

(1995) 06 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 30 of 1991

Som Datt and Others

APPELLANT

Vs

The State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 08-06-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1995) 2 ShimLC 427

Hon'ble Judges : S.N. Phukan, C.J; Bhawani Singh, J

Bench : Division Bench

Advocate : Dharam Chand, for the Appellant; M.L. Chauhan, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—This petition has been filed by the Petitioners for directing the Respondents to take over their services on the taking over of the privately managed Middle School, Kharsi, by the Respondents.

Petitioner No. 1 is the President of the Society which was running the school (Dr. Parmar Samarak Middle School, Kharsi) Petitioners 2 to 6 are the teachers while Petitioner No. 7 is the peon Since other Middle Schools were located at a long distance and this area being educationally and socially backward, people of the area started running this school since 1986. It was receiving aid from the State Government from time to time and was being inspected by the officials of the education department. Names of Petitioner Nos. 2 to 6 were sponsored by the employment exchange. They were employed after they were selected by the Board consisting of the Headmaster of the Central School, Gohar, Sub-Divisional Magistrate, Chairman of the Managing Committee and two Members thereof. District Education Officer, Mandi, was requested to participate in the interview Board in writing, but no reply was received from him.

2. Petitioner Nos. 1 and 2 are B.A, B.Ed., Petitioner No. 3 is B.A. (Shastri),

Petitioner No. 4 is B.Sc.B.Ed., Petitioner No. 5 is Matric Drawing trained, Petitioner No. 6 is Matric and Trained PTI, and Petitioner No. 7 is Middle pass Peon (Annexure PA/A). The District Education Officer inspected the School on 29th October, 1986 and submitted his report (Annexure PH), Again, the School was inspected on 9-6-1987, 21-11-1988 and 24-10-1990 by Headmaster of Government High School, Gohar. The working of the School was found in order and deficiencies pointed out were removed. The pay of all the teachers had been fixed in accordance with the Schedule of the Government and the School was being run in accordance with the instructions/ directions of the State Government.

3. People of the area had been demanding the taking over of the School by the Government. By an order of 12-1-1990, the School was taken over. The Managing Committee of the School requested the District Education Officer, Mandi, for taking over the staff of the School, but the District Education Officer returned the papers with the remarks that since the School had been downgraded by the Government of Himachal Pradesh, the case for taking over the staff of this School could not be forwarded to the State Government. The Petitioners requested the State Government to take over their services through individual applications and a resolution to this effect was also passed by the Managing Committee on 10th July, 1990 which was sent to the State Government. Communication of District Education Officer, Mandi (Annexure PJ) was the result of some kind of communication gap since the School had not been downgraded at any time. Rather, a Drawing Teacher and a Trained Graduate Teacher were posted in this School (Annexure PK). The Petitioners further submit that their case is fully covered by the policy of the State Government dated 7th July, 1985 since:

- (a) The School had been recognised by the Education Department;
- (b) The Managing Committee has always been prepared to hand over all the assets of the school to the Government, but it has not been taken over on behalf of the Government on the supposed notion that the School has been downgraded ;
- (c) No liability had been incurred by the school;
- (d) The staff to be taken over by the Government is qualified in accordance with the posts sanctioned by the Government in the prescribed scale.

The Petitioners are fully covered by the policy of the State Government and are qualified, therefore, they are entitled to be absorbed in the Government service. Inaction on the part of the Respondents in not taking over their services is arbitrary, unreasonable and violates Articles 14 and 16 of the Constitution. The cancellation order of taking over the school was later withdrawn by notification dated 9-1-1991 The services of the staff of the school are not to be taken over by the Government mechanically and automatically by the taking over of the school. Certain norms have to be followed for doing so. These norms are as

under:

- (1) That the privately run institutions/classes should be recognised by the Government/Department.
- (2) That no liability is to be borne/accepted by the Government.
- (3) That the management hands over all the assets.
- (4) That only qualified staff will be taken over, in accordance with posts sanctioned by Government, in the prescribed scales.
- (5) That the services of superannuated, untrained or unqualified members of the staff are not taken over by the Government.
- (6) That only such staff will be considered for taking over which was in position in the school at least for one year prior to the date of taking over of privately managed school/classes by the Government.
- (7) That after the school is taken over, it will be known as Government Primary/Middle High School as the case may be.
- (8) That members of the staff who are taken over in Government service shall be treated as new entrants to all intents and purposes.
- (9) That the cases of appointees of staff with requisite qualifications, who have been in service for one year or more in the institution already taken over or are going to be taken over by the Education Department, need not be referred to the H.P. Public Service Commission.
- (10) That the Government shall not accept any liability in respect of the staff etc prior to their date(s) of appointment(s) in the Education Department which is subject to the availability or sanction of posts.
- (11) That the pattern of staff for the newly opened/upgraded/taken over school is sanctioned as below:
 - (i) Primary School. JBT Teacher 1
 - (ii) Middle School. (1) Trained Graduate Teacher Science 1 (2) Trained Graduate Teacher (Arts) 1 (3) OT (Sanskrit) 1 (4) LT (Hindi) 1 (5) PTI (CP. Ed.) 1 (6) Arts and Craft Teacher 1 (7) Peon 1
 - (iii) High School. (1) Headmaster 1 (2) Trained Graduate Teacher (Arts) 1 (3) Trained Graduate Teacher (Science) 1 (4) Clerk 1 (5) Peon 1
- (12) In addition to the aforesaid norms the teachers appointed by Management of the Privately managed Schools must be of the same or earlier sessions of training as of those who are being appointed in Government service (by the Department) at the State or District levels/cadres on regular basis.
- (13) The names of the candidates to be appointed in the privately run/managed schools must be sponsored through the employment exchange.
- (14) The selections/interviews committees of the privately managed schools

must have the District Education Officer or his representative in that selection/ interview committee or Board.

(15) That the appointments made in the aforesaid manner must be approved by the concerned District Education Officer.

(16) That there must be formal request from the Management of privately run/ managed school for handing over the school/classes.

(17) That the formal deed is executed by the management for handing over their school/classes with the clear understanding covering and complying with all the above and other essential requirements.

4. According to the Respondents, compliance of the aforesaid conditions is necessary for taking over the services of the staff when privately managed school is taken over. The cases of the Petitioners were being scrutinised and their services would be taken over provided they fall within the aforesaid norms. For the present, it had been decided to take over the services of Petitioner No. 7 as Peon. The appointments were made by the management at its own level. The District Education Officer was not associated in the interview for selection of Teachers. The Petitioners have not given particulars of communications through which the District Education Officer was requested to be included in the Selection Committee formed by the Respondents. They did not comment upon the qualifications, professional or academic etc of the Petitioners. Further, it has been stated that these appointments were made by the Management at their own level and no approval of District Education Officer, Mandi, was sought though annexures indicated that they had been endorsed to the District Education Officer, but these appointment orders had not been received in that office. Though orders regarding taking over of the school were issued on 12-1-1990 and withdrawn in March 1990, but the same were reviewed by the State Government later and the school was taken over. The Petitioners cannot insist for taking over their services against the norms laid down by the Government in this behalf.

5. Through supplementary affidavit of 9-3-1992, it has been stated that District Education Officer, Mandi, is competent to take over the services of the Drawing Masters, Shastries and Physical Education Teachers in accordance with the norms/ criteria fixed by the Government for taking over of the privately managed schools. Cases of Petitioner Nos. 3, 5 and 6 had been examined/considered by the District Education Officer, Mandi and rejected as they were not covered under the norms. Cases of Petitioner Nos. 2 and 4 fall under the category of Trained Graduate Teachers. Though their cases are not covered under the norms, yet they can be considered for appointment on tenure or ad hoc basis provided ban on recruitment is lifted by the State Government. They cannot be admitted into Government services as their cases are not covered by the norms.

6. By affidavit of 27-4-1992, it has been pointed out that in order to deal with such kind of cases uniformly, a Committee had been set-up at the Directorate level on 2-4-1992 and cases of teachers would be placed before this Committee

even if they had been decided earlier by the District Education Officer, Mandi. Further, the management had not submitted the requisite documents of taking over of the school.

7. In the affidavit of 1st December, 1992, it has been stated that the Committee referred to in the affidavit of 27-4-1992 recommended that the teachers who were fully covered under the criteria of session and other conditions laid down by the Government, shall be taken over on regular basis and the staff who is not covered under session and other requirements/ conditions etc , appointments be given on fixed pay. Regular appointments in such cases be given as and when the candidates conform to the requirements of session of training etc. Till these recommendations were approved by the Government, the same cannot be implemented. Affidavit dated 5-7-1993 states that the matter was referred to the Commissioner-cum-Secretary (Education) to the Government of H.P. who conveyed that the staff of this school can be taken over by the Government provided it fell within the norms laid down by it. These norms have been narrated as follows:

(i) That the privately run institution/classes should be recognised by the department.

(ii) That no liability is to be borne/accepted,

(iii) The management of the privately managed school hands over all the assets. There should be formal request from the management for handing over of institution and then execution of gift deed etc.

(iv) That only qualified staff will be taken over in accordance with posts sanctioned by the Government in the prescribed scales.

(v) That only such staff will be considered for taking over which was in position in the school at least for one year prior to the date of taking over of privately managed school by the Government.

(vi) That the superannuated, untrained or unqualified staff members are not taken over by the Government.

(vii) That the school after it being taken over shall be known as Government Primary/Middle/High School as the case may be.

(viii) That the members of staff who are taken over in Government service shall be treated as new entrants to all intents and purposes.

(ix) That the pattern of staff in the case of Middle school is as under:

1. TGT (Science) One. 2. TGT (Arts) One. 3. OT (Sanskrit) One. 4. LT (Hindi) One. 5. PTI (CP Ed.) One. 6. Arts and Craft One.

(x) The names of candidates to be appointed in the privately run/ managed schools must be sponsored through the employment exchange.

(xi) The selections/interview committees of the privately managed school must have the District Education Officer or his representative in that selection/interview committee or Board. The selection/appointment must be approved by the District Education Officer concerned.

(xii) The session of candidates training must be the same or earlier to the session of training of the candidates (of corresponding categories) being appointed by the competent authorities (District Education Officers in respect of District cadres posts and Director in the case of state cadre posts) on regular basis in Government schools.

It has further been stated that in the present case, the following norms were not fulfilled:

(1) The District Education Officer was not associated in the selections/appointments nor his approval was obtained in the matter of appointment of teaching staff.

(2) The session of training of teachers appointed by the management was neither same nor earlier than those of the corresponding categories of teachers being appointed on regular basis in Government schools by the competent authorities.

(3) One of the teachers (Petitioner No. 6) was appointed without getting his name sponsored through Employment Exchange.

(4) There had been no gift deed executed between the management of privately managed school and the department.

The affidavit dated 21-7-1993 states that the staff of this school did not fulfil the guidelines/instructions, therefore, could not be taken over.

8. Affidavit dated 14th October, 1993 repeats the norms for taking over the staff of privately managed schools. Further, the Petitioners do not fulfil the requirement of session, meaning thereby, the Petitioners are junior to those who have passed the qualifying examination/training earlier to them in the District and the State. Further, the District Education Officer or his nominee was not associated in the selection when these appointments were made by the school. These appointments were not approved by the District Education Officer concerned. Petitioner No. 6 was not sponsored through employment exchange and that no gift deed had been executed by the management of the school in favour of the department.

9. After narrating the material facts of the case, we turn to the questions specifically raised by both sides before us.

10. Shri Dharam Chand Chaudhary, learned Counsel for the Petitioners, vehemently contended that there is no doubt about the taking over of the school by the State Government. The services of the Petitioners are to be taken over as a matter of course. The Petitioners are qualified and they have right of their

services being taken over and regularised by the Respondents. Rejection of their cases is arbitrary and unreasonable, therefore, violative of Articles 14 and 16 of the Constitution of India. Further, the contention of the State Government that guidelines had to be fulfilled before services of the Petitioners are taken over and that the Petitioners do not fulfil session wise criteria, is not correct. Petitioners form a separate class, therefore, session wise criteria cannot be pressed into service and their services have to be taken over alongwith the taking over of the school. Guidelines are totally unreasonable and violative of Articles 14 and 16 of the Constitution. In any case, they are not mandatory in nature. It was also contended that if any condition has not been fulfilled by the management, the Petitioners cannot be blamed for that nor their cases could have been rejected on that basis. In support of the submissions, reference was made to State of Orissa and Another Vs. N.N. Swamy and Others, Sri Rabinarayan Mohapartra Vs. State of Orissa and others, . M.S. Mudhol and Another Vs. S.D. Halegkar and Others, and C.W.P. No. 193 of 1984, Smt. Shanti Chauhan v. State of H.P. and Ors. decided on August 27, 1984.

11. This case is covered by many decisions of this Court. One among them is Smt. Shanti Chauhan's case (supra). Relevant facts and decision of the Court is quoted:

On the facts and in the circumstances of the case, it appears to be just and proper to direct that the Petitioner be regularly appointed in such vacancy. The Petitioner, who is M.A., B.Ed., was appointed as Trained Graduate Teacher in a privately managed High School at Dhamandari, Tehsil Theog, District Shimla on March 1, 1982. The name of the Petitioner was sponsored by the Employment Exchange, Theog and she was selected after an interview by the Managing Committee of the School. Be it stated that under the memo issued on July 18, 1979 to all the District Education Officers in Himachal Pradesh by the Director of Education, Himachal Pradesh, (Annexure RB-1) the officer to be nominated by the District Education Officer to participate in the meetings of the Managing Committee was required to ensure that the appointment of the Trained Graduate Teachers was made on sessionswise basis after having been sponsored through the Employment Exchange. Besides, the District Education Officer was required to approve every such appointment in order to ensure that there was no deviation from those instructions. In the present case, there was a lapse on the part of the concerned authorities in enforcing those instructions. The school in question in which the Petitioner was appointed as a Trained Graduate Teacher was taken over by the Government sometime in the first half of 1983. However, the services of the Petitioner were not taken over on the ground that Trained Graduate Teachers of earlier sessions were available. The instructions dated July 5, 1973 (Annexure RA) issued by the Director of Education in regard to the taking over of the staff of the privately managed schools does not lay down any such requirement. The material requirement therein prescribed is that only such qualified staff, who was in position in such schools at least one year prior to the date of taking over, will be considered for being taken over alongwith the school

The Petitioner satisfies the said requirement. As earlier pointed out, at the stage of the initial appointment of the Petitioner, the lapse, if any, was on the part of the District Education Officer in not enforcing the Government policy with regard to the sessionswise recruitment and the Petitioner cannot be penalised therefore by not taking over her services although she is otherwise qualified. The Petitioner has shown that in other districts, services of the Trained Graduate Teachers of private schools have been taken over although their initial recruitment was not made on sessionswise basis. In light of all these facts and circumstances, we have given the direction aforesaid regarding the Petitioner's appointment being made on a regular basis.

12. We examined the whole matter carefully. Certain facts are not at all disputable. The Petitioners were working in this school for the past more than a year from the date of the taking over of the school. They are well-qualified and the Respondents have not said anything against their qualification in this case. "As a matter of fact, their services should have been taken by the Respondents at the time of taking over of the school. These Petitioners form a class by themselves. Their cases cannot be considered similar to Ors. as stated by the Respondents. The action of the Respondents in not taking over the services of these teachers is highly inequitable, arbitrary and unreasonable. The contention that persons who have received the training earlier to the Petitioners have not as yet been appointed to the Education service, is hardly acceptable. Principle of sessions cannot be pressed into service in the case of these teachers. In reality, it does not apply in many other circumstances and one such may be persons from reserved categories are being appointed in comparison to persons from general category, even though the former may have done the training later in point of time. Since persons from such categories having done the training in the same year in which persons from general category may have done, may not be available.

13. Further, the Petitioners were selected by the Selection Committee to which District Education Officer was asked to participate. If he did not participate, the Petitioners cannot be blamed for that. Information of selection was sent to the District Education Officer. The Respondents did not raise any objection in case the selection of the Petitioners was not legal, therefore, the Respondents are estopped from challenging the selection at this stage. The case of Petitioner 6 cannot be rejected on the ground that it was not sponsored through Employment Exchange. Execution of gift deed, transferring of the assets of the school to the Respondents is the responsibility of the management and not of the Petitioners.

14. In the aforesaid circumstances, we do not see any force in any of the contentions raised by the Respondents in this case. Although the Respondents could be directed to appoint the Petitioners from the date of taking over of the school and give them all the benefits from that date, yet we are of the opinion that such a course may not only put heavy burden on the State Exchequer but also cause prejudice to other employees in the Education Department so far as

question of seniority is concerned. Therefore, we direct that the services of Petitioners 2 to 7 be taken over by the Respondents by employing them as teachers and Peon (in the case of Bakshi Ram, Petitioner 7) in the Education Department within a period of two months from today. Their seniority would be counted from the date of joining as such.

No other point was urged by the learned Counsel for the parties.

The writ petition is, therefore, allowed in the aforesaid terms, leaving toe parties to bear their own costs.