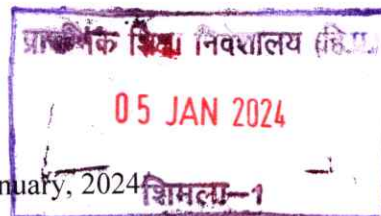


No:EDN-H(2)B(2)2073/2020---CC
Directorate of Elementary Education,
Himachal Pradesh Lal Pani Shimla-01.



Dated Shimla-171001 the January, 2024

In the matter of CWP No. 2073/2020-Kamaljeet Singh & ors. Vs. State of H.P. & Ors decided on 20.07.2020.

ORDER

Whereas, the petitioner Sh. Kamaljeet Singh alongwith other petitioners have filed CWP No. 2073/2020 titled as Kamaljeet Singh & ors. Vs State of H.P. & Ors in the Hon'ble High Court of H.P. for the grant of following reliefs:-

- (a) That the impugned rejection dated 18.07.2017 conveyed vide communication 16.12.2019 at Annexure P-4 (colly), whereby the representation of the petitioner has been rejected may very kindly be quashed and set aside.
- (b) That the respondents may very kindly be directed to issue fresh appointment letter to the post of TGT (Arts) to the petitioners on regular basis instead of contract appointment w.e.f. 07.11.2008 with all consequential benefits in the interest of justice.

Whereas, the case of the petitioners was listed before the Hon'ble High Court of H.P. on dated 20.07.2020 when after hearing the matter, the Hon'ble Court was pleased to disposed of the writ petition with following orders:-

"2. Learned counsel for the petitioner states that the issue in question is squarely covered by the judgment of the Court in LPA No. 54/2013, titled as State of H.P. and ors. Vs Om Prakash, dated 04.10.2019 (Annexure P-7). His statement is taken on record. This is a matter to be considered by the respondents.

In view of above, the petition is accordingly disposed of with a direction to the respondents to consider and decide the case of the petitioners in light of the aforesaid decision, by passing a speaking order, within a period of eight weeks from today and in case the petitioner are found to be similar to that of in Om Prakash's case (supra), then same and similar benefits alongwith all consequential benefits, if any, be granted to them within a period of four weeks thereafter. Pending application(s), if any, also stands disposed of.

Whereas, the present civil writ petition was filed by the petitioners in the Hon'ble High Court of H.P. with the prayer that they may be considered regular employee from the date of their initial appointment on contract basis as TGT w.e.f. 07.11.2008 with all consequential benefits. The ground for relief in the writ petition

was that the R&P Rules of TGTs were amended on dated 22.10.2009 whereas they had been appointed as TGT (Arts) through batchwise basis much prior to the amendment of R&P Rules of TGTs dated 22.10.2009 and this matter has already been decided by the Hon'ble High Court of H.P. in LPA No. 54/2013, titled as State of H.P. and ors. Vs Om Prakash, dated 04.10.2019.

Whereas, after thorough examination of the case it is found that the Government during 2008 conveyed the approval to fill up the posts of TGTs on contract basis vide letter No. EDN-C-B(15)6/2007-Loose dated 16.06.2008 and accordingly, the Department advertised the posts vide requisition No. EDN-H(2)B(2)3/2018- Requisition dated 27.06.2008 purely on contract basis as per contract conditions and emoluments. Thereafter, after completion of recruitment process petitioners were offered appointment on contract basis vide office order No. EDN-H(2)B(2)6/2008-(Arts)-Deptt, Dated 07.11.2008. However, the specific amendment related to contract appointment was inserted in the R&P Rules, of TGTs on dated 22.10.2009 and prior to this, in the R&P Rules of TGTs, provision of regular appointment was in vogue. The services of the petitioner were regularized by the Department vide office order No. EDN-H(2)B(2)34/2014-Regularisation (contract) dated 22.06.2015 in pursuance to the Government letter No. PER(AP)C-B(2)-2/2015 dated 07.05.2015.

Whereas, after going through the order of the Hon'ble Court dated 10.11.2022, it is revealed that the matter of regular appointments to those incumbents who were appointed on contract basis before the amendment of R&P Rules was decided by the Hon'ble High Court of H.P. in CWP No. 7602 of 2010, titled as Om Prakash Versus State of H.P. on dated 02.05.2012. The operative part of the judgment is as under:-

"In view of the aforesaid factual matrix, since petitioners' services were taken over w.e.f. 6.2.2007, i.e. prior to issuance of the aforesaid Rules, petitions need to be allowed. As on this date, there was no provision in the rules, enabling the State to take over services of the petitioners on contract basis. No doubt, Government took a policy decision to make all appointments on contract basis after 12th December, 2003, but then this could be done only by amending the rules and incorporating specific conditions therein. Executive power could not have been exercised, in view of specific prior notification, occupying the specified field. Also, policy decision did not supersede/repeal earlier decision in that regard. Rules were in existence. In the absence of same, Government could not have taken over services of the petitioners on contract basis, particularly when their initial appointment was on regular basis. 13. Consequently, petitions

10


are allowed and respondents are directed to consider the petitioners' case for appointment as Lecturer (School Cadre) in their respective Subjects on regular basis w.e.f. 6.2.2007, the date on which College and services of the petitioners were actually taken over. Needful be positively done within a period of three months from today. All consequential actions shall follow".

Whereas, the order passed by the Hon'ble High Court of H.P. in CWP No. 7602 of 2013 was further challenged by the State Government vide LPA No. 54 of 2013 titled as State of Himachal Pradesh & Ors Vs Sh. Om Parkash & Ors which was tagged with LPA No. 21 of 2013 titled State of H.P and others Vs Ravinder Kumar and other connected LPAs which was decided by the Hon'ble High Court of H.P. on 04.10.2019. The operative part of the order is as under:-

"4 (i) It is not in dispute that even though the State Government on 12-12-2003 had requested all the heads of Department to amend Clause-10 of R&P Rules, for including contractual appointment as one of the mode of recruitment in accordance with the decision taken by the State, yet, Recruitment & Promotion Rules for lecturer (School cadre) were not amended in tune with 12.12.2003 decision of the State Government. The mode of recruitment under the Recruitment & Promotion Rules for appointment lecturer (School cadre) continued to be only on regular basis. It was only on 29.09.2010, that Clause-10 of the R&P Rules for the post in question was amended and notified, incorporating contractual appointments, as one of the mode of recruitment.

4 (ii) The college in question was taken over by the State on 06-02-2007. In terms of notification dated 25-08-1994, services of the eligible staff were also required to be taken over w.e.f. 06-02-2007. State though had taken over the services of the staff of the Kanwar Durga Chand Memorial College, Jaisinghpur only on 21-06-2010. Fact remained that services of writ petitioners were taken over prior to amendment of R&P Rules.

The services of the petitioners were required to be taken over in terms of Recruitment & Promotions Rules, which were in existence on the date of taking over the college i.e. 06-02-2007. The R&P Rules as they existed on 06-02-2007 did not provide for contractual appointments. The Rules only provided for regular recruitment. Service of petitioners were taken over w.e.f. 06-02-2007. College itself was taken over on 06-02-2007. Therefore, clause providing appointments on contractual basis inserted in the R&P Rules by way of amendment of Rules on 20-09-2010, could not be retrospectively applied to the petitioners.



It is apt to refer the judgment passed by this court, in CWP No. 1811 of 2008, titled Dev Raj Vs State of H.P. & others relevant segment reproduced hereinafter:-

“25. Government appointments are made in accordance with the Rules framed under Article 309 of the constitution of India. When such Rules are framed the Government is expected to act and make appointments in accordance with the Rules. If the Rules do not permit the Government to make appointment on contract basis they must be made on regular basis.

4 (iii) The notification dated 25-08-1994, under which State Government took over the privately managed colleges as well as services of staff working there, provided for granting them Government Scales as admissible to their respective corresponding categories. Clause-9 of this notification reads as under:-

Provided that services of only those employees will be taken over who furnish a written acceptance on non-judicial paper duly attested by the competent authority to the effect that they are willing to be absorbed in Government services on the conditions laid down in these rules”.

There is no provision in the above notification for taking over services of staff of privately managed colleges on contract basis, more so, in the facts of instant case, in view of Recruitment and Promotion Rules of Lecturer (School cadre) as they existed on 06-02-2007 i.e. the date of takeover, whereunder no provision for appointment on contract basis was there, regular recruitment was the only prescribed mode.

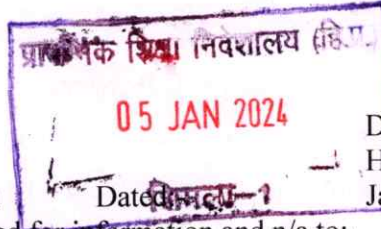
5. Thus services of the petitioners were thus required to be taken over w.e.f. 06-02-2007 on regular basis. There is no infirmity in the judgment passed by learned Single Judge. All these appeals are, therefore, dismissed alongwith pending application(s), if any.

Whereas, after the judgment passed in LPA No. 54/2013 titled as State of Himachal Pradesh & Ors. Vs Sh. Om Parkash with other connected appeals, the Director of Higher Education decided the matter of Lecturer (school cadre) whose services were taken over on contract basis from Aided colleges prior to the amendment of R&P Rules vide office order No. EDN-H (19)B(1)6/2013- Court Case dated 08.12.2020 and allowed the benefit of taking over the services to eligible petitioners as lecturer on regular basis instead of contract w.e.f. 06.02.2007, whereas, in the matters of TGTs who were appointed on contract basis through batchwise basis prior to the amendment of R&P Rules of TGTs, the Hon'ble High Court of H.P. in CWP No. 414/20214 titled as Kuldeep Chand Vs State of H.P. & ors and

other similar CWP's had ordered that "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. Ordered accordingly" therefore, the matter of LPA No. 54/2013 was again taken up with the Govt. vide letter No EDN-H(2)B(2)54/2013 CC date 03.10.2020 and it was advised by the Govt. vide letter No EDN-C-E(3)3/2020 dated 07.12.2020 that **"in view of above narrated position and in view of large financial implication involved, which too may be calculated by the department, Department is advised to file Review Petition in High Court. If necessary, senior Counsel may be hired in consultation with Ld. Advocate General H.P. to defend State Government interest"**. Accordingly, the Department filed review petition No. 19/2021 titled as State of H.P. & others Vs Gumat Ram in the Hon'ble High Court of H.P. which has been dismissed by the Hon'ble High Court of H.P. on the ground of delay. Thereafter, the matter was again taken up with the Government vide letter No. EDN-H(2)B(254/2013-CC dated 01.11.2023 and the Government vide letter No. EDN-C-E(3)3/2020 dated 30.11.2023 conveyed the approval to implement the judgment passed in CWP No. 414 of 2014 in letter and spirit and accordingly the Department implemented the judgment passed in CWP No. 414/2014 titled as Kuldeep Kumar Vs State of H.P. & Ors and other connected matters vide office order No. EDN-H(2)B(2)54/2013-CC dated 01.12.2023 by considering the petitioners deemed appointed on regular basis from the date of their initial appointment who were offered appointment on contract basis through batchwise basis much prior to the amendment of R&P Rules of TGTs dated 22.10.2009 vide office order No. EDN-H(2)B(2)6/2008-(Arts)-Deptt. Dated 07.11.2008 against the posts advertised before the amendment of R&P Rules of TGTs dated 22.10.2009.

In view of above facts and circumstances, I am of the considered view that as such the Department has already ~~been~~ implemented the judgment passed in LPA No. 54/2013-State of H.P. Vs Om Prakash & other connected matters dated 04.10.2019 in the matter of TGTs in CWP No. 414/2014 titled as Kuldeep Chand Vs State of H.P. and others and other connected matters vide office order No. EDN-H(2)B(2)54/2013-CC dated 01.12.2023 as per approval conveyed by the Government vide letter No.EDN-C-E(3)3/2020 dated 23.09.2020 & No. EDN-C-E(3)3/2020 dated 30-11-2023, therefore, the petitioner Sh. Kamaljeet Singh S/o Sh. Hari Singh Vill. Kardho, P.O. Panyali, Tehsil Nadaun Distt. Hamirpur H.P. presently working as TGT (Arts) at GSSS, Kangoo (Hamirpur) and Sh. Pawan Kumar S/o sh. Bhag Singh Vill. Samlah, P.O. Bhadwara, Tehsil Ghumarwin, Distt. Bilaspur H.P., presently working as TGT (Arts) at GMS Kuthera u/c GSSS Bharari (Bilaspur) who were

appointed as TGT (Arts) through batchwise 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)6/2008-(Arts)-Deptt. Dated 19.08.2009 are hereby considered as deemed appointed on regular basis in the pay scale of Rs. 10300-34800 + 3600 Grade Pay plus other allowances from the date when they were initially appointed on contract basis with all consequential benefits. 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.



Director Elementary Education,
Himachal Pradesh.
January, 2024

EndstNo:Even

Copy forwarded for information and n/a to:-

1. The Seretary (Education), to the Government of Himachal Pradesh w.r.t. letter No.EDN-C-E(3)3/2020 dated 23.09.2020 & dated 30-11-2023.
2. The District Attorney, Directorate of Elementary Education H.P. Shimla-01 w.r.t. U.O. No. EDN-H-(18)LC-4/2020-Hamirpur dated 04.01.2024.
3. The Dy. Director of Elementary Education, Bilaspur/Hamirpur Distt. of H.P.
4. The Principal, GSSS, Kangoo Distt. Hamirpur H.P
5. The Principal, GSSS, Bharari Distt. Bilaspur H.P.
6. Sh. Kamaljeet Singh, TGT (Arts) S/o Sh. Hari Singh Vill. Kardho, P.O. Panyali, Tehsil Nadaun Distt. Hamirpur H.P..
7. Sh. Pawan Kumar, TGT (Arts) S/o sh. Bhag Singh Vill. Samlah, P.O. Bhadwara, Tehsil Ghumarwin, Distt. Bilaspur H.P.
8. Nodal Officer, IT Cell, Dte. of Ele. Edu. H.P. to upload the same on Departmental website.
9. Guard file.

Director Elementary Education,
Himachal Pradesh.