

(1991) 07 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : T.A. No. 876 of 1986

Sushil Kumar Kaushal and Another	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 01-07-1991

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 29

Citation : (1992) 1 ShimLC 245

Hon'ble Judges : M.G. Chitkara, J; Hari Singh, Member

Bench : Division Bench

Advocate : Dilip Sharma and D.R.S, for the Appellant; R.K. Duggal and H.K. Paul, Assistant A.G. and Harish Behal, for the Respondent

Final Decision : Allowed

Judgement

M.G. Chitkara, Member (J)

1. The applicants, S/Shri Sushil Kumar Kaushal and Rattan Lal, Trained Graduate and Shastri Teachers respectively were appointed as teachers by the Managing Committee, Janata High School. Jabli. District Solan, during September, 1982. Janata High School, Jabli was taken over by the Government on July 3, 1985 but the services of the applicants were not taken over and as such they filed Civil Writ Petition No. 1089/85 in the Hon'ble High Court of Himachal Pradesh praying that the Respondents be directed to take over the services of the applicants against the post of Trained Graduate Teacher and Shastri Teacher respectively with effect from taking over of Janata High School, Jabli, i.e. July 3, 1985.

2. The Writ Petition was transferred to the Himachal Pradesh Administrative Tribunal u/s 29 of the Administrative Tribunals Act. 1985 vide order dated December 12, 1986 passed by the Hon'ble High Court of Himachal Pradesh and as such the writ petition is being treated as an application u/s 19 of the Administrative Tribunals Act, 1985.

3. The applicant No. 1 Sushil Kumar Kaushal is a Trained Graduate Teacher and

the applicant No. 2 is Shastri Teacher and are eligible for the post of Trained Graduate Teacher and Shastri Teacher respectively Both the applicants joined the Janata High School, Jabli as Trained Graduate and Shastri Teachers on September 1, 1982 on a fixed monthly salary of Rs. 516/- and Rs. 437/- respectively. Interviews for the posts of Trained Graduate and Shastri Teachers in Janata High School, Jabli were conducted during December, 1983, but none of the candidates were offered appointment and the applicants were allowed to continue. The names of the applicants were sponsored through Employment Exchange and were duly selected in the interview held by Janata High School, Jabli on June 24, 1984 and the applicants were selected in the pay scale of Rs. 620-1200 and Rs. 570-1080 respectively with five advance increments with usual allowances. In pursuance to the negotiations between the State of Himachal Pradesh and the Managing Committee of Janata High School, Jabli, the management of the school was taken over by the Government, on July 3, 1985. In spite of the representations to Respondents the services of the applicants were not taken over by the State of Himachal Pradesh though eligible to be appointed on regular basis as Trained Graduate Teacher and Shastri Teacher respectively on the plea that the Department had appointed B.Ed. Teachers on regular basis of 1971-72 session and Shastri Teachers for the session of 1975-76 and the applicants belonged to subsequent sessions of 1981 and 1982 respectively, and the Trained Graduate Teachers as also Shastri Teachers, of the earlier sessions were available.

4. It has been strenuously argued by Shri Dilip Sharma, learned Counsel for the applicants that the applicants served the private institution, namely, Janata High School, Jabli, purely on temporary basis at the time when other candidates were reluctant to serve because of meagre salary and uncertain service conditions; that the applicants were appointed after their names were sponsored by the Employment Exchanges and were duly qualified and eligible to hold the posts and there being no infirmity in the appointment of the applicants, they were entitled to be absorbed in the Government service especially when the State had agreed with the Managing Committee of Janata High School, Jabli that the services of the qualified staff will be taken over by the Government and absorbed in the Government service. It is also submitted by the learned Counsel that the applicants have served for about 3 years in the private institution and according to Government instructions the teachers who had served in such institution for more than a year before the taking over of the institution by the Government were required to be absorbed in the Government service.

5. To the contrary, Shri R.K. Duggal, Advocate appearing for the State of Himachal Pradesh and Director of Education, submitted that no doubt the applicants are eligible to be appointed as Trained Graduate and Shastri Teachers but were to be appointed on the basis of session-wise criteria and the eligible candidates of earlier sessions were available. He also clarified that the appointment of the applicants was not according to the Government policy more particularly the session-wise criterion was not adhered to by the Managing

Committee and as such the applicants were not eligible to be absorbed in the Government service at the time of taking over the institution by the Government.

6. Shri Harish Behal, Advocate appearing on behalf of Respondent No. 3, the Managing Committee, Janata High School, Jabli submitted that the applicants' name were sponsored by the Employment Exchanges and the applicants had the teaching experience and were selected by the Managing Committee after interviews had been held on June 24, 1984. They were offered the appointment at the earliest occasion since other candidates who came for interviews were hesitant to join the private service on a fixed salary with no future prospects. He also submitted that according to the gift deed, Annexure R-3/G whereby the Janata High school, Jabli was taken over by the State Government, it was agreed that the applicants would be absorbed in the Government service, and as such the State was bound to absorb the applicants.

7. We have noted the respective contentions of the learned Counsel for the parties and have gone through the record. The main contention of the State as is evident from their reply affidavit dated April 5, 1986 is that the applicants were eligible to be appointed on regular basis as Trained Graduate and Shastri Teachers but such appointments were to be made on the basis of session-wise criterion and the candidates for earlier sessions were available, and as such the applicants could not be absorbed in the Government service. It is specifically submitted in para 10 of the reply affidavit supra that though the applicants were appointed through Employment Exchanges but session-wise criterion was introduced with a view to avoid pick and choose which led to frustration amongst the candidates of earlier sessions in the past. It was seen that the management of the private institutions used to appoint the candidates just to enable them to enter into Government service through back door. It is admitted by the State that there may be departure from the Government instructions in few cases but the applicants cannot be allowed to take the benefit out of the same and one wrong cannot justify the other wrong. The applicants also filed an additional affidavit dated April 9, 1986 and have enclosed office orders dated November 19, 1985, February 2, 1984, July 24, 1984 whereby the teachers serving in some private institutions were absorbed in Government service on taking over of such institutions by the Government, in violation of the Government instructions and session-wise criterion. The applicants in their affidavit (supra) have also given particulars of six more teachers who were appointed and absorbed in Government service in violation of session-wise criterion of taking over of the private institutions by the State Government. No reply has been filed by Respondents 1 and 2 to additional affidavit dated April 9, 1986.

8. The Respondent No. 3 i.e., the Managing Committee, Janata High School, Jabli with their reply have also placed on record the gift deed dated April 18, 1985, Annexure R-3/G entered into between the Managing Committee of Janata High School and the Governor of Himachal Pradesh whereby the Janata High School, Jabli was taken over by the State Government. The relevant Clauses 3, 7 and 12

of the gift deed (supra) are reproduced for the sake of convenience:

3. That only the qualified staff employed in the school will be taken over in accordance with the posts sanctioned by the Government in the prescribed scale.

7. The Members of the staff who will be taken over in the Government service shall be treated as new entrants and no benefit whatsoever shall be given to them in respect of the services rendered by them in the private school.

12. The Government shall not be bound to take over the services of the staff of the school and shall have full discretion in taking over such of them in Government in the light of the instructions issued from time to time in this behalf.

9. The applicants have also placed a communication from the Commissioner cum-secretary (Education) to the Government of Himachal Pradesh, dated February 12, 1985 addressed to the Director of Education to the Government of Himachal Pradesh, Shimla. This letter reads as under:

For some time past consequent upon nationalisation of private schools, the question of taking over the services of teachers serving in private schools in Government service was under consideration of the Government. According to present instructions the teachers who have served for one year in private institution are to be absorbed in Government service. Whereas the trained teachers of the earlier sessions are unable to get Government service, because according to Government instructions such teachers are appointed according to the batch of the training. As such there is resentment amongst such unemployed teachers.

Therefore, keeping in view the aforesaid facts the Government has taken this decision that the teachers who could be appointed in private schools, their cases be re-examined. The persons who have not been appointed session-wise, this will be advisable that services of such teachers be dispensed with. In future the appointments in private schools also should be made by District Education Officer/District Primary Education Officer. The officer who appoints teachers in Government schools will also appoint the teachers in private schools. The procedure of recruitment will also be same as in Government schools. Such schools which do not follow this policy will be denied aid recognition by the Government.

At the time of taking over a private school, those teachers alone may be, absorbed in Government service who are found entitled for appointment according to their session.

This principle should not be violated and in future this policy should be followed strictly. No relaxation will be given in such matters.

10. A perusal of this letter will show that a policy decision was taken by the State Government consequent upon the nationalisation of the private schools. The instructions prevalent before taking over of such decision were that the teachers

who had served for one year in private institution were to be absorbed in Government service and in future those teachers alone were to be absorbed in Government service who were found entitled for appointment according to their session. The applicants admittedly were sponsored through Employment Exchanges and were appointed by the Managing Committee, Janata High School, Jabli on June 24, 1984 long before issuance of the letter, dated February 12, 1985, Annexure PG/1 referred to above and admittedly the same cannot be applied and instructions regarding the session wise criterion contained therein cannot be enforced in case of the applicants. We may also point out that the applicants 1 and 2 were appointed in Janata High School, Jabli initially on a fixed monthly salary of Rs. 516 and Rs. 437 respectively on September 1, 1982. Ultimately, their names were sponsored by the Employment Exchanges and they were offered appointment in the pay scale of Rs. 620-1200 and Rs. 570-1080 vide appointment order, dated June 24, 1984. Neither the pay of each teachers was lucrative nor there were attractive service conditions and the continuing of the teachers in service was at the mercy of the Managing Committee of the private institutions and as such candidates for such appointments in private institutions were not readily available. These teachers who joined the private institutions, constitute the bulk of the educated unemployed who are compelled to accept these jobs with miserable conditions of service. We also find from the reply affidavit filed on behalf of Respondent No. 3, the Managing Committee, Janata High School, Jabli that an interview was conducted during December, 1985 for appointment of Trained Graduate and Shastri Teachers (when the applicants were already in service), and requisition for sponsoring the names of eligible candidates were sent to Solan and Kasauli, Employment Exchanges. No name was sponsored by the Employment Exchange, Kasauli, whereas twelve names were sponsored by the Employment Exchange, Solan for the post of Trained Graduate Teachers and five names were sponsored for the post of Shastri but on December 4, 1983, the date fixed for the interview, only one candidate appeared for each category and hence the Managing Committee had to cancel the interview. This clearly implies that the candidates were actually available but were unwilling for appointment in the private institutions on account of non-lucrative pay and uncertainty in service. This view finds force from the fact that for the interview which was subsequently held on June 24, 1984 though one name was sponsored by the District Employment Exchange, Solan and six names were sponsored by the Employment Exchange, Nalagarh for the post of Trained Graduate Teacher yet only the applicants appeared in the interview and got selected. Similarly 15 candidates were sponsored by the Employment Exchange, Kasauli for the post of Shastri and only six candidates appeared but only the applicant had the teaching experience who was selected and appointed.

11. It is admitted case of the parties that the applicants are duly qualified for the posts of Trained Graduate and Shastri Teachers respectively. It was for the State Government to have absorbed them in Government service after completion of necessary formalities as required by gift deed dated April 18, 1985. The

applicants were no doubt to be treated as fresh entrants according to the gift-deed (supra) and the applicants admittedly had more than one year's experience as stipulated in instructions dated February 12, 1985 issued by the State Government. As such they were fully eligible to be absorbed in Government service. We are fortified in our view by the State of Orissa and Another Vs. N.N. Swamy and Others, where the apex Court had considered the case of a private College, known as Khallikote College, the management of which was taken over by a formal agreement which was executed between the Managing Committee of the College and the Governor. It was observed at page 1241 para 17:

When a fairly well-recognised institution, as in this case, run for more than a century, is completely taken over by the Government for management, it is not merely taking over the land and buildings, tables and chairs. It has to tackle, at the same time, a human problem, that is to say, the fate of the teachers and the staff serving that institution. The institution, with which we are concerned, was taken over, by consent, as a going educational concern and it goes without saying that it must be administered on sound lines having regard to quality, efficiency and progress in all respects. It is understandable that the employees had to join the new service under the Government, for the first time, and so could be, in that sense, fresh entrants.

12. In view of the gift-deed, dated April 18, 1985, the State had agreed that the qualified staff employed in the school will be taken over in accordance with the posts sanctioned by the Government in the prescribed scale and they were to be treated new entrants and the services of such employees were to be taken over as may be considered suitable in the light of the instructions issued from time to time. The applicants were fully eligible. They had served in Janata High School, Jabli for more than one year and so far as session-wise criterion was concerned it was not on account of any fault of the applicants that when they were appointed on June 24, 1984, this criterion was not adhered to by the Managing Committee of the Janata High School, Jabli. This was not possible in case of applicant No. 1 because out of seven candidates sponsored for the post of Trained Graduate Teacher, only the applicant appeared in the interview and as such the Managing Committee had no option but to appoint the applicant against the said post and in such circumstances it would be uncharitable to say that the Managing Committee violated the session-wise criterion. Similarly in case of appointment of Shastri Teachers 15 candidates were sponsored. Out of 15 sponsored candidates only six candidates appeared for the interview and it was the applicant No. 2 alone who had the teaching experience and was selected and appointed and as such it cannot be said that there was any violation of the instructions given by the Government from time to time.

13. In the light of above, we allow this application and direct the Respondents 1 and 2 to take over the services of the applicants 1 and 2 against the post of Trained Graduate and Shastri Teachers respectively and issue appointment order immediately but not later than July 31, 1991. Parties are left to bear their own

costs.