

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3815 OF 2020

(Arising out of Special Leave Petition (C)No.12139 of 2020)

STATE OF HIMACHAL PRADESH & ORS. ...Appellant(s)

VERSUS

KULDEEP KUMAR & ORS. ...Respondent(s)

WITH

CIVIL APPEAL Nos. 3816-3817 OF 2020

[@ SLP(C) NOS.14224-25/2020]

(@ DY. NO.19748/2020)

ORDER

1. Leave granted.
2. These appeals arise out of the judgment and final order dated 14.08.2020 passed by the High Court of Himachal Pradesh at Shimla in Civil Writ Petition No.1728/2019.
3. The Writ Petition was filed by four petitioners submitting that though there were large number of vacancies of teachers in the respective cadres, rather than taking recourse to regular appointment of teachers, the State was permitting School Management Committees ('SMC', for short) to appoint teachers on "period basis" (hereinafter referred to as "SMC teachers"); that there were 3500 such SMC teachers serving in various

schools of the State; and that in the process, the candidates like the petitioners who were otherwise eligible to be considered for regular appointment, were being deprived of their chances. The petition, therefore, prayed for quashing of the relevant Policy dated 17.07.2012 issued by the State Government permitting engagement of SMC teachers.

4. Himachal Pradesh Elementary Education Department Trained Graduate Teachers, Class III (Non-Gazetted) Recruitment and Promotion Rules, 2009 (2009 Rules, for short) issued in exercise of power conferred by Proviso to Article 309 of the Constitution of India, deal with regular appointments of Teachers. Rule 15A of 2009 Rules which contemplates selection for appointment to the post of teachers by 'contract recruitment' is as under :-

“15-A Selection for appointment to the post by contract recruitment:

Notwithstanding anything contained in these rules, contract appointments to the post will be made subject to the terms and conditions given below:-

(I) CONCEPT

(a) Under this policy, the Trained Graduate Teacher in the Department of Elementary Education H.P. will be engaged on contract basis initially for one year, which may be extendable on year to year basis.

(b) POST FALLS WITHIN THE PURVIEW OF HPPSC/HPSSSB:-

The Director, Elementary Education after obtaining the approval of the Government to fill up the vacant posts on contract basis will place the requisition with the concerned recruiting agency i.e. HIMACHAL PRADESH SUBORDINATE SERVICES SELECTION BOARD.

- (c) The selection will be made in accordance with the eligibility condition prescribed in these Rules.

(II) CONTRACTUAL EMOLUMENTS:-

The Trained Graduate Teacher appointed on contract basis will be paid consolidated fixed contractual amounts @ Rs.8220/- P.M. (Which shall be equal to initial pay scale + dearness pay). An amount of Rs.160/-(equal to annual increment in the minimum initial start of the pay scale of the post) as annual increase in the contractual emoluments for the subsequent year(s) will be allowed if contract is extended beyond one year.

(III) APPOINTING/DISCIPLINARY AUTHORITY

The Director, Elementary Education, Himachal Pradesh will be appointing and disciplinary authority.

(IV) SELECTION PROCESS:

Selection for appointment to the post in the case of contract appointment will be made on the basis of viva-voce test or if considered necessary or expedient by a written test or practical test the standard/syllabus etc. of which will be determined by the concerned recruiting agency i.e. HIMACHAL PRADESH SUBORDINATE SERVICES SELECTION BOARD or any other recruiting agency as the case may be.

(V) COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS:-

As may be constituted by the concerned recruiting agency i.e. HIMACHAL PRADESH SUBORDINATE SERVICES SELECTION BOARD/any other recruiting agency from time to time.

(VI) AGREEMENT:

After selection of a candidate, he/she shall sign an agreement as per annexure-B appended to these rules.

(VII) TERMS AND CONDITIONS:-

- (a) The contractual appointee will be paid fixed contractual amount @ Rs.8220/-P.M. (which shall be equal to initial of the pay scale + dearness pay). The contract appointee will be entitled for increase in contractual amount @Rs.160/- (equal to annual increase in the minimum / initial start of the pay scale of the post) for further extended years and no other allied benefits such as senior/selection scale etc. will be given.

- (b) The service of the Contract Appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found satisfactory.
- (c) Contract appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated up to one year. No leave of any other kind is admissible to the contract appointee. He/she shall not be entitled for medical re-imburement and LTC etc. only maternity leave will be given as per rules.
- (d) Unauthorized absence from the duty without the approval of the controlling officer shall automatically lead to the termination of the contract. Contract appointee shall not be entitled for contractual amount for the period of absence from duty.
- (e) Transfer of a contract appointee will not be permitted from one place to another in any case.
- (f) Selected candidate will have to submit a certificate of his/her fitness from a Government/registered Medical Practitioner. Women candidate pregnant beyond 12 weeks will stand temporarily unfit till the confinement is over. The women candidate will be re-examined for the fitness from an authorized Medical Officer/Practitioner.
- (g) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to regular officials at the minimum of pay scale.
- (h) Provisions of service rules like FR-SR, Leave Rules, GPF Rules, Pension Rules and Conduct Rules etc. as are applicable in case of regular employees will not be applicable in case of contract employees. They will be entitled for emoluments etc. as detailed in this column.”

5. A Notification was issued on 17.07.2012 notifying “Policy to engage Teachers through School Management Committees purely on period basis in Elementary/Higher Education Departments of Himachal Pradesh in Tribal/Difficult Areas”, hereinafter referred to as “the Policy”.

5.1 The Policy laid down the procedure for appointment of SMC teachers as under:

“The School Management Committees of the educational institutions located in the Tribal / Difficult areas have requested to fill up vacant posts of teachers in their schools. The Government is making all efforts to fill up all the vacant posts in the educational institutions in the State but even then some posts in the Tribal/Difficult areas remain vacant due to retirement, transfers, promotions etc. As such the studies of the students suffers badly. Keeping in view the betterment of the study of students in these areas, it has been decided by the Government to permit the School Management Committees of educational institution situated in Tribal/Difficult areas as notified by the Department of Personnel (Annexure-I), to provide the teachers against vacant post as per the clause 15 of the Right of Children to Free and Compulsory Education, Himachal Pradesh Rules, 2011 and para 4.19 of the guidelines issued by the Government for the constitution of School Management Committees in the educational institutions under the “Right of Children to Free and Compulsory Education, Himachal Pradesh Act, 2009.”

The Government hereby frames the following procedures for the appointment of teachers through the SMCs purely on period basis:-

1. The SMC of the concerned educational institution will submit request through the Head of the Institution to the respective Dy. Director of Education to allow them to provide the teacher against vacant post on period basis. The head of the Institution will ensure that the teaching post sin his/her school are as per PTR norms. No posts will be filled up excess than PTR/Rationalization norms.
2. The concerned Dy. Director of Education after verifying the vacancies likely posting either on recruitment, transfers, promotion, availability of posts as per PTR norms, etc may allow the SMC to provide the eligible teacher on period basis.
3. The concerned SMC of the primary and Middle Schools will make an open advertisement at the Gram Panchayat/Nagar Panchayat/Urban local are and the SMC of the High and Senior Secondary Schools will make advertisement in Patwar Circle of the concerned area also and ask all eligible candidates to apply within 15 days for said period based assignment.

4. Member of the Selection Committee will be as under:-
 1. President SMC
 2. Head of the Institution-cum-Member Secretary of SMC.
 3. Subject expert from outside the concerned institution.
 4. Senior most Regular Teacher of the concerned institution. (If the regular teacher is not available in the concerned institution, the same be called from the adjoining institution).

5. The SMC will conduct an interview and follow distribution of Marks for evaluation during the course of Marks for evaluation during the course of Selection Process as per Annexure-II. Preference will be given to local eligible candidates.

6. After conducting the interview, the President of the SMC will declare the result and issue order of assignment to the eligible candidate(s).

7. The Head of the Institution after verifying all the credentials which include educational certificates as per R 7 P Rules and instructions issued by the Government, character certificates issued by the competent authority etc. will accept the joining of the said candidates(s).

8. The Head of the Institutions will ensure that no ineligible candidate joins the educational institution for teaching the students on period basis. If, it is found that the Head of Institution has permitted an ineligible candidates, the disciplinary action will be initiated against him/her as per the CCS (CCA) Conduct Rules, 1964.

9. The Head of the Institutions ensure that the services of the said SMC provided teachers will automatically be terminated as and when regular/contract teacher appointed/transferred by the Government joins against the said post or after completion of the academic session of the institution, whichever is earlier.

10. In the next academic session, a fresh selection process will be conducted in no case, the SMC provided teacher earlier be allowed to be continue after completion of academic session nor after the joining of regular/contract teacher appointed by the Government.

11. The Grant-in-Aid is permissible only in favour of those teachers, who have been provided by the SMCs after following these terms and conditions only.

12. The Grant in illegible will be released by the Government to the SMCs only against the vacant posts of PGTs, TGTs, LTs, Spastic, JBTs only. No GIA will be released against any other posts.

13. The amount of Grant-in-Aid to SMC in respect of a Teacher engage-I on period basis shall be calculated/provided by the Government in the following manner:-

1. (i) PGT: Rs.150/- per period (for 10+1 and 10+2 classes)
- (ii) PGT: Rs.100/- per period (for 9th and 10th classes)
2. TGT: Rs.100/- per period.
3. LT: Rs.75/- per period.
4. Shastri: Rs.75/- per period.
5. JBTs: Rs.75/- per period.

14. Limit of Grant per month amount of GIA to a SMC provided leader will not exceed the following limit:-

1. PGT: Rs.6,000/- P.M.
2. TGT: Rs.6,000/- P.M.
3. LT: Rs.4,500/- P.M.
4. Shastri: Rs.4,500/- P.M.
5. JBTs: Rs.3,500/- P.M.

Any illegible, if any, will be borne by the SMC of the concerned institute.

15. The Grant-in-Aid will be given by the Government only to the SMCs constituted in those institutions located in the Tribal/Difficult areas.

16. The Grant-in-Aid given by the Government for this purpose will not be incurred for other purposes/works.

17. Application for Grant-in-Aid - The SMC, after providing the teacher on the period basis, submit an application for grant-in-aid in Form-I. Character/antecedents of such teachers verified by a Gazetted Government Officer should be enclosed with the application. Further, the request for grant in respect of grant in respect of teachers provided should be accompanied by a certificate from the Head of Institution to the effect that the work and conduct of the teachers was satisfactory. In case the educational institution does not have a regular Head of Institution, the request for grant should be accompanied by certificates from the teacher of the institution carrying out the functions of Head of Institution.

18. Responsibility during vacations/Holidays:- No grant shall be admissible to SMCs for teachers made available during the period of vacations/Holidays, unless specifically allowed by the Dy. Director of Education (Concerned) for reasons to be recorded in writing.”

5.2 Further, the distribution of marks for evaluation was stipulated as follows:-

Sr. No.	Qualification	PGT	TGT	LT/Shastri	JBT
1	Matric	-	-	-	-
2.	10+2	-	5	5	5
3	Graduation/ Shastri	10	10	10	10
4.	B-ED for PGT/TGT, JBT, Certificate for JBT Posts	10	10	-	10
5	Post-Graduation	10	5	10	-
6.	TET	-	10	10	10
7.	Ph.D	10			
8.	Permanent resident of the concerned Panchayat where the Primary /Middle School located	-	10	10	10
8(b)	Permanent resident of the concerned Patvar Circle where the High Senior Secondary School located	10	-	-	-
9.	Interview	10	10	10	10
		80	60	60	60

5.3 Annexure I to the Policy set out the details of the concerned Tribal/Difficult Areas.

6. The effect and operation of the Policy was continued for subsequent Academic Years. By Notification dated 30.07.2014, the composition of the Selection Committee was changed with sub-Divisional Magistrate of the concerned sub-Division being designated as the Chairperson.

7. By Notification dated 16.08.2014, the Policy adopted vide Notification dated 17.07.2012 was applied in respect of all Schools which were upgraded during Academic Years 2013-14, 2014-15 irrespective of the area where such schools were situated and to all the sanctioned posts of Teaching cadres which had remained vacant for over two years. All the other terms and conditions of the Policy dated 17.07.2012 were to apply without any change.

8. Coming back to the Writ Petition, though it was specifically asserted that more than 3500 persons were engaged as SMC teachers, none of them was impleaded as respondent to the Writ Petition. However, some of the SMC Teachers impleaded themselves and became parties to the proceedings before the High Court.

9. The stand taken by the State in its reply to the Writ Petition was as under:

“2. That the respondent State took a Cabinet decision on 24.7.2018, to fill up the vacant posts (except posts of PET/DPE/DM) in the schools through School Management Committees and Government issued a letter on 28.7.2018 directing the Director of Higher Education and the Director of

Elementary Education to fill the vacant posts, (except the posts of PET/DPE/DM) in the schools where there are no teachers for the last one year, through SMCs, from eligible candidates as per the notification dated 28.07.2018 as a temporary arrangement till the joining of a regular teacher.

3. That with reference to the order passed by the Hon'ble Court on 08.08.2019 and 05.09.2019 in this Civil Writ petition and in CWPIIL 157/2017 titled as Court on its own Motion Vs. State of Himachal Pradesh & Ors. It is submitted that the respondent department has filled up 844 post of Junior Basic Teachers, 1036 posts of TGTs (TGT Arts=751, TGT(NM) 272 and TGT (Medical) 13 posts) in the year 2019. The Government has conveyed the approval to fill up 3636 posts i.e. 684 posts of TGT (Arts), 359 Posts of TGT (NM), 261 posts of TGT (Med) 1049 posts of Shastries, 590 posts of Language Teachers, and 693 posts of JBT teachers vide letter No. EDN-C-B(1)3/2019 dated 10.12.2019 on batch wise basis as well as through Himachal Pradesh Subordinate Services Selection Board which is recruiting agency and the copy of same is annexed as Annexure-RI for kind perusal of this Hon'ble Court please.

... ..
5. That in CWP 277/2017 titled as Subhash & Ors. Vs. State of Himachal Pradesh & Ors and other connected matters decided on 30.10.2018 the Hon'ble Court has been pleased to hold that:-

“As similar issue is involved in all these writ petitions, the same are accordingly being disposed of by a common judgment.

2. Petitioners before this Court are stated to be working in various schools of the State having been appointed by the respective School Management Committees of the School against vacant posts of teachers on different dates between 2008 to 2013. They claim release of pay in terms of Grant-in-Aid Policy of the State in their favour and also for the regularization of their services as SMC teachers.

3. The stand of the State is that SMC Policy dated 17.07.2012, as extended vide Notification dated 16.08.2014 covers only those teachers who are appointed after coming into force of the said Policy and who have been appointed in terms of the said Policy.

4. A perusal of the said policy which has been notified vide Notification dated 17.07.2012 demonstrates that the School Management Committees have been authorized to appoint teachers as per the procedure contemplated in the same through a Selection Committee composition of

which is provided in Clause-4 of the Policy which reads as under:-

“4. Member of the Selection Committee will be as under:-

1. President SMC
2. Head of the Institution-cum-Member Secretary of SMC.
3. Subject expert from outside the concerned institution.
4. Senior most Regular Teacher of the concerned institution. (If the regular Teacher is not available in the concerned institution, the same be called from the adjoining institution)”

5. It is not in dispute that the petitioners have not been appointed by following the process as is envisaged in the above mentioned Policy.

6. In this view of the matter, the State cannot be directed to release wages in favour of the petitioners who have not been appointed, in terms of the 2012 Policy.

7. Similarly, as the petitioners have not been appointed as per the Recruitment and Promotion Rules against the posts which presently are being manned by them, therefore, no direction for regularization of their services can be issued.

8. The Hon’ble Court in case No. CWPIIL No.157 of 2017 titled Court on its own motion vs. State of H.P. & Ors., has directed the respondent – State to come out with a time schedule to fill up all the vacant posts in various schools of the State on regular/contract basis. Accordingly, subject to orders to be passed in the above mentioned writ petition i.e. CWPIIL No.157/2017, all these writ petitions are disposed of by directing that an endeavour be made by the State to fill up the vacant posts of teachers on regular basis within a period of one year and in the interregnum on contract basis within a period of six months. It is clarified that the petitioner shall be entitled to participate in the process of selection for appointment on contract/regular basis subject to eligibility. It is made clear that continuation of the services of the petitioner as SMC appointee shall not confer any preferential right of appointment upon them.

6. That in view of these peculiar facts and circumstances and

pandemic disease COVID-19 the process to fill up these posts has been held up and shall take some more time to fill up the vacancies and till then engagement of teachers through School Management Committees is a temporary arrangement so that the study of students may not suffer adversely.”

9.1 It was also submitted :-

“It is further submitted that the respondent department has filled up 844 posts of Junior Basic Teachers, 1036 posts of TGTs (TGT Arts=751, TGT(NM) 272 and TGT (Medical) 13 posts) in the year 2019 and the Government has conveyed the approval to fill up 3636 posts i.e. 684 posts of TGT (Arts), 359 posts of TGT (NM), 261 posts of TGT (Med.) 1049 posts of Shastries, 590 posts of Language Teachers and 693 posts of JBT teachers vide letter No.EDN-C-B(1)3/2019 dated 10.12.2019 on batch wise basis as well as through Himachal Pradesh Subordinate Services Selection Board which is recruiting agency and the copy of the same is annexed as Annexure R-1 for kind perusal of this Hon’ble Court please.

4. That the contents of this para call for no submissions in view of the detailed facts and submissions made in reply to para 3 supra.

5. That the contents of this para also call for no submission in view of the detailed facts and submissions made in reply to para 3 supra.

6. That the contents of this para are wrong hence denied. The respondent department has filled up 844 posts of Junior Basic Teachers, 1036 posts of TGTs (TGT Arts=751, TGT(NM)272 and TGT (medical) 13 posts) in the year 2019 and the Government has conveyed the approval to fill up 3636 posts i.e. 684 posts of TGT (Arts), 359 posts of TGT (NM), 261 posts of TGT (Med.) 1049 posts of Shastries, 590 posts of Language Teachers, and 693 posts of JBT teachers vide letter No.EDN-C-B(1)3/2019 dated 10.12.2019 on batch wise basis as well as through Himachal Pradesh Subordinate Services Selection Board which is recruiting agency. But due to pandemic disease COVID-19 the process to fill up these posts has been held up and shall take some more time to fill up the vacancies and till then engagement of teachers through School Management Committees is a temporary arrangement so that the study of students may not suffer adversely.”

10. The High Court accepted the submissions of the petitioners and

held that the State was obliged to make to regular appointments of teachers instead of making temporary appointments through the mechanism of the Policy. The High Court therefore, directed: -

“9. Consequently, there is merit in the instant petition, and, the same is allowed. However, the respondents concerned are directed, to, within six weeks from today, after completing all the codal formalities, hence engage/appoint apposite regular hands, against, the, apposite substantive post(s) and, also for ensuring qua the academic pursuits, of, the children rather not becoming jeopardized, they are directed, to in the afore schools, hence, ensure imparting, of, online teachings, reiteratedly to, all the students, at all, the schools concerned. The induction/appointments, of, the private respondents concerned, are, quashed and set-aside.”

The High Court thus allowed the Writ Petition and directed that all appointments of SMC teachers in terms of the Policy would stand quashed and set aside.

11. The view taken by the High Court is presently under challenge before this Court.

12. The original Petitioners who are respondents 1 to 4 in Civil Appeal No.3815 of 2020 have asserted in their counter affidavit filed in this Court as under:

“....There are specific averments in para 14 of petition filed in HP High Court that matter may not be treated as PIL in any manner. It is admitted that replying respondent No.8 was petitioner No.3 in the matter filed at HP High Court at Shimla and the government job as teacher in Education Department during pendency of the matter and this factum was brought to the notice of Hon’ble Court and an application was filed for deletion of his name and that application was allowed by the Hon’ble Court. All other replying respondents are also participating in the

recruitment processes pending in the respondent education department. After filing of this matter in the Hon'ble High Court Education department initiated many recruitment processes for giving appointment to teachers as per R & P rules on permanent basis. Replying respondent No. 6 have also participated in the recruitment process for the post of TGT (Arts) in the month of October 2020 on batch-wise basis.”

13. We heard Mr. P.S. Patwalia, learned Senior Advocate for State of Himachal Pradesh, Mr. C.A. Sundram, learned Senior Advocate for the appellants in the connected matter and Mr. Harish Pandey, learned Advocate for the original petitioners.

14. The Notification dated 17.07.2012 refers to Clause 15 of the Right of Children to Free and Compulsory Education Himachal Pradesh Rules, 2011 and Para 4.19 of the Guidelines issued by the State Government “for constitution of SMCs in the Educational Institutions” under the Right of Children to Free and Compulsory Education Act, 2009 (“the RTE Act” for short).

15. Article 21-A of the Constitution of India which recognizes the Right to Education in respect of every child in the age group of 6-18 as a Fundamental Right, has correspondingly cast an obligation on the State to provide adequate opportunities for every child to be educated. The imparting of Education in terms of the provisions of the RTE Act and the Rules framed thereunder visualizes establishment of a school in every neighbourhood where a child can be provided easy access to all the

facilities for being educated.

In keeping with these obligations and while meeting the challenges in making adequate facilities available in remote areas, the Policy contemplates *pro-tem* or temporary arrangements alongside regular appointment of teachers to be undertaken by the State. The mechanism so stipulated is intended to be in addition to the regular modes of recruitment and not in substitution. It is for this reason that the terms and conditions in the Notification dated 17.07.2012 prescribe that the services of the teachers appointed by SMCs in pursuance of the temporary arrangement will automatically stand terminated as and when regular appointments are undertaken by the State Government.

16. Pertinently, the terms and conditions of the Policy also mandate adequate publicity to be given by the Heads of Institutions so as to ensure that an open advertisement is made in the concerned Gram Panchayat/Nagar Panchayat/Urban Local Area.

Further, a look at the Tabular Chart which was part of the Notification dated 17.07.2012 also shows that the marks allocable to interviews are only 10 out of 80, 10 out of 60, 10 out of 60 and 10 out of 60 in cases of PGT, TGT, LT/Shastri/JBT teachers respectively. There is thus no undue emphasis on marks of Interview in the Selection Process.

17. These stipulations ensure elements of fairness and transparency. Thus all the appointments of SMC teachers were *pro-tem* or temporary

arrangements and in any case as accepted by the petitioners in their affidavit in reply filed in this Court, Regular Recruitment Process is being undertaken by the State and that the petitioners have also participated in such regular recruitment. We may at this stage record that Mr. P.S. Patwalia, learned Senior Advocate for the State has fairly accepted that the State will make regular appointments periodically and at least every year so that the fresh talent emerging in the State has sufficient avenues and opportunities. This stand will sufficiently take care of the apprehension that the State may not make regular recruitment and thereby deny adequate opportunities to the concerned candidates.

18. In the circumstances, we do not find any infirmity in issuance of Notification dated 17.07.2012 and in framing of the Policy permitting SMCs to appoint SMC teachers at local levels to tide over the difficulties. It must be stated here that even in 2009 Rules, a provision has been made in the form of Rule 15A to make contract appointments, though the Selection Process stipulated therein is of a different dimension and character.

We therefore, allow these appeals and set aside the judgment and order passed by the High Court. It is directed that the appointments made by SMCs in terms of Notification dated 17.07.2012 hold good for the purpose for which said appointments were made till regular appointments are undertaken in accordance with 2009 Rules.

19. With the aforesaid observations, these appeals are allowed without any order as to costs.

.....J.
[Uday Umesh Lalit]

.....J.
[Vineet Saran]

.....J.
[S. Ravindra Bhat]

New Delhi;
24th November, 2020.

