

(2011) 04 SHI CK 0171

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (T) No. 11593 of 2008

Shiv Om

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0171

Hon'ble Judges : Kuldip Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldip Singh, J.—The Petitioner has prayed mainly the following relief's:

(i) To direct the Respondents not to terminate the services of the applicant except in accordance with law while keeping in view the order of the Hon''ble Tribunal at Annexure PB''.

(ii) To direct the Respondents to allow the applicant to continue to serve the department in terms of Annexure PC'' and if necessary, the applicant is ready to enter into fresh agreement as envisaged in Annexure PA''

(iii) To issue directions to the Respondents to pay the applicant Dearness Allowance on fixed salary in accordance with the orders of the government as passed by them from time to time in respect of grant of D.A. to contractual/ regular employees.

2. The facts in brief are that Petitioner was appointed as TGT (Arts) in Government Middle School, Nisoo (Complex GHS Katindhi) on contract basis in the pay scale of Rs. 5480-8925 plus other admissible allowances till 28.2.1999. The contractual period of the Petitioner was extended from time to time.

3. There was threat to terminate the contractual service of the Petitioner in February 1999. The Petitioner filed OA (M) No. 36/99 in the erstwhile Tribunal and on 26.2.1999, the Tribunal directed the Respondents to allow the Petitioner

to continue to work in Government Middle School, Nisoo as TGT (Arts), in case post was lying vacant and no regular hand had been appointed.

4. The Petitioner was initially appointed vide office order dated 12.6.1998. On 2.8.2003, Respondent No. 2 issued guidelines for proper implementation of instructions and terms and conditions of agreement of contractual appointee. It has been stated that even after culmination of contract period of such appointee or before such culmination, the appointee gets stay order for terminating his services, the department is not barred to execute fresh agreement after the end of academic session and commencing of next academic session.

5. The Respondent No. 3 despite the instructions laid down in the letter dated 2.8.2003, was not prepared to allow the Petitioner to continue in service after the end of academic session. The Petitioner apprehended that his services would be terminated at any time despite interim order dated 26.2.1999. The threatened action of Respondent No. 3 was contemptuous.

6. The Petitioner has not been paid his salary and allowances in terms of contract as well as instructions dated 2.8.2003. The Petitioner is entitled to salary at the rate allowed to the comparable regular employees from time to time by the government. The Petitioner for this purpose has relied on the instructions contained in the letter dated 6.12.1999 of District Education Officer, Mandi. The Petitioner was appointed as TGT (Arts) with effect from June 1998 when he signed agreement on 17.6.1998 for employment in Education Department on contract basis.

7. The Respondents have contested the petition by filing reply. It has been stated that Petitioner was appointed as TGT (Arts) on contract basis for a specific period. The Petitioner has entered into an agreement with the employer. According to contract agreement, the Petitioner is entitled to pre-revised pay scale of Rs. 1640-2925. The letter dated 25.3.2005 was erroneously issued by the department without concurrence of Finance Department, which was withdrawn and instructions dated 2.8.2003 were issued. The appointment of the Petitioner is on contract basis temporarily as a stop-gap arrangement, therefore, he cannot equate himself with a regular appointed teacher. The Petitioner cannot claim any benefit beyond the scope of contract agreement. The contract appointee is entitled to the pre-revised pay scale and his service is regulated by the stipulations of the contract.

8. I have heard the learned Counsel for the parties. The learned Counsel for the Petitioner has stated that during the pendency of the petition, the services of the Petitioner have been regularized. He has further submitted that despite the regularization of the services of the Petitioner, the Petitioner is entitled to allowances in accordance with the orders of the government passed from time to time for contract/regular employees.

9. The Petitioner vide office order dated 5.6.1998 was appointed as TGT (Arts) in Government Middle School, Nisoo in the pay scale of Rs. 5480-8925 (fixed 5480)

plus other admissible allowances on the terms and conditions laid down in the agreement till 28.2.1999. The agreement dated 17.6.1998 is for the period 17.6.1998 to 28.2.1999 or the last working day of the academic session or replacement by a regular appointment or posting on transfer of regular teacher to the post held by the Petitioner, whichever is earlier.

10. The Clause (v) of the agreement provides that government of Himachal Pradesh 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 Rs. 1650-2925 or 5480-8925, if revised, and other allowances admissible at the station on the basic pay including HRA and CCA. The Petitioner shall not be entitled to any further benefits. The contract employment of the Petitioner was to be regulated as per agreement dated 17.6.1998. The relief Nos. 1 and 2 above have become infructuous in view of the stand taken by the learned Counsel for the Petitioner that Petitioner has been regularized.

11. The letter dated 2.8.2003 is for clarification of letter dated 23.5.2003. In the letter dated 2.8.2003, it has been stated that instructions dated 23.5.2003 issued by the government are clear and wages to contractual teachers/lecturers are to be calculated on the basic pay and allowances of the respective post, on the date of executing agreement between the contractual appointee and the authorized authority of the department, applicable at their locations. It is thus clear that wages of the contract teacher are to be calculated on the basic pay and allowances on the date of executing agreement. The agreement in the present case was executed on 17.6.1998 and it came to an end by efflux of time on 28.2.1999.

12. The Petitioner has not placed any other agreement on record. After the expiry of period of agreement on 28.2.1999 the Petitioner continued in job, but the Petitioner has not explained or pleaded how he continued in job after the expiry of contract on 28.2.1999. The Petitioner has also not explained on what terms and conditions he continued after 28.2.1999 till he was regularized. The instructions dated 2.8.2003 are of no help to the Petitioner. On the contrary, said instructions provide that wages of teacher are to be calculated on the basic pay and allowances on the date of executing agreement. There is no merit in the petition, which is accordingly dismissed.