



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 1582 of 2024
a/w CWP No. 1584 and
1624 of 2024

Decided on: 18.03.2024

1.CWP No. 1582 of 2024

Som Nath Sharma. ...Petitioner.

Versus

State of H.P. and Anr. ...Respondents.

2.CWP No. 1584 of 2024

Neelam Kumari.Petitioner.

Versus

State of H.P. and Anr. ...Respondents.

3.CWP No. 1624 of 2024

Surender KumarPetitioner.

Versus

State of H.P. and Anr. ...Respondents.

Coram

The Hon’ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹

¹ Whether reporters of the local papers may be allowed to see the judgment?

For the petitioner(s) : Mr. J.P. Sharma, Advocate.
 For the respondents : Mr. Y.P.S. Dhaulta and Mr. Leela Nand Sharma, Additional Advocate Generals.

Satyen Vaidya, Judge (Oral)

By way of these petitions, petitioners have prayed for grant of following substantive reliefs:

“i) Issue a writ of mandamus directing respondents to regularize the services of the petitioner with effect from the date of their initial engagement/appointment with all consequential benefits in terms of the judgments passed by this Hon'ble Court in CWP/7602/2010, titled as Om Parkash vs. State of H.P. & Others, and connected matters, CWP No. 3144 of 2011, titled as Anju Devi versus State of H.P. & Others and CWP No. 3143 of 2011, titled as Manju Devi vs. State of H.P. & Others.

ii) Issue a writ of Mandamus directing the respondents to release the entire consequential benefits along with interest @ 9 % per annum from the date of their

initial appointment to till date of realization.

iii) Issue a writ of mandamus directing the respondents to regularized the service of petitioner from the initial date of his appointment along with all consequential benefits as given to Kuldip Chand and similar situated person in execution petition no. 54/2023, vide office order dated 01.12.2023, Annexure P-7, as per the judgment of Om Prakash etc.”

2. The case of the petitioners is that the State Government approved the filling up of 4568 posts of TGTs in various streams on contract basis on fixed emoluments of Rs.8220/- per month. The approval of the Government in this behalf was conveyed vide communication dated 16.06.2008. As per the aforesaid decision, 37.5% posts were to be filled by direct recruitment, 37.5% on batch-wise basis and remaining 25% by way of promotion from JBTs and C&V categories.

3. The petitioners were appointed as TGT (batch-wise) in various streams in pursuance to the aforesaid decision on contract basis.

4. The grievance of the petitioners is that their appointment from the initial dates should be treated to be on regular basis for the reasons firstly that the Recruitment and Promotion Rules (for short, "R & P Rules") for the post of TGT as applicable at the time of appointments of petitioner did not provide for contract appointment and secondly, the appointments by promotion were made on regular basis, which caused discrimination between the petitioners and promotees.

5. The respondents have contested the claim of petitioners on the grounds that the Government vide letter dated 12.12.2003 had taken a decision to provide contract appointment as one of the mode of recruitment in addition to other mode of recruitment in all the R & P Rules and a decision was taken to amend all the R & P Rules including that of TGTs. In compliance, the R & P Rules of TGTs were amended vide notification dated 22.10.2009, providing

contractual appointment as one of the mode. The fixed emoluments for TGTs to be appointed on contract basis was also prescribed. It has also been submitted that the State Government being employer has a right to determine the terms and conditions of the service. As per the respondents, since the petitioners were appointed on contract basis, as per the prevailing instructions, which were not repugnant to the R & P Rules. The petitioners have no right to claim regular appointment from the initial date.

6. The petitioners have placed on record an office order dated 01.12.2023 whereby the persons situated similarly to the petitioners have been granted the benefit of regular appointment from the initial date.

7. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

8. The fact that R & P Rules for TGTs were amended on 22.10.2009 is not in dispute. It

has also not been disputed that the dates of appointment of petitioners as TGT is before the coming into force of the amended R & P Rules of TGTs.

9. Indisputably, the mode of appointment on contract basis with fixed emoluments was incorporated in the R & P Rules for TGTs for the first time w.e.f. 22.10.2009. Prior to such amendment, the only mode of recruitment was regular appointment.

10. In CWP No. 414 of 2014, titled Kuldip Chand vs. State of H.P. & Others, the petitioners therein had raised the claim in the same terms as has been raised by the petitioners by way of instant petition. A Division Bench of this Court vide order dated 24.04.2014, disposed of CWP No. 414 of 2014, titled Kuldip Chand vs. State of H.P. & Others in following terms:-

“Mr. Ramakant Sharma, learned counsel for the petitioners, stated that the matters are covered in terms of judgments of this Court, passed in CWP No.7602 of 2010, titled Om

Parkash versus State of H.P. and others, and connected matters, and CWP No.3144 of 2011, titled Anju Devi versus State of H.P. and others. Mr. Romesh Verma, learned Additional Advocate General, stated at the Bar that the State has challenged the said judgments by way of filing Letters Patent Appeals, being LPAs No.54 of 2013 and 500 of 2013, which are pending adjudication in this Court.

2. In the given circumstances, we deem it proper to dispose of the writ petitions in terms of the judgments, referred to above, subject to the outcome of LPAs No.54 of 2013 and 500 of 2013. Pending CMPs, if any, also stand disposed of."

11. As evident, CWP No.414 of 2014 was disposed of in terms of the judgments passed by this Court in CWP No. 7602 of 2010, titled Om Parkash vs. State of H.P. and others, and connected matters, and CWP No. 3144 of 2011, titled Anju Devi vs. State of H.P. and others, subject to the final outcome of LPAs No. 54 of 2013 and 500 of 2013, arising out of challenge to aforesaid judgments passed in CWP No.7602 of 2010 and CWP No. 3144 of 2011.

12. Vide judgment dated 04.10.2019 passed in LPA No. 54 of 2013 alongwith connected matters, a Division Bench of this Court held that the amended R & P Rules providing for contract appointment cannot be applied retrospectively. In LPA No. 54 of 2013, the issue related to erstwhile employees of private educational institutions, whose services were taken over by the State Government and were given appointment on contract basis *dehors* the prevailing R & P Rules.

13. It is clear from the office order dated 01.12.2023 (Annexure P-8) that the State Government has implemented the judgment dated 24.04.2014, passed in CWP No. 414 of 2014, titled Kuldip Chand vs. State of H.P. and Others by applying the principle as laid down while deciding LPA No. 54 of 2013. The relevant portion of office order dated 01.12.2023, reads as under:

“In view of above facts and circumstances and in compliance to the order passed by the Hon’ble High Court of H.P. in the matter of LPA No. 54/2013 State of H.P. Vs. Om Prakash alongwith LPA Nos. 18, 21, 22, 26, 37, 38/2013, 4059/2013 & 4060/2013 & other connected matters dated 04.10.2019 and in compliance to the order passed by the Hon’ble High Court of H.P. in Execution Petition No.94/2020 in CWP No. 414/2014 titled as Kuldeep Chand & other vs. Connected matters on dated 28.11.2023 and further approval conveyed by the Government to implement the judgment passed in the instant matters vide letter No. EDN-C-E(3)3/2020 dated 23.09.2020 & No.EDN-C-E(3)3/2020 dated 30-11-2023, all the petitioners (TGTs) in CWP No.414/2014, Kuldeep Chand vs. State of H.P. & connected matters, CWP No. 6383/2014- Manoj Kumar Vs State of H.P. & Others, CWP No. 416/2014-Door Singh, CWP No.6746/ 2014-Som Dutt, CWP No.6751/2014- Manohar Lal, CWP No. 6748/2014-Disha Sharma, CWP No.6749/2014- Nirmla Shashni Vs State of H.P. & others, CWP No. 6750/2014 – Chhime Angmo Vs. State of H.P. & others, who were appointed as TGT (Arts/NM/Medical) through batch-wise basis on contract basis vide this Directorate office order No. EDN-H(2)B(2)5/2008-(Non-Med.)-Deptt. Dated 14.11.2008. No. EDN-H(2) B (2) 5/2008-

(Medical)-Deptt. Dated 25.11.2008 & No. EDN-H(2)B(2)6/2008-(Arts)-Deptt. Dated 19.8.2009 are hereby considered as deemed regular employees in the pay scale of Rs.10300-34800+3600 Grade Pay plus other allowances with all consequential benefits from the date when they were initially appointed on contract basis. The concerned Principal/ Headmaster/ Incharge of GSSS/GHS/GMS of H.P. is further directed that consequential benefits regarding monetary benefits qua the petitioners shall be released as per the instructions issued by the Finance Department H.P. vide letter No.Fin-E-I-C(17)-6/08 dated 07.01.2012 and No.Fin-(PR)B(7)-1/2021-Loose dated 17.09.2022.”

14. Thus, the petitioners being similarly situated cannot be dealt with differently by same employer.

15. Accordingly, these petitions are allowed with direction to the respondents to grant all such benefits to the petitioners as have been granted to the petitioners in CWP No.414 of 2014, titled Kuldip Chand vs. State of H.P. and others, vide office order dated 01.12.2023, issued by the Director Elementary Education, Himachal

Pradesh, within six weeks from the date of passing of this judgment.

16. These petitions stands disposed of, so also the pending miscellaneous application(s), if any.

18th March, 2024
(sushma)

(Satyen Vaidya)
Judge