
(2013) 01 SHI CK 0064
In the High Court Of Himachal Pradesh
Case No : CWP No. 7618 of 2010

Shri Anup Kumar Sharma

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Citation : (2013) 01 SHI CK 0064

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Judgement

V.K. Sharma, J.—All these petitions, being interconnected, are taken up together for disposal. The petitioners, in all these petitions, were members of the teaching faculty/ministerial/laboratory staff of the erstwhile Goswami Ganesh Dutt Sanatan Dharam College, Baijnath, District Kangra, H.P. (in short "GGDSD College"), which was taken over by the respondent-State of Himachal Pradesh vide Notification dated 08.02.2007 (Annexure P-1), which, in turn, is based on an earlier Notification dated 25.08.1994, Clause (9) whereof, being relevant, is extracted below:

(9) All members (including Principal) of the staff will be treated as fresh entrants and they will be placed at the bottom of the seniority list, maintained in respect of Government employees in their respective cadre from the date of taking over, provided, in the case of Ministerial staff:

(i) a person with 25 years experience may be absorbed as Superintendent Grade-II.

(ii) a person with 17 years of service as clerk may be absorbed as Senior Assistant.

(iii) a person with 10 years experience as clerk may be absorbed as junior assistant.

(iv) and having 5 years experience may be absorbed as senior clerk and less

than 5 years, as clerk.

Provided that services of only those employees will be taken over who furnish a written acceptance on non-judicial paper duly attested by the competent authority to the effect that they are willing to be absorbed in Government service on the terms & conditions laid down in these rules.

2. However, to the detriment of the incumbents their pay was fixed at the initial of the respective pay-scales.

3. In somewhat similar circumstances National College, Amb was also taken over by the State Government pursuant to which pay of the teaching/non-teaching staff of the said college was also similarly fixed at the initial pay-scale of the respective posts. Being aggrieved, one of them, namely, Ms. Prem Lata Thapar, approached the then H.P. Administrative Tribunal (since abolished) by way of an original application, which on abolition of the said Tribunal, was transferred to this Court and registered as CWP(T) No. 7821 of 2008, titled Ms. Prem Lata Thapar vs. State of H.P. & others, which was ultimately decided vide judgment dated July 27, 2011 (Annexure P-21), passed by this Court, text whereof is as under:

Petitioner was working as lecturer in a private college, known as National College, Amb in the year 1997, when the said college was taken over by the State of H.P., vide notification dated 27.6.1997, copy Annexure A-3. The notification, inter alia, said that services of the staff will be taken over by the government, in accordance with the Recruitment and Promotion Rules/terms and conditions, laid down in notification No. Cha (15)-3/86-Shiksha-Ka, dated 25th August, 1994.

2. Petitioner, at the time of taking over of the college, was in the pay scale of Rs. 3700-5700, and drawing salary of Rs. 4, 450/-. However, after taking over of the college and her services, petitioner was placed in the time scale of the post of lecturer, i.e. Rs. 2200-4000, though her basic pay at Rs. 4,450/- was protected. Relevant order is Annexure A-6. Petitioner is aggrieved by this order. Her grievance is that she should have been placed in the higher pay scale, which she had been getting at the time of taking over of the college and also her services by the State of H.P.

3. Respondents, in their reply, have stated that only the time scale of the staff of the taken over college was required to be protected and the members of the staff were not to get the same higher scales, in which they might have been placed by the college management, before its taking over. It has been pleaded that though the higher pay scale has not been protected, pay as such has been protected, by treating the difference between the maximum of the time pay scale and the pay drawn by the staff members, as personal pay of concerned staff members.

4. Petitioner placed on record copy of order, annexure A-11, per which, one of the lecturers, who had been placed in higher scale of Rs. 3000-5000, had been

granted pay in that higher scale of Rs. 3000-5000, instead of time scale of Rs. 2200-4000. Respondents were then required by this Court, vide order dated 26.11.2010, to file supplementary affidavit, indicating whether higher pay scales in respect of lectures of other private colleges had been protected at the time of taking over of such colleges and the services of the staff by the State, or not. No affidavit has been filed in response to this order, despite various opportunities having been granted. They were granted last opportunity vide order dated 17.3.2011, to comply with this order. Still, affidavit has not been filed. So, presumption is that the respondents are not in a position to deny that in the case of lecturers of other private colleges, which have been taken over, higher scales, which are known as senior scales and selection scales, were and are being protected. Not only this, even in the case of one of the lecturers of the college, in question it self, namely Usha Rani, senior scale of Rs. 3000-5000 has been protected, vide order, Annexure A-11.

5. Order of taking over of college, Annexure A-3, vide para 2, says that the staff of the college will be taken over, in accordance with Recruitment and Promotion Rules/terms and conditions, laid down in notification No. Cha (15) -3/86-Shiksha-Ka, dated 25th August, 1994.

6. I have sent for a copy of the aforesaid notification No. Cha (15) -3/86-Shiksha-Ka, dated 25th August, 1994. Condition No. 7 of this notification, which is reproduced below, says that government scales in respect of the respective categories shall be permissible to them, after the taking over:

(7) The services of only qualified teaching and non teaching staff appointed one year earlier who fulfill, prescribed departmental recruitment and promotion rules, conditions prevalent at the time of taking over will be considered for taking over subject to the approval of the State Public Service Commission or Departmental Screening Committee from the date of taking over. The services of the Principal will be taken over only as Senior most lecturer of the college concerned subject to the above mentioned proviso. The Government scales in respect of the respective categories shall be permissible to them after the take over. That means, staff of the taken over college is entitled to government pay scales, which such staff had been getting at the time of take over.

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7. Learned Deputy Advocate General, relying upon condition No. 9, which reads as follows, argues that staff of taken over colleges, is entitled only to the initial pay scale:

(9) All members (including principal) of the staff will be treated as fresh entrants and they will be placed at the bottom of the seniority list, maintained in respect of government employees in their respective cadre on the date of taking over, provided, in the case of Ministerial staff.

8. A bare reading of condition No. 9 shows that staff is to be treated as fresh entrant, only for the purpose of seniority and not for the purpose of pay scale or pay. For the purpose of pay scale, the above reproduced condition No. 7 applies.

9. As a result of the above discussion, writ petition is allowed and respondents are directed to fix the pay of the petitioner, at the time of taking over of the college, in the selection scale of Rs. 3700-5700, in which pay scale she was drawing salary at the time of taking over of the college and her services. Of course, she will be given the benefit of revision of pay scales, which have taken place subsequent to the taking over of the college and her pay in the revised scales of pay shall be re-fixed, in accordance with the rules and notification of pay revisions. She will also be given all consequential monetary benefits of salary and allowances as also pension, gratuity and other retiral benefits. Order be complied with by 31st October, 2011.

Writ petition is disposed of.

4. Based on the above judgment in CWP(T) No. 7821 of 2008, titled Ms. Prem Lata Thapar vs. State of H.P. & others, similar matters have also been decided by this Court vide judgments dated December 2, 2011 in CWP(T) No. 16700 of 2008, titled K.C. Sood & others vs. State of H.P. & another and December 27, 2011 in CWP No. 7192 of 2010-H (Annexure P-20), titled Dr. Suman Kumar vs. State of Himachal Pradesh & others.

5. In view of the above, these petitions are also disposed of in terms of the aforesaid judgment dated July 27, 2011, in CWP(T) No. 7821 of 2008, titled Ms. Prem Lata Thaper vs. State of H.P. & others. Consequently, the petitioners herein, who are also similarly situate, shall also be treated similarly without any discrimination keeping in view their respective status as members of the teaching faculty/ministerial/laboratory staff and benefit of the said judgment shall also be extended to them within three months from the date of production of copy of this judgment by them before the respondents/competent authority.

6. Insofar as rest of the claims, if any, set by the petitioners are concerned, the same are left open and the petitioners shall be at liberty to agitate the same before a court/forum of competent jurisdiction by way of appropriate proceedings, if so advised. The petitions, as also pending application(s), if any, stand disposed of in the above terms.