that of Respondent No. 4 and 5.
2. Impugned order dated 29.1.2005 reads as under:

The O.A. filed by you against non grant of selection grade was listed before the Hon"ble Administrative Tribunal on 16.12.2003 on which date same was directed to be treated as representation to the Principal Secy. (Education) to the Govt. of H.P., Shimla with direction to decide the same after the hearing the applicants. Accordingly the Principal Secy. (Edn.) vide order No. EDN(D)1-70/2004 dated 22-03-2004 has decided the same with the direction to the Director of Education to consider the case of the Petitioner on merit and under the "Next below rule" and grant them the relief of pay fixation as admissible under the rules.

In pursuance to the direction given by the Principal Secy.(Edn.) Vide order dated 22-03-2004, the Director of Education vide letter No. EDN-H(III)B(2)C.C. (D.I.M.N.D.)/2004 dt. 28-04-2004 has directed the undersigned to take action

according to the direction given by the Principal Secy. (Edn.) if admissible under the rule.

The matter has been examined on merit in the light of decision given by the Principal Secy. (Edn.) and further direction given by the Director of Education, as per letters referred to above. After going through the relevant rules and record it is informed that your case is not covered under, next below rule. It is further informed that selection grade has been awarded to the Drawing Teachers in the year 1987 on the basis of sty. list issued in 1985, taking into account sanctioned strength of Drawing Teachers during the relevant periods. The Seniority list was final as no objections were pending against the said seniority list.

The benefit of selection grade to the C&V teachers was available till 31-12-85 and the same ceased to be in operation after the implementation of revised scales w.e.f. 01-01-1986. However this scheme has been extended upto 31-12-1987.

Accordingly, your case has been re-examined in view of the sanctioned strength of Drawing Teachers and the policy of selection grade. It is intimated that the relief prayed for you cannot be accorded as the same is not admissible to you.

3. Quite apparently rejection of the Petitioner's claim for higher pay scale, at par with the one given to his juniors w.e.f. 1985 onwards, is in fact contrary to the prior decision taken by the Principal Secretary (Education) vide order dated 22.3.2004 (Annexure A-3) wherein it is categorically stated as under:

The facts in the case as narrated above are not disputed by any one. There was nothing wrong in the Department having granted Selection Grade to Respondents No. 4 - 5 on the basis of the 1985 seniority list. However, subsequently, when the revised seniority lists made the Petitioners senior to Respondents No. 4 - 5, the Department should have rectified the anomaly of juniors drawing a higher pay than their seniors, either by withdrawing the Selection Grade from Respondents No. 4 - 5 and/or granting it also to the Petitioners if sufficient number of vacancies existed in the Selection Grade. However, it appears that the Department has taken refuge under a mere technicality, namely, that the representation was not made within time. Such technicalities should not deny the Petitioners any genuine claim that they may have under the revised seniority lists of 1991 & 1996. Therefore, the petition is accepted to the extent that the Director of Education will consider the cases of the Petitioners on merit and under the "next below rule" and grant them the relief of pay fixation as admissible under the rules. The cases should be disposed off by him within one month.

(Emphasis supplied)

4. Significantly in terms of Annexure A-3 the competent authority had already taken a decision with regard to the Petitioner's eligibility for grant of selection grade. The said order was reiterated by the Director of Education and the Deputy Director of Education was to simply implement the same. In view of the decision

already taken by the State/competent authority, the Deputy Direction of Education could not have taken a contrary view.

5. As such impugned order dated 29.1.2005 (Annexure A-5) is quashed and Respondents are directed to grant selection grade which already stands accorded to the private Respondents who undisputedly were junior to the Petitioner.

6. Respondents are directed to take all necessary and consequential action within a period of three months from the date of receipt of the certified copy of the judgment, failing which thereafter, Petitioner shall be entitled to interest @ 9% p.a. which shall be personally recovered from the erring official(s).

7. With the aforesaid directions, present petition stands disposed of, so also the pending application(s), if any.