

(2011) 03 SHI CK 0053
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 4221 of 2008

Suman Sharma and Others	Vs	APPELLANT
H.P. State Council for Child Welfare		RESPONDENT

Date of Decision : 10-03-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Himachal Pradesh Administrative Tribunal Act, 1985 — Section 21

Citation : (2011) 03 SHI CK 0053

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

Bench : Single Bench

Judgement

V.K. Sharma, J.—The Petition has been filed on the following prayers:

- i) That the Respondents may be directed to regularize the applicants either as Balsevikas or as Balwadi Teachers in the pay scale of Rs. 950-1800;
- ii) That the Respondents may be directed to pay the minimum wages to the applicants as stipulated under the Minimum Wages Act;
- iii) That the Respondents may be directed to frame an equitable scheme for regularizing the services of the applicants and similarly situate persons who have rendered more than five years continuous service in the Respondent No. 1 Council;
- iv) That the Respondent No. 4 may be directed to sponsor the names of the applicants for one year's JBT condensed course;

2. In reply, Respondent No. 1 has taken the following stand vide paras 3, 6(X and XI) and 16.

Admitted to the extent that the applicants are working as Balsevikas in the Indian Council for Child Welfare, New Delhi and State Government Sponsored Schemes and there is no provision for grant of regular scales of pay to the Workers in this Scheme. The Workers are given a fixed honorarium and the

Council which utilizes the funds provided by the ICCW, New Delhi and State Government of H.P. has no Authority to grant regular scales to the Workers. The applicants have therefore, no cause of action against the Replying Respondent. It is also submitted that the pattern of Scheme meant for Day Care/Creche Centre is prevalent throughout the State of H.P. The funds for this purpose are made available by the Government of India through the ICCW, New Delhi and State Government. It is not possible to grant regular pay scales to the Petitioners/Applicants. The grant/budget for the Scheme in which the applicants are working provides only for the payment fixed honorarium to the Workers. The Council has no jurisdiction to go beyond what is provided in the budget for a particular Scheme. It may be pertinent to submit here that all over the State of H.P., the Government of India and State Government has provided fixed honorarium to the Workers and no exception can be made in case of the Applicants particularly at the instance of the Council/Replying Respondent. Hence, there is no Violation of Articles 14 and 16 of the Constitution of India.

Admitted to the extent that some Balwadi Teachers are working in the regular pay scales. These Balwadi teachers are however, working in the Schemes Sponsored by the Government of H.P. and a provision for regular scale has been made in the budget sanctioned for the said Scheme. The Applicants/Petitioners on the other hand are working in the ICCW, New Delhi and H.P. State Government sponsored Schemes and there is no provision for regular pay scales to these Workers. The Workers are given a fixed honorarium and the Council which utilizes the funds provided by the ICCW, New Delhi and by the State Govt. of H.P. has no Authority to grant regular pay scales to the Workers. As regards the training programme of Balsevika concerned with Day Care/Creche Centre it was to be provided to those girls who were already in service in Day Care/Creche Centres and after completion of their training, they were to be adjusted against their respective centres against which they were sponsored. Hence, the applicants have therefore, no cause of action against the replying Respondents.

Admitted to the extent that Rama Chaudhary is not correct name of the employee, but the name of this employee is Sama Chaudhary. It is also further submitted that Satya Kaushalya employed at Balwadi Centre Nalagarh are also not true as this Centre is not run by this Council. It is also not true that Miss Nimo Dogra and Nishi Sood, respectively working in Balwadi Centre, Cemetary (Sanjauli) and Kanrot in Tehsil Kumarsain have got no Diploma. In this regard, it is submitted that these Balwadi Teachers were posted in the Balwadi Schemes and obtained BST for one year and six months respectively from the Balsevika Training Institute, Navbahar, Shimla. Besides this Madhu Singh and Sushila posted in Balwadi centre, Navbahar and Mundla respectively had already completed their B.Ed. before the appointment as Balwadi Teachers. If well qualified staff is available then there is no justification to appoint such Balsevikas in the Balwadi Scheme. Moreover, there is no condition in the appointment orders of the applicants that they would be adjusted in Regular Scheme on regular pay scales. Comments on remaining points this para have already been given in

para:3 above.

2. The following averments have been set up on behalf of Respondent No. 2 by way of preliminary submissions:

The Himachal Pradesh State Council for Child welfare has been constituted to promote generally the formulation and implementation of policies and programmes relating to the welfare of Children in Himachal Pradesh and co-ordinate activities and help the development of the child welfare movement in the State with certain other objectives and is affiliated to Indian Council for Child Welfare. The role of the State Government is to release grant-in-aid to the council under various schemes. The source of finance of the council is grant-in-aid received from the state Government and central Government. The employees working in the said council are governed by the separate set of rules framed by the council and as such the role of state Govt. is restricted to grant-in-aid being released under various schemes. The child Welfare council is running Child Welfare centres in the Pradesh where Balsevikas have been appointed to facilitate the work. In the instant case, it appears that the applicants are working as Balsevikas in the Child Welfare Centres being run by the council. The State Government is releasing grant-in-aid in the ratio of 90:10 under this scheme and thus it is the liability of the council to take welfare measure for the employees working under them.

3. The following preliminary submissions have been made on behalf of Respondent No. 4:

i) That the present original application filed by the applicants is not maintainable because the same is barred by limitation as provide u/s 21 of the H.P. Administrative Tribunal Act, 1985 as the Annexure A-2 has been issued on 20.07.1983 vide which starting of one year condense course to Nursery/Bal Sevika Trained Teacher to appear in the 2nd year J.B.T. Examination w.e.f. 1.1.83 has been mentioned whereas the present original application has been filed by the applicants in the month of 1997 i.e. after the expiry of more than 13 years. Hence, the present original application filed by the applicants deserves to be dismissed on this score alone.

ii) That it is further submitted that in condition No. VII of the admission notice attached with Annexure A-2 i.e. copy of letter dated 20.7.1983 it has been specifically mentioned that the application of the willing candidates on the prescribed form along with attested copies of the desired certificates, testimonial should reach to the Principals of the Basic Training Schools of Himachal Pradesh by 31.7.1983 positively. No application will be entertained after the expiry of due date. Since, in the present original application the applicants have nowhere submitted that they had applied for the JBT training within prescribed period i.e. up to 31.7.83, therefore, the applicants by their act and deed are estopped to file the present original application with the relief that the Respondent No. 4 may be directed to sponsor the name of the applicants for one year JBT condensed

course. Hence, the present original application deserve to be dismissed.

4. Respondent No. 3 has also adopted the reply filed on behalf of Respondent No. 1.

5. In view of the above replies, the petition is disposed of with the direction that subject to the Petitioners making a joint representation supported by documents to the Respondents alongwith a copy of this judgment within a month from today, the same shall be considered and decided by the Respondents in accordance with law and taking into consideration the averments made by the Petitioners vide para 6 (XV and XVI) within next three months after affording an opportunity of being heard to the Petitioners/their duly authorized representative (s).

6. With these observations, the writ petition stands disposed of, so also pending CMP(s), if any.