

(2011) 12 SHI CK 0133

In the High Court Of Himachal Pradesh

Case No : CWP No. 3310 of 2011-D and CWP No. 4853 of 2011-E

Smt. Leela Devi

APPELLANT

Vs

State of Himachal Pradesh and Deputy Director, Elementary
Education to the Govt. of Himachal Pradesh, Mandi

Kewal Ram Vs State of Himachal Pradesh and Deputy
Director, Higher Education, Distt. Shimla, Himachal Pradesh

RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Citation : (2011) 12 SHI CK 0133

Hon'ble Judges : Kurian Joseph, J;Dev Darshan Sood, J

Bench : Division Bench

Judgement

Justice Kurian Joseph, C.J.—The petitioners in all these cases have been appointed as Part Time Water Carriers in terms of the 2001 Policy, dated 27.7.2001 issued by the Education Department. Paragraph 20 of the Policy stipulates that "the candidates appointed as part time water carrier under the scheme, by the respective Gram Panchayats/Urban Local Bodies of the area in which the Primary School is located, shall have no right to claim regularisation/appointment." It is the stand of the respondents- State, as reflected in paragraph 5 of the reply filed by the Director that the 2001 Policy permits the appointment of Contingent Paid employees in Government Primary Schools, on contract basis, through the Panchayati Raj Institutions. It is also stated at paragraph 9 of the reply that there is no instruction that Part Time Water Carriers after completion of 8 years of continuous service will be made regular class-IV employees. At paragraph 9 of the reply, it is stated that "the Part Time Water Carrier are converted to the post of Whole Time Contingent Paid as per their seniority and availability of posts. The policy for regularization after 8 years of continuous service is not applicable to the petitioner." Still further, at paragraphs 10, 11, 12, 13, 15 & 16, it is stated as follows:

10. That in reply of this para it is submitted that being a district cadre post, the

Part Time water Carrier who joined in district Shimla have been assigned the seniority numbers by the Deputy Director of Higher Education Shimla according to their initial joining as Part Time water Carrier in the Department. The Part Time water Carrier joined in district Shimla upto 11.08.1997 and bearing seniority numbers upto 391 have been made Whole Time Contingent Paid employees by the DDHE-Shimla on 21.07.2009, vide order No. Shiksha-Shimla (1-4)B-13/2007-8688-8818. It is also pertinent to mention here that the flow of promotion of district cadre posts is different in different districts. It depends upon the next higher sanctioned posts, number of promotions and number of retirements in a particular cadre.

11. That in reply to this para it is submitted that only such daily wager employees and Contract appointees who have rendered 8 years of continuous service with a minimum of 240 days are being regularized w.e.f. a cut of date as decided by the Government. The petitioners are Part Time Water Carriers and engaged only for four hours per day (portion of a day) and accordingly they are not cover under the regularization policy of the Government.

12. That in reply of this para it is submitted that the petitioners were appointed under the recruitment scheme notified on 27.07.2011, on contract basis, through the Panchayati Raj Institutions. As per the decision f the Government conveyed, vide letter No. EDN-C-B(2)35/2006, dated: the 28th May 2009 "that after considering all the Part Time Water Carriers appointed under 1996 policy, posts of Whole Time Contingent Paid be filled up by giving preference to the incumbents appointed under the policy issued on 27.07.2011." the petitioner as well as other similar situated persons will be given preference to grant them Whole Time Contingent Paid status purely on the basis of their seniority and subject to the availability of the posts of Whole Time Contingent Paid in the respective districts.

13. That in reply to this para it is submitted that the services of retrenched persons, declared surplus from the HP State Forest Development Corporation Ltd. Were regularized in the Department, against the vacant posts of Class-IV employees, after giving the preference/promotional benefits to all the eligible Whole Time Contingent Paid employees of department, as per decision of the Government, after observing all the codal formalities.

15. That in reply of this para it is submitted that the petitioners were appointed under the recruitment scheme notified on 27.07.2001, on contract basis, through the Panchayati Raj Insitutions. As per the decision of the Government conveyed, vide letter No. EDN-C-B(2)35/2006, dated :the 28th May 2009 "that after considering all the Part Time Water Carriers appointed under 1996 policy, posts of Whole Time Contingent Paid be filled up by giving preference to the incumbents appointed under the policy issued on 27.07.2001" the petitioner as well as other similar situated persons will be granted Whole Time Contingent Paid status purely on the basis of their seniority and subject to the availability of the posts of Whole Time Contingent Paid in the respective districts.

16. That in reply to this para it is submitted that the due and admissible promotional benefits will be given to all the petitioners as well as other similar situated persons, on the basis of their seniority and subject to the availability of the posts of Whole Time Contingent Paid, after considering all the Part Time Contingent Paid engaged as per the policy notified on 06.07.1996.

2. Learned Senior Counsel for the petitioners contended that the petitioners shall be treated as eligible for appointment in terms of the Recruitment and Promotion Rules for the post of regular Class-IV employees. We are afraid that this contention cannot be appreciated, for the simple reason that the petitioners have not been appointed as Part Time Workers. They have been appointed under a Scheme for appointment of Part Time Water Carriers through the Panchayat Raj Institutions. However, the stand that they will be made Whole Time Contingent Employees in accordance with their seniority and availability of vacancy, which would necessarily vary from district to district, cannot be appreciated, in view of the undisputed general policy available in the State that any Part Time Water Workers after completion of 10 ears of service as such, is made Whole Time Contingent Employee on daily waged basis and on such continuous service of 8 years with 240 days in a year is made a regular class-IV employee. Therefore, Part Time Water Carriers cannot be put to a more disadvantageous position. This 10 years part time, 8 years daily wage and then regular, will also necessarily ensure the uniformity irrespective of the fortuitous status of Part Time Water Carrier getting employment in a particular District where he would be getting accelerated promotion. Therefore, all these writ petitions are disposed of directing the respondents/competent authority to consider the cases of the petitioners as follows:

(i) All those Part Time Water Carriers, who have completed 10 years of service as such, shall be converted to the status of Whole Time Contingent Employees on daily waged basis.

(ii) Such an employee in continuous service of 8 years with 240 days in a year as daily wager after 10 years of part time service shall be appointed on regular basis as Class-IV employee.

(iii) However, it is made clear that in the case of any petitioner, who has completed 10 years of part time service, on conferment of daily wager status, shall not be entitled to any retrospective wages. The entitlement shall only be for counting 240 days in the year concerned for the purpose of appointment as a regular Class-IV employee.

(iv) The Director (Education) shall also look into the grievance of the petitioners that they have been paid lesser wages than those appointed under the 1996 Policy and required steps shall be taken for redressal of such grievances.

3. The needful action, in the light of the above judgment, shall be taken by the competent authority, within a period of four months from the date of production of a copy of this judgment by the petitioner concerned before the Director,

Elementary Education.

4. Pending applications, if any, also stand disposed of.