
(2010) 11 SHI CK 0382

In the High Court Of Himachal Pradesh

Case No : CWP (T) No. 7618 of 2008 and (OA No. 634 of 2001)

Shakuntla Sharma and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 16-11-2010

Acts Referred:

Citation : (2010) 11 SHI CK 0382

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kuldip Singh, J.—The Petitioners have prayed mainly the following reliefs in the petition :

(i) That the impugned order dated 10.11.2000 (Annexure A-7) to the extent recovery is ordered to be effected from the pay of applicants may be quashed and set-aside.

(ii) That the applicants may be held entitled for the payment of their salary in the basic pay scale of JBT teacher i.e. 1200-2100 with Dearness Allowance @ 37% of pay w.e.f. 1.7.1999 and revised from time to time.

(iii) That the Respondent No. 3 may be directed to continue paying the salary of applicants with Dearness Allowance @ 37% of their pay.

(iv) That the Respondent No. 3 may be directed not to effect any recovery from the salary of the applicants pursuant to order dated 10.11.2000 (Annexure A-7) on account of the payment of Dearness Allowance paid to them.

2. The case of the Petitioners is that as per letter dated 31.8.1995 a decision was taken by the Respondents that trained JBT teachers shall be appointed on contract basis and during the contractual appointments they will be paid salary at the minimum of JBT scale with full allowances admissible from time to time but no increments shall be given. On 12.9.1995 the Respondent No. 2 circulated the

decision dated 31.8.1995 of the Government to all the District Primary Education Officers in the State. The Petitioners were eligible for appointment as JBT teachers as per the policy of the Government. Therefore, the Petitioners were appointed in the years 1996, 1997, 1998 and 1999 on contract basis as JBT teachers and they are working as such in different primary schools in District Solan. The further particulars of the Petitioners have been given in the petition. It is the case of the Petitioners that they were in fact B. Ed and belonging to C and v. category and were appointed against the posts of JBT teachers.

3. The contract appointments of JB Ts were made in the pay scale of ` 1200 - 2100 and they were to be given full allowances admissible from time to time but they were not entitled to any increments. The candidates before joining the duties were also asked to execute agreements. The Clause 5 of the agreement provides that Government shall pay the teacher so long as the teacher shall remain in the service and actually perform his/her duties monthly honorarium equal to the basic pay in the pay scale of ` 1200 -2100 and other allowances admissible at the station on the basic pay including HRA and CCA.

4. On 8.11.1999 the Government has allowed the Dearness Allowance at the rate of 32% of pay w.e.f. 1.1.1999 of those employees whose pay scale was not revised. Accordingly, the Dearness Allowance at the rate of 32% of pay was paid to contract teachers by the Department also. On 5.4.2000 again the Government modified the rates of Dearness Allowance payable to the employees of the Government w.e.f. 1.7.1999 at the rate of 37% of pay. The Respondents again allowed and paid D.A. at the rate of 37% to some of the JBT contract teachers working in Solan District. It has been submitted that Respondent-department had paid salary to contract JBT teachers in the State according to the rates revised from time to time. The department has appointed JBT teachers on contract basis on pre-revised pay scale of ` 1200 -2100 which was revised to ` 4020-6200 w.e.f. 1.1.1996, however, the scale of contract JBT teachers was not revised and they were getting their salary in the pre-revised scale with full allowances admissible from time to time including D.A.

5. On 10/13.11.2000 the Respondent No. 2 addressed letter to all the District Primary Education Officers in the State regarding payment of Dearness Allowance to the teachers working on contract basis whereby the Respondent No. 2 has calculated the Dearness Allowance being payable to contract teachers at the rate of 203% of pay as per old notification dated 26.4. 1999 without taking into consideration the latest notification dated 5.4.2000 whereby the Dearness Allowance has been revised to 37% of pay per mensem. The Petitioners were paid their salary with 37% D.A. w.e.f. June 2000 i.e. ` 4924/-per month and the arrears on account of the revised Dearness Allowance was paid to such contract teachers in the month of August, 2000. The Respondents have thus reduced the salary of the Petitioners from ` 4924/- to ` 4286/- w.e.f. December, 2000. The Petitioners apprehended that the Respondents will effect the recovery from the pay of the Petitioners in view of Annexure A-7, which action of the Respondents

has been assailed as illegal, unjust, arbitrary and against the notification dated 5.4.2000.

6. The Petitioners were appointed JBT teachers on contract basis in pursuance to decision dated 31.8.1995 and 12.9.1995 vide which the Petitioners are entitled to salary at the minimum of JBT scale with full allowances admissible from time to time but no increments shall be given to them. The Respondents are paying salary to all such contract JBT teachers in the State including Solan District at the minimum of JBT scale with full allowances including Dearness Allowance admissible from time to time. All the contract JBT teachers are getting the Dearness Allowance revised from time to time since their appointments. The decision Annexure A-7 is illegal, unjust, arbitrary and Petitioners have prayed for quashing of Annexure A-7.

7. The Respondents have contested the petition by filing the reply and have submitted that Petitioners were appointed on contract basis against the posts of JBT teachers in the pay scale of ` 1200/- fixed which was admissible to the JBT teacher prior to 1.1.1996. The Petitioners before their appointments had executed an agreement with the Respondent-State. As per agreement, the Petitioners agreed to serve as JBT teachers. The excess payment has been made to Petitioners as they were entitled to the fixed pay scale of ` 1200/-plus D.A. at the rate of 203% which is clear from Annexure A-7. It has been submitted that the pay of the Petitioners has been rightly reduced and the excess payment received by them is liable to be recovered from them. The Petitioners filed rejoinder and reiterated their stand.

8. I have heard the learned Counsel for the parties. The learned Counsel for the Petitioners has submitted that the case of the Petitioners is covered by judgment dated 19.10.2010 in CWP (T) No. 7011 of 2008. It has been submitted that similar question was raised in CWP(T) No. 7011 of 2008 and it has been held in the judgment dated 19.10.2010 that the persons selected under the policy, during the period of their contractual appointment, were entitled to payment of salary with the minimum of JBT scale with full allowances admissible from time to time. The only exception was that of increments. The learned Counsel for the Petitioners has submitted that Annexure A-9 noticed in the judgment dated 19.10.2010 was issued by the Treasury Officer, Nahan on the basis of memo dated 10/13.11.2000 of Director Primary Education. The learned Counsel for Petitioners has submitted that in fact he represented the Petitioners also in CWP(T) No. 7011 of 2008. He has submitted that in the present case memo dated 10/13.11.2000 has been placed on record by the Petitioners as Annexure A-7. The learned Additional Advocate General has submitted that the Petitioners have executed an agreement with the State, therefore, no fault can be found with the memo dated 10/13.11.2000 Annexure A-7 and the Petitioners are not entitled to Dearness Allowance as claimed by them, the excess payment has been made to the Petitioners and, therefore, they are liable to return the excess payment made to them.

9. In judgment dated 19.10.2010 passed in CWP(T) No. 7011 of 2008, it has been held as follows :

1. Policy decision taken by the Government as conveyed vide Annexures A-2 and A-3 is unambiguously clear. Persons selected under the policy, during the period of their contractual appointment, were entitled to payment of salary with the minimum of JBT scale with full allowances admissible from time to time. The only exception was that of increments. It is not in dispute that otherwise JBT teachers are entitled to dearness allowance. Petitioners were selected in terms of policy decision. Their letter of appointment also entitles them for payment of all allowances except for increments. Consequently the stand taken by the Respondents is untenable in law. Further nothing has been placed on record to show that the Finance Department took a decision to exclude persons who were selected pursuant to the policy decision (Annexure A-2). During the pendency of the present petition Petitioners have also been receiving the aforesaid amounts.

2. Consequently Annexure A-9 is quashed. Members of the Petitioner association are entitled to payments of such salary and emoluments as they are entitled to, in accordance with the policy decision conveyed vide Annexure A-2.

10. It is not the case of the Respondents that Petitioners herein and Petitioners in CWP(T) No. 7011 of 2008 were appointed on contract basis as JBT teachers under different policies. It emerges from the record that there was only one policy for appointment of JBT teachers and under that policy, the Petitioners were appointed. The Respondents have failed to establish that Petitioners in CWP (T) No. 7011 of 2008 were appointed on different policy. In the facts and circumstances of the case which have come on record the case of the Petitioners is covered by judgment dated 19.10.2010 passed in CWP (T) No. 7011 of 2008 and, therefore, the Petitioners are entitled to revise Dearness Allowance vide Annexures A-5 and A-6 and the Respondents are directed not to recover any amount paid to the Petitioners on account of Dearness Allowance pursuant to Annexures A-5 and A-6. The petition stands disposed of on above terms, so also the pending application(s), if any.