

(2011) 04 SHI CK 0064

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (T) No. 14341 of 2008

Shiv Om

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Citation : (2011) 04 SHI CK 0064

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kuldeep Singh, J.—The Petitioner has prayed a direction against the Respondents to implement the terms of appointment of the Petitioner relating to his pay in the pay scale of Rs. 5480-8925 (Rs. 5480 fixed) as spelt out in office order dated 12.6.1998 Annexure PA with other allowances as admissible under the rules from time to time. A prayer has also been made to grant the Petitioner arrears of pay while placing him in the revised pay scale of Rs. 5480-8925 (Rs. 5480 fixed) alongwith allowances granted to similarly situate Trained Graduate Teachers from time to time. The Petitioner has also prayed for other connected benefits of the service.

2.The facts in brief are that Petitioner was appointed on contract basis as Trained Graduate Teacher in the scale of Rs. 5480-8925 vide letter dated 12.6. 1998 in Govt. High School, Kataula, District Mandi. The Petitioner was allowed basic pay of Rs. 5480 (fixed) plus dearness allowance as admissible under the rules from time to time with effect from the date of joining till 28.2.1999 or joining of a regular hand.

3. The Petitioner joined the Government High School, Kataula in June, 1998 and continued thereafter on contract basis. The Petitioner executed agreement dated 17.6.1998. It has been pleaded that at the beginning of the new academic year the Petitioner was required to furnish fresh agreement as a Trained Graduate

Teacher. Clause 7 of the agreement dated 17.6.1998 provides that pay and allowances of the teacher would be fixed equal to the basic pay in the pay scale of Rs. 1650-2925 or to Rs. 5480-8925, if revised and other allowances admissible at the station on the basic pay including H.R.A. and C.C.A.

4. The District Education Officer, Mandi on 6.12.1999 had written to all the Heads of Government Senior Secondary Schools/Government High Schools in Mandi District saying that the Government employees appointed on contract/whole time basis whose pay scale(s) had not been revised should be allowed dearness allowance. The applicant as per appointment letter dated 12.6.1998 is entitled to the pay scale of Rs. 5480-8925 (fixed Rs. 5480) but he is being paid salary in the pre-revised scale of Rs. 1650-2925 plus dearness allowance at an arbitrary rate and not in consonance with the rates as mentioned in the letter dated 6.12.1999. The Petitioner is not being paid House Rent and City Compensatory Allowance as per Clause 7 of the agreement dated 17.6.1998.

5. It has been alleged that some Trained Graduate Teachers appointed on contract basis were allowed the pay scale of Rs. 5480-8925 plus other allowances as admissible under the rules. The Respondents No. 2 and 3 had reduced their pay to unrevised pay scale of Rs. 1650-2925 plus dearness allowance as admissible from time to time. This was challenged by such teachers and the erstwhile Tribunal had granted stay. Thereafter Respondent No. 2 had issued memo dated 2.8.2003. It is clear from memo dated 2.8.2003 that the relevant clause pertaining to pre-revised scale be amended/revised and the arrears of pay be allowed w.e.f. 23.5.2003 to the concerned teachers.

6. The Petitioner has suffered financially, he has not been allowed the pay scale of Rs. 5480-8925 (fixed Rs. 5480) plus dearness allowance nor he has been paid dearness allowance as indicated in the letter dated 6.12.1999. He has been denied HRA and CCA. The Respondents are defying their own order dated 2.8.2003. The Petitioner in all fairness should be allowed revised pay scale of Rs. 5480-8925 (Rs. 5480 fixed) plus allowances. The Respondents have created artificial classification in the same category, which is not justifiable and sustainable. The learned Counsel for the Petitioner has stated that Petitioner had also filed CWP (T) No. 11593 of 2008 which has been dismissed by this Court on 6.4.2011. The Respondents have not filed reply.

7. I have heard the learned Counsel on either side. In CWP (T) No. 11593 of 2008 one of the directions sought by the Petitioner against the Respondents was to pay the Petitioner Dearness Allowance on fixed salary in accordance with the orders of the government as passed from time to time in respect of grant of D.A. to contractual/regular employees. The Petitioner in CWP (T) No. 11593 of 2008 raised the issue that he was not paid salary and allowances in terms of contract as well as instructions dated 2.8.2003. In that petition, the Petitioner also relied letter dated 6.12.1999 of District Education Officer, Mandi. The fact that the Petitioner was appointed on 12.6.1998 and he signed agreement on 17.6.1998 was also pleaded in that petition.

8. It has been held in judgment dated 6.4.2011 in CWP (T) No. 11593 of 2008 that the agreement dated 17.6.1998 was 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. 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 regulated by the agreement dated 17.6.1998. It has been noticed in the judgment dated 6.4.2011 in CWP (T) No. 11593 of 2008 on the basis of submissions made by the learned Counsel for the Petitioner that the Petitioner has been regularized.

9. The letter dated 2.8.2003 was also noticed in the judgment dated 6.4.2011, which provides 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. The wages of the contract teacher are to be calculated on the basic pay and allowances on the date of executing agreement. The Petitioner has placed on record agreement dated 17.6.1998 which was 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, whichever is earlier. The agreement dated 17.6.1998 at the most was upto 28.2.1999.

10. 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 it has not been made clear how he continued in job after the expiry of contract on 28.2.1999 and on what terms and conditions till he was regularized. The instructions dated 2.8.2003 are of no help to the Petitioner. The instructions dated 2.8.2003 are to the effect that wages of contractual teachers/lecturers are to be calculated on the basic pay and allowances of the respective post, on the date of executing agreement between contractual appointee and the authorized authority of the Department, applicable at their locations. It has not been pointed out what other connected benefits of the service as contractual teacher have not been given to the Petitioner. Thus, seen from any angle, there is no merit in the petition and the same is dismissed.