

Chander Mohan Negi vs State Of Himachal Pradesh on 17 April, 2020

Equivalent citations: AIR ONLINE 2020 SC 475

Author: R. Subhash Reddy

Bench: R. Subhash Reddy, Mohan M. Shantanagoudar

C.A.Nos.2813 of 2017 etc.

REPO

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2813 OF 2017

Chander Mohan Negi & Ors.

....A

Versus

State of Himachal Pradesh & Ors.

....Resp

WITH

Civil Appeal No.2814 of 2017

AND

CIVIL APPEAL NO.2815 OF 2017

JUDGMENT

R. Subhash Reddy, J.

1. All these civil appeals are filed against a common judgment dated 09.12.2014 passed by the Division Bench of High Court of Himachal Pradesh at Shimla in L.P.A.No.504 of 2012 and batch. The said Letter Patent Appeals were filed, aggrieved by the order of the learned Single Judge dated 18.10.2012 passed in C.W.P.No.3303 of 2012-A. When, Letters Patent Appeals were filed in L.P.A.Nos.504, 507, 512 of 2012 Date: 2020.04.17 15:26:05 IST Reason:

and 203 of 2014, they were heard and disposed of by the Division C.A.Nos.2813 of

2017 etc. Bench along with the other connected writ petitions pending on similar issues.

2. The writ petitions and Letters Patent Appeals are the outcome of the policies framed by the Government of Himachal Pradesh, i.e., The Himachal Pradesh Prathmik Sahayak Adhyapak/Primary Assistant Teacher (PAT) Scheme; The Himachal Pradesh Para Teachers (Lecturer School Cadre), Para Teachers (TGT's) and Para Teachers (C&V) Policy, 2003 and the Himachal Pradesh Gram Vidya Upasak Yojna, 2001. Such schemes were framed to fill up various vacant posts of teachers in different categories as per the policies framed by the Government during the years 2001 and 2003.

3. Though the policies and appointments were of 2001 and 2003, three individuals, by name, Chander Mohan Negi; Rajiv Chauhan; and Rakesh Kumar have approached the High Court in the year 2012 by filing C.W.P.No.3303 of 2012-A before the High Court of Himachal Pradesh seeking the following reliefs :

“i) That respondents may kindly be directed to fill up the available vacancies of the Junior Basic Trained teachers in accordance with Recruitment and Promotion Rules.

ii) That the respondents may further be restrained from regularizing the Primary Assistant Teachers who have been appointed in violation of Constitutional Schemes and Law established and settled by the Hon'ble Apex Court with further directions to the respondents to advertise all the available vacancies of Junior Basic Trained teachers in the Education Department to be filled in accordance with Recruitment and Promotion Rules without any further delay and all the vacancies may be filled up in accordance with Recruitment and Promotion Rules available at the time of occurrence of the vacancies.

C.A.Nos.2813 of 2017 etc.

iii) That the respondents may kindly be burdened with costs.

(iv) That the entire record of the case may kindly be summoned.”

4. The learned Single Judge of the High Court, by order dated 18.10.2012 mainly on the ground that such appointments were made by the State by appointing the Primary Assistant Teachers to impart education upto primary level, who even do not fulfil the minimum essential qualification prescribed under the Recruitment and Promotion Rules and the State has failed to produce any material to show that the candidates who are possessing JBT degrees have refused to serve in tribal/difficult areas, the recruitment of such teachers de hors the Recruitment and Promotion Rules amounts to back door entry, has allowed the writ petition by directing the State to phase out the teachers appointed under The Himachal Pradesh Prathmik Sahayak Adhyapak/Primary Assistant Teacher Scheme, 2003 in a phased manner and to fill up the existing vacancies of JBT posts strictly in

accordance with the Recruitment and Promotion Rules. The learned Single Judge has further directed the State not to regularise the teachers.

5. Aggrieved by the order of the learned Single Judge dated 18.10.2012 passed in C.W.P.No.3303 of 2012-A, the affected/aggrieved parties, individual teachers, Association of Primary Assistant Teachers, and the State of Himachal Pradesh have filed Letters Patent Appeals. The said appeals were heard along with the writ petitions wherein appointment of teachers under the other two schemes, namely, Para C.A.Nos.2813 of 2017 etc. Teachers Policy of 2003 and the Himachal Pradesh Gram Vidya Upasak Scheme of 2001 was under challenge. By common impugned judgment dated 09.12.2014 Division Bench of High Court has allowed the Letters Patent Appeals by setting aside the order of the learned Single Judge and dismissed the writ petitions which were clubbed along with the Letters Patent Appeals. The Division Bench has allowed the Letters Patent Appeals on various grounds, viz.:

Though the appointments were made during the year 2001 and 2003, writ petitions were filed belatedly in the year 2012 and 2013 and the writ petitioners in C.W.P.No.3303 of 2012 were not even qualified when the appointments were made;

No one has questioned the selection of teachers under the Schemes at the relevant point of time, writ petitions were filed after 11 years of their appointment and the writ petitioners have not filed any rejoinder controverting the plea of the State as stated in para 11 of the reply filed in the writ petition and the State had made such appointments by framing the policies when the qualified teachers were not available for making appointments, such appointments made under various schemes cannot be termed as illegal;

In view of the long service rendered by them it is always open for the State to regularise their services;

C.A.Nos.2813 of 2017 etc. State has sufficiently explained giving the background of such appointments of the teachers in various categories and the material placed by the State disclosed that a large number of posts were vacant in the cadres of TGTs, C&Vs, PTAs etc.; A large number of vacancies are still available as the writ petitioners have claimed interest such pleas cannot be entertained to treat the writ petitions as the public interest litigation and the appointees are not even made party respondents, and no material is placed to show that all the appointees are members of the Association which was impleaded as the third respondent in the writ petition etc.

6. The order passed by the Division Bench of the High Court was challenged, amongst other L.P.As and C.W.Ps, in L.P.A.No.507 of 2012 arising out of writ petition in C.W.P.No.3303 of 2012, by 13 appellants by filing civil appeal. The original petitioners before the High Court are figured as appellant nos.1 to 3 and appellant nos.4 to 13 who are not parties before the High Court also have filed the appeal.

Subsequently the civil appeal was dismissed as withdrawn in respect of the appellants except appellant nos.1, 2 and 4. It is also stated during the course of arguments that appellant nos.1 and 4 were also appointed as JBT teachers and they are working as such. So, only left out candidate is appellant no.2. It is stated that he is eligible and there are vacant posts.

C.A.Nos.2813 of 2017 etc.

7. We have heard Sri Prashant Bhushan, learned counsel appearing for the appellants; Sri P.S. Patwalia, learned senior counsel for the State of Himachal Pradesh and Sri C.A. Sundaram and Sri Maninder Singh, learned senior counsel appearing for the private parties.

8. Learned counsel Sri Prashant Bhushan appearing for the appellants, by taking us to the orders passed by the learned Single Judge and the Division Bench of the High Court and other material placed on record, has contended that the various schemes under which the appointments of teachers were made by the Government of Himachal Pradesh were contrary to the Rules framed under proviso to Article 309 of the Constitution. It is submitted by the learned counsel that though eligible and qualified candidates were available, appointments were made under various policies only to fill up the vacancies by back door method. It is submitted that the teachers who are appointed were not qualified to hold the posts and such candidates cannot be regularised. It is submitted that if such unqualified candidates are allowed to hold the posts contrary to rules, it results in diluting the standards in the educational institutions. It is submitted that at the relevant point of time JBT qualified persons were available, and inspite of the same without issuing an advertisement to fill up the vacancies as per the rules in force, under various schemes appointments were made. It is also submitted that appointments were made without adhering to the rule of reservation, as per the Recruitment and Promotion Rules and only on the plea that such appointees were continued for a long time, by C.A.Nos.2813 of 2017 etc. itself is no ground to regularise their services. Learned counsel – Sri Prashant Bhushan – in support of his argument that the appointees who were appointed on temporary basis/contract basis contrary to rules governing the appointments, cannot be regularised, has placed reliance on judgments of this Court in the case of J & K Public Service Commission & Ors. v. Dr. Narinder Mohan & Ors. 1; Secretary, State of Karnataka & Ors. v. Umadevi (3) & Ors. 2; Accounts Officer (A&I) A.P.SRTC & Ors. v. P. Chandra Sekhara Rao & Ors.3; and Punjab State Warehousing Corpn., Chandigarh v. Manmohan Singh & Anr.4.

9. On the other hand Sri Patwalia, learned senior counsel appearing for the State of Himachal Pradesh has submitted that the Primary Assistant Teachers Scheme of 2003 (PAT Scheme) was notified on 27 th August 2003 and under the said Scheme, Primary Assistant Teachers were appointed by the respective Gram Panchayats in the area where the primary school was located, keeping in view the non-availability of trained teaching manpower in the remote and backward areas in view of the tough topographical conditions of the State. The object of the Scheme was to compulsorily enrol children in schools for elementary and primary education by providing such teachers to achieve the goals set by the Government in enacting, The Himachal Pradesh Compulsory Primary Education Act, 1997. It is submitted that such appointments were made on the monthly remuneration of Rs.2000/- and the 1 (1994) 2 SCC 630 2 (2006) 4 SCC 1 3 (2006) 7 SCC 488 4

(2007) 9 SCC 337 C.A.Nos.2813 of 2017 etc. honorarium was increased in July 2013 to Rs.8900/-. It is submitted by the learned counsel that in all 3294 candidates who are working now have acquired the professional qualification of diploma in elementary education or have undergone Professional Development Programme for Elementary Teachers. Similarly, for Para Teachers who are engaged under the policy of the State dated 17.09.2003, the policy comprises of Classical and Vernacular teachers, Trained Graduate Teachers, D.P.E.'s (School Cadre), i.e., teachers teaching physical education, and Lecturers (School Cadre). It is submitted that so far as this Scheme is concerned even as per the policy the qualification for the post of Para Teachers was as prescribed in the Recruitment and Promotion Rules applicable at the relevant time. Thus, all the persons who are recruited as Para Teachers are fully qualified as per Recruitment and Promotion Rules which were in force. Further it is submitted that even the third category, of teachers appointed under the Scheme, fulfil the educational qualifications prescribed in the Recruitment Rules. As such, a Cabinet decision was taken on 31.07.2013 to take over such teachers on contract basis after they have completed eight years of service which was subsequently reduced to seven years by Cabinet decision dated 27.12.2014. It is further submitted that out of 6799 teachers 5017 teachers were taken over on contract basis by the State Government, only 1782 lecturers could not be taken over in view of the interim orders passed by this Court. It is submitted that all the teachers, however, fulfil all the qualifications required under service rules. Lastly, it is submitted C.A.Nos.2813 of 2017 etc. that all the appointments were made when such schemes were announced and the PTA teachers were lastly appointed upto 2008 and since 2008 regular appointments have been made as per service rules.

10. Sri C.A. Sundaram and Sri Maninder Singh, learned senior counsel appearing for the respondents have submitted that the High Court has recorded valid and sufficient reasons in support of its judgment and there are no grounds at all to interfere with the same. Further, it is submitted that all the appointees have completed 15 years of service as of now and such appointments were made under various schemes framed by the Government when they were unable to fill up regular vacancies of teachers, as such, such appointments cannot be continued forever on the meagre salaries, which they were being paid. It is submitted that in view of the topography of the State and teachers in single teacher schools were not available to appoint teachers to fill up vacancies, such schemes were framed and the writ petitioners belatedly questioning such schemes and appointments cannot deprive regularisation of appointees.

11. At the outset, it is to be noted that the schemes in question were notified in the year 2001 and 2003 under which appointments were made with regard to Primary Assistant Teachers and teachers in other categories. At the relevant point of time nobody has questioned either the schemes or the appointments. It is the specific case of the respondent-State that such appointments have not affected the writ petitioners and the Department was not in a position to leave the C.A.Nos.2813 of 2017 etc. schools, teachers' deficient for long since it would have affected the studies of the students very badly. Therefore, it was the case of the State that teachers had been appointed under various schemes at that point of time and such appointments have been made upto the year 2007 and have no impact on the appellants since they have completed their two-year JBT training in the year 2011. As is evident from the order under appeal passed by the Division Bench of the High Court, the appellant-writ petitioners have not even chosen to file rejoinder and the stand taken by the State thus has remained uncontroverted. Further, it is also to be noted that when such appointments were

made during the year 2001 and 2003 the writ petitions came to be filed in the year 2012 and 2013. As the writ petitioners have claimed interest for their appointment, the Division Bench of the High Court has rightly held that such petitions cannot be considered as the public interest litigation. Such a writ petition which was filed by the petitioners who came to be qualified only in the year 2011 are not entitled for any relief on the ground of unexplained laches and inordinate delay of about more than 10 years in approaching the court for questioning the appointments. Though relief was sought against the State to deny the benefit of regularisation to the appointed teachers, they were not even impleaded as party respondents. An Association was impleaded as third respondent but without furnishing any material to show that at least majority of appointees are members of such Association. So far as Primary Assistant Teachers Scheme of 2003, which was subject matter C.A.Nos.2813 of 2017 etc. of Letters Patent Appeal arising out of C.W.P.No.3303 of 2012-A filed by Chander Mohan Negi and others, is concerned, the appellants in Civil Appeal No.2813 of 2017 except appellant nos.1, 2 and 4 have withdrawn the appeal and appellant nos.1 and 4 are already appointed as JBTs. Insofar as the only appellant, viz., appellant no.2 – Rajiv Chauhan – is concerned, it is stated that he is qualified and there are vacant posts and he can be considered if he applies to any of the existing vacancies. So far as Primary Assistant Teacher Scheme is concerned, same was notified as early as on 27 th August 2003. As is evident from the scheme itself, the object of the scheme appears to be to compulsorily enrol children in schools for elementary and primary education in the remote areas to achieve the goals as set by the Government while enacting The Himachal Pradesh Compulsory Primary Education Act, 1997 with a view to achieve the target of 100% enrolment to children. As per the scheme, the eligibility was 10+2 from a recognised Board/University and the candidates with higher qualifications were also eligible and candidates with professional qualifications were to be preferred. As per the regular Recruitment Rules the requisite qualification for the post of JBT teacher during the relevant time was 10+2 with 50% marks and JBT certificate. As submitted by learned senior counsel appearing for the State that initially though 3500 odd teachers were appointed, as of now there are only a total of 3294 teachers working in this category and out of this about 1866 had the qualification of 10+2 with more than 50% marks at the C.A.Nos.2813 of 2017 etc. relevant point of engagement. Out of the balance of 1015 had 10+2 with less than 50% marks, but they had higher qualification such as B.A./M.A./M.Sc. or B.Ed. etc. Further, it is also brought to our notice that out of all the candidates 3294 candidates who are presently working have acquired the professional qualification of diploma in elementary education or have undergone Professional Development Programme for Elementary Teachers. In that view of the matter, we are of the view that when the appointees appointed under the scheme have completed more than almost 15 years of service now and also have acquired the professional qualifications, they cannot be denied regularisation at this point of time. As the appointments were made as per the schemes notified by the Government such appointments cannot be treated as illegal, if at all they can be considered irregular. When it is the plea of the State that in view of the hard topography/tribal areas in the State, large number of vacancies were there even single teacher schools and to achieve the object of The Himachal Pradesh Primary Education Act, 1997 such steps were taken, there is no reason to disbelieve the same, more so, in absence of any affidavit by way of rejoinder by the writ petitioners before the High Court controverting the allegations in the reply filed on behalf of the State.

12. Even with regard to Para Teachers Policy under which various category of teachers were appointed in the year 2003 pursuant to policy notified on 17.09.2003 it is clear from the record placed before this Court that all the persons who were recruited as Para Teachers were fully C.A.Nos.2813 of 2017 etc. qualified as per the Recruitment and Promotion Rules, i.e., The Himachal Pradesh Education Department Class-III (School and Inspection Cadre) Service Rules, 1973. In view of the stand of the State that such policy was necessitated due to large number of vacant posts which have arisen year after year and which could not be filled since the State Selection Subordinate Board, Hamirpur which was responsible for the selection of teachers had come under a cloud and the selection process had come to a halt, such appointments cannot be rendered as illegal. Such aspect is also evident from the policy itself. Even in other category of Grant-in-Aid to Parent Teacher Association Rules, all teachers appointed under the scheme fulfil the educational qualifications prescribed in the Rules. For such kind of teachers, Cabinet has taken decision to take over the teachers on contract basis after completion of eight years of service which period was later reduced to seven years. It is also brought to our notice during the course of arguments that out of the total 6799 teachers, 5017 teachers were already taken over on contract basis by the State Government and only 1782 could not be taken over in view of the interim orders passed by this Court.

13. It is true that in the initial schemes notified by the Government there was a condition that such appointees should not seek regularisation/absorption but at the same time for no fault of them, they cannot be denied regularisation/absorption. It is in view of the requirement of the State, their services were extended from time to time and now all the appointees have completed more than 15 years of C.A.Nos.2813 of 2017 etc. service. For majority of the appointed teachers under the various schemes benefit was already extended and some left over candidates were denied on account of interim orders passed by this Court. With regard to Primary Assistant Teachers, it is stated that all the candidates have completed Special Teacher Training Qualifying Condensed Course and also had obtained special JBT certificate after 5 years' continuous service in terms of the Himachal Pradesh Education Code 1985. The judgments relied on by learned counsel Sri Prashant Bhushan also would not render any assistance to the case of the appellants herein for the reason that there was unexplained and inordinate delay on the part of the appellants in approaching the High Court and further having regard to explanation offered by the State about the need of framing such policies to meet the immediate requirement to fill up single teacher schools which were vacant for a very long time, having regard to topographical conditions, which is not even controverted by way of any rejoinder before the High Court. In such view of the matter, taking the totality of peculiar circumstances of these cases, we are of the view that the view expressed by this Court in the judgments relied on cannot be applied to the facts of the case on hand. All the appointed candidates are working for the meagre salaries pursuant to schemes notified by the Government. Except the vague submission that such schemes were framed only to make back door entries, there is no material placed on record to buttress such submission. Further it is also to be noted that though such schemes were notified as early as in 2003, nobody has C.A.Nos.2813 of 2017 etc. questioned such policies and appointments upto 2012 and 2013. The writ petition, i.e., C.W.P.No.3303 of 2012-A was filed in the year 2012 without even impleading the appointees as party respondents. In the writ petition there was no rejoinder filed by the writ petitioners disputing the averments of the State as stated in the reply affidavit. Having regard to nature of such appointments, appointments made as per policies cannot be termed as illegal. Having regard to material placed before this Court and

having regard to reasons recorded in the impugned order by the High Court, we are of the view that no case is made out to interfere with the impugned judgment of the High Court.

14. For the aforesaid reasons, all these appeals are dismissed with no order as to costs.

..... J . [M O H A N M . S H A N T A N A G O U D A R]
.....J. [R. SUBHASH REDDY] New Delhi.

April 17, 2020.