

HIGH COURT OF UTTARAKHAND AT NAINITAL.

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32 (2)(b))

Description of the Case.

Writ Petition No. 762 (S/S) 2006

Smt. Kamla Tewari. ... Petitioner

Vs.

State of Uttarakhand
And 4 others. ... Respondents

Approved for reporting.

~~Not approved for reporting.~~

Date of Decision 31st July, 2007 .

Initial of Judge.

Reserved

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

(1)Writ Petition no. 762 (S/S) 2006 (Leading Case)

Smt. Kamla Tiwari W/o Kailash Chandra Tiwari
R/o Agar Inter College Tandi Pokhrad
District Nainital ----- Petitioner

Versus

1. State of Uttarakhand through Additional Secretary,
Education Govt. of Uttarakhand, Dehradun
2. Director of Education (Secondary) Uttarakhand, Dehradun
3. District Education Officer, Nainital
4. Manager, Committee of Management Agar Inter College
Tandi Pokhrad, District Nainital
5. Principal, Agar Inter College, Tandi Pokhrad,
District Nainital

----- Respondents

AND

(2)- Writ Petition no. 2008(S/S) 2005

Manoj Kumar and four others. -----Petitioners

Vs.

State of Uttarakhand and five others. -----Respondents

AND

(3)- Writ Petition no. 347(S/S) 2006

Sunita Maheshwari and two others -----Petitioners

Vs.

State of Uttarakhand and three others. -----Respondents

AND

(4)- Writ Petition no. 661(S/S) 2006

Ganga Prasad Pant. -----Petitioner

Vs.

State of Uttarakhand and four others. -----Respondents

AND

(5)- Writ Petition no. 944(S/S) 2006

Smt. Mukta Chaudhary. -----Petitioner

Vs.

State of Uttarakhand and three others. -----Respondents

AND

(6)- Writ Petition no. 2022(S/S) 2005

Suresh Singh and two others. -----Petitioners

Vs.

State of Uttarakhand and three others. -----Respondents

AND

(7)- Writ Petition no. 768(S/S) 2006

Narayan Singh Karmyal -----Petitioner

Vs.

State of Uttarakhand and three others. -----Respondents

AND

(8)- Writ Petition no. 323(S/S) 2006

Devendra Kumar Sharma -----Petitioner

Vs.

State of Uttarakhand and three others. -----Respondents

AND

(9)- Writ Petition no. 672(S/S) 2006

Sanjeev Kumar Singh. -----Petitioner

Vs.

State of Uttarakhand and four others. -----Respondents

AND

(10)- Writ Petition no. 660(S/S) 2006

Vivek Kumar. -----Petitioner

Vs.

State of Uttarakhand and four others. -----Respondents

AND

(11)- Writ Petition no. 498(S/S) 2006

Rajendra Singh Rawat and two others. -----Petitioners

Vs.

State of Uttarakhand and three others. -----Respondents

AND

(12)- Writ Petition no. 673(S/S) 2006

Shish Pal. -----Petitioner

Vs.

State of Uttarakhand and four others. -----Respondents

AND

(13)- Writ Petition no. 674(S/S) 2006

Rajeev Chaturvedi -----Petitioner

Vs.

State of Uttarakhand and four others. -----Respondents

AND

(14)- Writ Petition no. 879(S/S) 2006

Smt. Rajesh Sharma and another. -----Petitioners

Vs.

State of Uttarakhand and three others. -----Respondents

AND

(15)- Writ Petition no. 961(S/S) 2006

Roshan Singh Rawat. -----Petitioner

Vs.

State of Uttarakhand and five others. -----Respondents

AND

(16)- Writ Petition no. 1041(S/S) 2006

Gulab Singh Padiyar. -----Petitioner

Vs.

State of Uttarakhand and five others. -----Respondents

AND

(17)- Writ Petition no. 1077(S/S) 2006

Pushpa Upadhyay. -----Petitioner

Vs.

State of Uttarakhand and three others. -----Respondents

AND

(18)- Writ Petition no. 1124(S/S) 2006

Sanjay Kumar Singh. -----Petitioner

Vs.

State of Uttarakhand and four others. -----Respondents

AND

(19)- Writ Petition no. 1215(S/S) 2006

Manbar Singh. -----Petitioner

Vs.

State of Uttarakhand and four others. -----Respondents

AND

(20)- Writ Petition no. 1231(S/S) 2006

Jagdish Singh Bhandari. -----Petitioner

Vs.

State of Uttarakhand and four others. -----Respondents

AND

(21)- Writ Petition no. 1232(S/S) 2006

Madan Mohan Patni. -----Petitioner

Vs.

State of Uttarakhand and four others. -----Respondents

AND

(22)- Writ Petition no. 671(S/S) 2006

Navin Chandra. -----Petitioner

Vs.

State of Uttarakhand and four others. -----Respondents

AND

(23)- Writ Petition no. 1095(S/S) 2006

Satish Chandra Nautiyal and another. -----Petitioner

Vs.

State of Uttarakhand and three others. -----Respondents

AND

(24)- Writ Petition no. 653(S/S) 2006

Mohit Gupta. -----Petitioner

Vs.

State of Uttarakhand and three others. -----Respondents

AND

(25)- Writ Petition no. 1691(S/S) 2005

Umesh Chandra. -----Petitioner

Vs.

State of Uttarakhand and three others. -----Respondents

Sri S.N. Babulkar, Sr. Adv., Sri M.C. Kandpal, Sr. Adv., Sri Chetan Joshi, Adv., Sri Ganesh Kandpal, Adv. Sri B.D. Upadhyay, Adv. Sri D.S. Mehta, Adv., Sri Kamlesh Tewari, Adv. Sri I.S. Mehra, Adv., Sri Prabhar Joshi, Adv. and Sri Rajeev Shrama advocate, learned counsel for the petitioners.

Sri Paresh Tripathi, learned Standing Counsel for the State, AND,

Sri Ashish Joshi, Adv., Sri Manoj Tewari, Adv., Sri R. Dobhal,, Adv., Mrs. Gauri Deo Devi, Adv., Sri Vinay Upadhyay, Adv., Sri Vijay Bhatt, Adv., Sri M.C. Pandey, Adv., Sri G.S. Negi, Adv., Sri S.S. Rawat, Adv. Sri Subhash Upadhyay, Adv. and Sri A.K. Bisht, Advocate for the private respondents.

Hon'ble M.M. Ghildiyal, J.

In all these petitions the petitioners are aggrieved with the Govt. Order dated 20th September 2003 by which the Govt. has declined payment of honorarium to such Teachers who have been appointed by the Parent Teacher Association after 5th September 2003. The petitioners are also aggrieved with the G.O. dated 19th October 2005 by which the Government has issued directions that the appointments can be made by the aided Colleges, leaving the posts occupied by the PTA Teachers. Some of the petitioners have challenged the advertisement issued by the Committee of Management to fill

up the post against which they are working. On 20th September 2003, Government issued order stipulating therein that the P.T.A. teachers, who were appointed on or before 05.09.2003, possessed the requisite qualification and were eligible for holding the said posts and have been selected and appointed by the Parent Teachers Association shall be provided honorarium @ Rs. 25/- per period, 6 period per day upto maximum of Rs. 4,000/- per month, however, vide subsequent Govt. Order dated 24th October 2003, the limitation prescribed for 6 periods in a day has been withdrawn and direction was issued to make payment @ of Rs. 4000/- per month.

The petitioners are working in different recognized and aided institutions in the State of Uttarakhand. The services of the petitioners in these petitions are governed by the Provision of Intermediate Education Act 1921 and the Regulation framed under this Act. Payment of Salary Act 1971 is also applicable to the Institutions in which the petitioners are serving. In some of the petitions publication of posts is sought to be quashed. In some petitions the petitioners have sought their regularization on the posts held by them. In most of the petition the petitioners have prayed to issue a writ in the nature of mandamus commanding and directing the respondents to ensure payment of full salary as is admissible to the regularly appointed L.T. Grade teachers or at least to pay admissible honorarium @ of Rs. 4,000/- per month in pursuant to Government Order dated 20.09.2003 alongwith the arrears from the date of their appointment.

As the petitioners have challenged the cut of date stipulated by the Government vide its G.O. dated 20th Sep. 2003, by which the PTA Teachers who have been appointed

after 5th September 2003 have been declined for payment of honorarium, thus for the sake of convenience all the writ petitions have been consolidated and are being decided by a common judgment. The Writ Petition No. 762 (S/S) of 2006 is treated as a leading case.

The Uttarakhand School Education Act, 2006, Act No. 8 of 2006 was enacted and came into force w.e.f. 22nd April, 2006. under Section 41, provision has been made for ad hoc appointment of part time teacher/Acting Parent Teachers Association Teachers by Committee of Management. It is provided that the *Committee of Management shall appoint on ad hoc basis such part time PTA Teachers as were employed up to 05.09.2003 by the Committee of Management from its own resource, for which substantive posts were created at the time and who possessed qualification prescribed for the corresponding posts and who were paid honorarium from the Government funds.*

Prior to enforcement of the aforesaid Act, Uttar Pradesh Intermediate Education Act, 1921 and the Regulations framed thereunder were adopted by the State of Uttarakhand. Certain provisions of U.P. Intermediate Education Act, 1921 as well as Regulations relating to appointment of Teachers under Parent Teachers Association (hereinafter referred to as the PTA) are relevant for the proper adjudication of the case, are as under: -

7AA. Employment of Part-time Teachers or Part-time Instructors:-

1. *Notwithstanding anything contained in this Act, the Management of an Institution may, from its own resources, employ-*

(i). as an interim measure part-time teachers for imparting instructions in any subject or group or subjects or for

a higher class for which recognition is given or in any section of an existing class for which permission is granted under Section 7-A:

(ii). part-time instructors to impart instruction in moral education or any trade or craft under socially useful productive work or vocational course.

2. No recognition shall be given and no permission shall be granted under Section 7-A, unless the Committee of Management furnishes such security in cash or by way of Bank Guarantee to the Inspector as may be specified by the State Government from time to time.

3. No part-time teacher shall be employed in an institution unless such conditions may be specified by the State Government by order in this behalf are complied with.

4. No part-time teacher or part-time instructor shall be employed unless he possesses such minimum qualifications as may be prescribed.

5. A part-time teacher or a part-time instructor shall be paid such honorarium as may be fixed by the State Government by general or special order in this behalf.

*6. Nothing in this Act shall preclude a person already serving as a teacher in an institution from being employed as a part-time teacher or a part-time instructor under Section **7-AA**."*

Section 9, sub-Clause (4) of Uttar Pradesh Intermediate Education Act, 1921 provides *"Whenever in the opinion of the State Government, it is necessary or expedient to take immediate action, it may, without making any reference to the Board under the foregoing provisions, pass such order or to take such other action consistent with the provisions of this Act as it deems necessary, and in particular, may, by such order modify or rescind or make any regulation in respect of any matter and shall forthwith inform the Board accordingly."*

This power of State Government is disciplinary power and is not subject to challenge and, in fact, it is an emergent power which can be exercised in any contingent situation.

There was an acute shortage of teachers in Secondary Education and despite of so many efforts made by the State Government, the Government could not fill up the vacant post of teachers by making permanent arrangement. Since the Teachers as well as the students were facing great inconvenience in view of shortage of teachers, therefore, in view of its constitutional obligation, as the education has been regarded to be a fundamental right of the student and the mandate of Article 37 of the Constitution of India enjoins on the Government a constitutional obligation to bring Laws or make appropriate measures or implementing the fundamental rights and directives as soon as possible, therefore, in furtherance of this constitutional obligation and emergent situation arisen by non availability of regular teachers, the Government worked out on via media for providing teachers in the institutions through Parent Teachers Association (PTA) and, consequently, the regulation namely Abhibhawak Adhyapak Association Regulation 1986 has been framed inter-alia with the object to provide aid and assistance to Committee of Management and the Principal of the Institution for the effective functioning of such type of Institutions. Main purpose of constitute the Association is to propose the management to provide them qualified teachers by the fund collected by the Association out of its own resources.

The aims for which the Association is to be constituted under the Regulations of 1986 have been provided under Regulation 3 of Regulations, which are as under: -

“ एसोसिएशन के उद्देश्य— एसोसिएशन के निम्नलिखित उद्देश्य होंगे—

- (1) संस्था और स्थानीय समाज के पारस्परिक सम्बन्ध को बढ़ाना।
- (2) संस्था की समस्याओं की जानकारी प्राप्त करना और स्थानीय समाज के भौतिक, आर्थिक और नैतिक सहयोग से उनके निराकरण के लिए प्रयास करना।

- (3) संस्था में नई शैक्षिक योजनाओं के संचालन और क्रियान्वयन के लिये स्थानीय समाज का सहयोग प्राप्त करना।
- (4) स्थानीय समाज की शैक्षिक एवं व्यावसायिक आवश्यकताओं की पहचान कर उनके अनुकूल नवीन विषयों को पाठ्य विषयों में समावेश करने की संस्तुति करना।
- (5) विद्यालय यथार्थ में स्थानीय समाज का आलोक स्तम्भ है। इस भावना को सम्पुष्ट करना।
- (6) संस्था में अध्ययनरत छात्रों के सांस्कृतिक एवं शैक्षिक उन्नयन के लिये योजनायें एवं कार्यक्रम बनाने में मार्गदर्शन एवं सहयोग देना, और
- (7) प्रबन्ध समिति एवं प्रधानाचार्य की संस्था के सुचारुरूप से संचालन के लिये परामर्श एवं सहयोग देना, जिसमें संस्था के प्रबन्धकीय प्रशासन में हस्तक्षेप करना सम्मिलित नहीं है।

One of the object of the Association as is clear from No. 7 provided under Regulation 3 is to co-operate the Principal and the Committee of Management for smooth functioning of the Institution and under this object, teachers were appointed by the PTA in the institution on honorarium basis either paid by the Association itself or by the Management from its own resources.

Under the intimation to the Government and concerned authorities, the managements have to accept the proposals sent by the Committee. The petitioners having knowledge that post of L.T. Grade is vacant in a particular Institution and also have knowledge that the Parent Teacher Association/Management is going to make appointment against the vacant post, the petitioners have applied for the post to the Parent Teacher Association/management. The Selection Committee has been framed comprising the Chairman, members of Parent Teacher Association, the Manager, the Principal and two experts of the particular subject vacant in the Institutions. Accordingly, the managements of different Institutions has accepted such teachers appointed by the Abhibhawak Adhyapak Association –Parent-Teacher Association (for short P.T.A. Teachers) and they are functioning as substitute to the regular teachers against the existing vacancies.

In most of the petitions, the petitioners have claimed that they have been appointed against existing vacant post, after adopting full procedure of selection. As alleged by the petitioners, since they were appointed as L.T. Grade Teacher in the Institution and are continuing on the posts, however instead of paying admissible honorarium to the tune of Rs. 4000/-, they are being paid a meager sum per month.

Further the grievances of the petitioners is that the Committee of Managements wholly illegally and arbitrarily without considering the petitioners' regularization have advertised the vacant post of L.T. Grade Teachers held by them. In some cases the posts held by the petitioners have been shown to be a reserved category post and in some cases the posts on which candidates of reserve category are working, the same has been advertised as General Category Post.

In the writ petition No. 762 (ss)2006 as also in some other writ petitions, this Court, as an interim measure, has passed the following order: -

"Heard Sri S.N. Babulakar, Sr. Advocate assisted by Sri Anil Bisht, learned counsel for the petitioner and learned standing Counsel for the respondents nos. 1 and 3.

Issue notices to respondent nos. 4 and 5 returnable at early date.

Respondents may file counter affidavit within a period of ten days.

The submission of the learned counsel for the petitioner is that petitioner was appointed teacher under PTA Scheme on 10.08.2004 and still continuing on the post in Aagar Inter College, Tandi, Pokhrad District-Nainital.

The Director of Education, has already issued a letter dated 14.11.2005 that the posts which are being occupied by

the Teachers appointed under PTA Scheme may not be advertised. In spite of this order passed by Director of Education, the post which is being held by the petitioner has been advertised vide advertisement dated 30.05.2006 issued by the Committee of Management, Aagar Inter College, Tandil Pokhrad, District-Nainital.

*In view of the aforesaid facts, **respondents are directed not to proceed further to fill up the post which is being held by the petitioner in pursuance to the advertisement dated 30.05.2006. However, respondents may proceed further for rest of the posts.***

In the meantime, respondents shall pay Honorarium of Rs. 4,000/- to the petitioner as prescribed in the Government Order dated 20.09.2003.

After exchange of the pleadings, this Court on 7th December 2006 has passed the following order in Writ Petition No. 762(S/S) of 2006:-

"...Learned counsel for respondent no. 4 argued that the selection process is held up due to the interim order dated 14.06.2006, granted by this Court, as such, there is no urgency to hear the matter.

Heard learned counsel for the parties.

Admit the writ petition.

Counter and rejoinder affidavits have already been exchanged.

Lest this writ petition for final hearing in the week commencing on 19th February, 2007.

The interim order dated 14.06.2006, is extended till the next date of listing, only.

It is clarified, that the selection process is not stayed by this Court, in respect of any other post except the one held by the petitioner.

This arrangement was in existence since long. On 1st May 2002 information in regard to the existing PTA Teachers in the State was supplied to the Authorities by each of the District Education Officers of the State for placing the same before the Legislative Assembly, in pursuance to the question put up before the Assembly by the member of the legislative Assembly. Vide Government Order dated 20th September, 2003, as order was passed to pay honorarium to the teachers appointed under the scheme at the rate of Rs. 25/- per period and to the maximum of Rs. 4,000/- per month. This amount of honorarium was to be paid to the teachers from Government Exchequer. Order dated 20th September, 2003 issued by the Uttarakhand Government is reproduced as under: -

‘प्रेषक,

संजय कुमार,

अपर सचिव,

उत्तरांचल शासन

सेवा में,

निदेशक,

विद्यालयी शिक्षा,

2 सुभाष रोड, देहरादून

माध्यमिक शिक्षा अनुभाग

देहरादून दिनांक 20 सितम्बर, 2003

विषय: अशासकीय सहायता प्राप्त विद्यालयों में कार्यरत पीटीए शिक्षकों के भुगतान।

मानदेय का

महोदय,

उपर्युक्त विषयक आपके पत्र संख्या- शि0नि0/453/2003-04 दिनांक 19.7.2003 के सन्दर्भ में मुझे यह कहने का निर्देश हुआ है कि राज्यपाल महोदय अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों में अध्यापक अभिभावकों एसोसिएशन द्वारा चयनित ऐसे अध्यापक जो उक्त पद की अर्हता रखते हैं, को रू0 25.00 प्रति वादन की दर से प्रतिदिन 06 वादन

की सीमा तक अधिकतम ₹ 4,000/- रुपये चार हजार मात्र प्रतिमाह मानदेय के भुगतान की अनुमति प्रदान करते हैं।

2 प्रश्नगत व्यवस्था शिक्षा निदेशक द्वारा निम्नवत् उपलब्ध कराये गये विवरणानुसार वर्तमान में उपलब्ध शिक्षकों की संख्या की सीमा तक ही लागू होगी।

क्रमांक	जनपद का नाम	अध्यापकों की संख्या माध्यमिक	अध्यापकों की संख्या सम्बद्धप्राइमरी	योग
1	2	3	4	5
1	अल्मोड़ा	60	—	60
2	नैनीताल	60	—	60
3	पौड़ी	41	—	41
4	हरिद्वार	93	—	93
5	उधमसिंहनगर	93	—	93
6	बागेश्वर	29	—	29
7	देहरादून	158	14	172
	योग	534	14	548

सम्बन्धित शिक्षकों को विद्यालय के प्रधानाचार्य/प्रधानाध्यापक के साथ संलग्न प्रारूप पर अनुबन्ध किया जाना अनिवार्य होगा। भविष्य में इस प्रकार से चयनित अध्यापकों के सम्बन्ध में विचार सम्भव नहीं होगा।”

Thereafter on 24th October, 2003, another G.O. was issued by the State of Uttarakhand amending earlier G.O. dated 20.09.2003. By this Government Order, the condition of teaching six period was removed. The Government Order dated 24th October, 2003 is reproduced as under: -

"प्रेषक,

जे० पी० जोशी,
अनु सचिव,
उत्तरांचल शासन

सेवा में,

निदेशक,
विद्यालयी शिक्षा,
2 सुभाष रोड, देहरादून

माध्यमिक शिक्षा अनुभाग

देहरादून दिनांक 24 अक्टूबर, 2003

विषय: अशासकीय सहायता प्राप्त विद्यालयों में कार्यरत पी0टी0ए0 शिक्षकों के मानदेय का भुगतान।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या- 647 /माध्यमिक/ 2003 दिनांक 20.09.2003 के सन्दर्भ में यह अवगत कराया जाना है कि उक्त शासनादेश द्वारा अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों में अध्यापक अभिभावक एसोसिएशन द्वारा चयनित ऐसे अध्यापक जो उक्त पद की अर्हता रखते हैं, को रुपये 25.00 प्रति वादन की दर से प्रतिदिन छः वादन की सीमा तक अधिकतम रू० 4,000/- प्रतिमाह मानदेय के भुगतान की अनुमति प्रदान की गई थी।

2- उक्त शासनदेश के क्रम में शासन स्तर पर सम्यक् विचारोपरान्त मुझे यह कहने का निर्देश हुआ है कि राज्यपाल महोदय अध्यापक अभिभावक एसोसिएशन द्वारा चयनित ऐसे अध्यापक जो उक्त पद की अर्हता रखते हों, को अधिकतम रू० 4,000/- प्रतिमाह मानदेय के भुगतान में प्रतिदिन छः वादन की सीमा के प्रतिबन्ध को समाप्त किये जाने की सहर्ष स्वीकृति प्रदान करते हैं।

3- उक्त संदर्भित शासनादेश दिनांक 20.09.2003 इस सीमा तक संशोधित समझा जाय। शासनादेश के अन्य प्रतिबन्ध एवं व्यवस्थाएँ यथावत लागू रहेंगी।”

Another G.O. was issued on 12th December, 2003 clarifying the position that the honorarium shall be paid to only those PTA Teachers, who have been appointed against the post which is created in accordance with law and is still in existence and further the engagement can be made only after ensuring that other teachers appointed are having 36 period per week and even then there is a need of a teacher in the institution. No PTA Teacher may be appointed who is not qualified as per the qualification prescribed under the Act and further the engagement may be made after signing the contract, a proforma of which was also supplied by the Government.

On 22nd May, 2004, further clarification was issued to remove the condition of payment of honorarium at the rate of Rs. 25/- per period to the PTA Teachers and now all PTA teachers working under the Scheme would get honorarium at

the rate of Rs. 4,000/- per month. This order of 22nd May, 2004 is reproduced hereunder: -

प्रेषक,

आर० के० सुधांशु,

अपर सचिव,

उत्तरांचल शासन

सेवा में,

निदेशक,

विद्यालयी शिक्षा,

2 सुभाष रोड, देहरादून

माध्यमिक शिक्षा अनुभाग

देहरादून दिनांक 22 मई, 2004

विषय: अशासकीय सहायता प्राप्त विद्यालयों में कार्यरत पी०टी०ए० शिक्षकों को मानदेय का भुगतान।

महोदय,

उपर्युक्त विषयक शासनादेश संख्या— 647 /माध्यमिक /2003 दिनांक 20.9.2003 तथा शासनादेश संख्या 856/माध्यमिक/2003 दिनांक 24.10.2003 द्वारा अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों में पी०टी०ए० शिक्षकों को पद की अर्हता रखते हैं को रू० 25/- प्रतिवादन की दर से, अधिकतम रू. 4000/- प्रतिमाह का मानदेय स्वीकृत किया गया था। उक्त के क्रम में मुझे यह कहने का निर्देश हुआ है कि राज्यपाल महोदय शासनादेश में उल्लिखित रू० 25/- प्रतिवादन की दर के प्रतिबन्ध को समाप्त किये जाने की सहर्ष स्वीकृति प्रदान करते हैं।

उक्त शासनादेश इस सीमा तक संशोधित समझा जाय। ”

Again on 02.09.2004, the Govt. issued order providing that the number of PTA Teachers working, has been enhanced (as the number of PTA Teachers shown in the Govt. Order dated 20.09.2003 was only up to 01.05.2002, while during the period 02.05.2002 to 05.09.2003 when the decision was taken for honorarium there was increase in the number of PTA Teachers in the State). However, the said G.O. provides that the number of PTA Teachers has been increased as per the number of PTA Teachers working in the State only upto 05.09.2003 and other conditions of the Govt. orders issued in that regard would remain the same. On 15.09.2004 the

Director of Education issued directions to the District Education Officers stating that total number of PTA Teachers working in the State, district-wise, as on 05.09.2003 is mentioned and no honorarium shall be paid to the person appointed as PTA Teacher subsequent to 05.09.2003.

The Govt. Order dated 15.09.2004 is based upon the Govt. Order dated 02.09.2004 which has been issued due to the cause that the Govt. Order dated 20.09.2003 was based upon the number of PTA Teacher working in the State as on 01.05.2002 and no order was issued in regard to the PTA Teachers who were engaged in different Institutions during the period 02.05.2002 to 05.09.2003 (when the decision was taken to provide honorarium to PTA Teachers). Order dated 15.09.2004 is reproduced hereunder: -

“ प्रेषक,

निदेशक,
विद्यालयी शिक्षा,
2 सुभाष रोड, देहरादून।

सेवा में,

समस्त जिला शिक्षा अधिकारी,
उत्तरांचल, नैनीताल।

पत्रांक: माध्यमिक/247-74-89/पी0टी0ए0/2004-05 दिनांक 15 सितम्बर, 2004

विषय: अशासकीय सहायता प्राप्त विद्यालयों में कार्यरत पी0टी0ए0 शिक्षकों की पूर्व निर्धारित संख्या के अतिरिक्त पी0टी0ए0 शिक्षकों को मानदेय के भुगतान के सम्बन्ध में दिशानिर्देश।

महोदय,

शासनादेश संख्या-595/XXIV-2/2004, दिनांक 2 सितम्बर 2004 द्वारा निम्नांकित तालिका के कालम-3 में अंकित पी0टी0ए0 शिक्षकों की संख्या के अतिरिक्त कालम-4 में अंकित संख्या स्वीकृत की गयी है। इस सम्बन्ध में शूच्य है कि शासनादेश संख्या 647/माध्यमिक/2003 दिनांक 20.9.2003, शासनादेश संख्या: 856/माध्यमिक/2003 दिनांक 24 अक्टूबर, 2003 तथा शासनादेश संख्या: 366/ XXIV-2/2004 दिनांक 22 मई 2004 द्वारा अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों में कार्यरत पी0टी0ए0 शिक्षकों को मानदेय भुगतान की अनुमति दी गयी है। शासनादेश संख्या: 647/

माध्यमिक/ 2003 दिनांक 20.9.2003 के साथ अनुबन्ध पत्र भी दिया गया है। उक्त सभी शासनादेशों की प्रतियों निदेशालय से आपको पूर्व में उपलब्ध करायी जा चुकी है।

तालिका

क्रमांक	जनपद का नाम	पी0टी0ए0 शिक्षकों की पूर्व निर्धारित संख्या	वर्तमान में स्वीकृत संख्या	पी0टी0ए0 शिक्षकों की कुल संख्या
1	2	3	4	5
1	अल्मोड़ा	60	36	96
2	नैनीताल	60	34	94
3	पौड़ी	41	34	75
4	हरिद्वार	93	37	130
5	उधमसिंहनगर	93	70	163
6	बागेश्वर	29	29	58
7	देहरादून	172	19	191
8	टिहरी	0	45	45
9	चम्पावत	0	04	04
10	रूद्रप्रयाग	0	10	10
	योग	548	318	56

तालिका के कॉलम-3 में अंकित संख्या वही है जो कि विधानसभा के द्वितीय सत्र-2002 के द्वितीय गुरुवार हेतु निर्धारित अतारांकित प्रश्न संख्या-10 के सम्बन्ध में सम्बन्धित जिला विद्यालय निरीक्षकों द्वारा उपलब्ध करायी गयी। जबकि कॉलम-4 की संख्या वही है, जो कि निदेशालय के पत्रांक माध्यमिक/38966-78/पी0टी0ए0/ 2003-04 दिनांक 10.2.2004 के क्रम में जनपदों द्वारा उपलब्ध करायी गयी है और दिनांक 5.9.2003 की स्थिति के अनुसार है। पी0टी0ए0 शिक्षकों से अनुबन्ध कराने के लिए आपके मार्गदर्शन हेतु निम्नांकित दिशानिर्देश दिये जा रहे हैं :-

1.
2.
3.
4.
5.
6.
7. शासनादेश संख्या-595/XXiv-2/2004 दिनांक 2 सितम्बर 2004 में जनपदवार जिन पदों पर शासन ने व्यवस्था के निर्देश दिये हैं केवल उन्हीं के लिए यह व्यवस्था मान्य होगी। दिनांक 5.9.2003 के बाद नियुक्त किसी भी पी0टी0ए0 शिक्षक को राजकोष से मानदेय का भुगतान नहीं किया जायेगा और न ही कोई संशोधित संख्या मान्य की जायेगी। शासन द्वारा पी0टी0ए0 शिक्षकों की संख्या बढ़ने पर अप्रसन्नता व्यक्त की गयी है और सम्बन्धित अधिकारियों का स्पष्टीकरण हेतु निर्देशित किया गया है।
7. _____
8. _____
9. _____ “

On 22.04.2006, the Uttaranchal Education Act was enforced in the State and Section 41 of the Act provides that the Committee of Management shall appoint, on ad-hoc basis,

such part-time/ PTA Teachers as were employed up to 05.09.2003 by the Committee of Management from its own resources, for which substantive posts were created at the time and who possess the qualification prescribed for the corresponding posts and who were paid honorarium from the Govt. exchequer.

Vide Government Order dated 19th October, 2005, directions were issued to the institutions to initiate proceeding for regular appointment on the post which are vacant excluding those posts against which teachers under PTA Scheme are working. Consequently, the institutions where posts of teachers were vacant, advertised the posts of Assistant Teacher L.T. Grade for regular appointment and the petitioners have preferred these writ petitions challenging the advertisement on the ground that since there is an order of the Government to initiate proceeding for regular appointment on the post of Assistant Teacher excluding the posts against which the PTA Teachers are working. Order dated 19.10.2005 is reproduced hereunder: -

“ प्रेषक,
एस0के0 माहेश्वरी,
अपर सचिव,
उत्तरांचल शासन ।

सेवा में,
निदेशक,
विद्यालयी शिक्षा,
उत्तरांचल, देहरादून

शिक्षा अनुभाग-4

देहरादूनदिनांक 19 अक्टूबर, 2005

विषय: सहायता प्राप्त अशासकीय माध्यमिक विद्यालयों में नियुक्ति के सम्बन्ध में।

महोदय,

उपर्युक्त विषयक शासन के पत्र संख्या-541/ XXIV-2/2005, दिनांक 23.03.2005 एवं पत्र संख्या-611/ XXIV-2/2005, दिनांक 10.06.2005 जिनके द्वारा अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों में प्रधानाचार्य/अध्यापकों की नियुक्ति के सम्बन्ध में अग्रेतर आवश्यक कार्यवाही किये जाने के निर्देश दिये गये थे, का कृपया संदर्भ ग्रहण करने का कष्ट करें।

उक्त के सम्बन्ध में शासन के संज्ञान में आया है कि निदेशालय द्वारा अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों के रिक्त पदों पर नियुक्ति हेतु समस्त जिला शिक्षा अधिकारियों को निर्देश दिये गये हैं। उल्लेखनीय है कि अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों में कई वर्षों से पी0टी0ए0 शिक्षक भी कार्यरत हैं जिनका प्रकरण सम्प्रति शासन के विचाराधीन है। अतः शिक्षकों के रिक्त पदों पर नियुक्ति किये जाने के सम्बन्ध में मुझे यह कहने का निदेश हुआ है कि ऐसे अशासकीय सहायता प्राप्त माध्यमिक विद्यालयों में जहाँ पर पी0टी0ए0 शिक्षक कार्यरत हैं, के पदों को छोड़ते हुए शेष रिक्त पदों पर ही नियुक्ति हेतु नियमानुसार अग्रेतर कार्यवाही करने का कष्ट करें।

In this context, the G.O. No. 1175/XXI V-2/2005 dated 19th October 2005 is relevant which clearly points out that the matter in regard to the P.T.A. Teachers working in the Aided Private Secondary Schools is pending consideration of the Govt. It is further stated that due procedure may be initiated for appointment against the vacant posts, leaving the posts occupied by P.T.A. Teachers.

In the counter affidavit, the respondents have taken stand that the Parent Teacher Association Regulation, 1986 were framed by the U.P. Board of Intermediate Education in exercise of power conferred under Section 15(2) (m) of the U.P. Intermediate Education Act 1921. The Parent Teacher Association has got no jurisdiction or authority to make any appointment on the post of Assistant Teacher in L.T. Grade or in Lecturer Grade or on any teaching post in any aided Colleges, in absence of Regulations framed under Section 15(2). However, when the question was put before the Assembly, in the public interest it was thought proper to provide some solace to the PTA Teachers who are working

before 05.09.2003, accordingly, the Govt. issued G.O. dated 20.09.2003 in this respect. In pursuance of the queries of the Assembly, the District Education Officers have submitted detailed information to the Govt.

Thereafter, the Govt. issued a G.O. dated 20.09.2003 regarding payment of honorarium in regard to such Teachers, who possessed the requisite qualification and were eligible for holding the said posts and have been selected and appointed by the Parents Teachers Association. Since this G.O. has been issued after obtaining a list from the concerned districts, therefore the subsequent appointments made by the PTA are not entitled for payment of honorarium.

Vide aforesaid Order dated 20.09.2003 a maximum of Rs. 4,000/- has been stipulated as honorarium with a condition that they will not be provided more than 6 periods per day @ 25/- per period, however vide subsequent G.O. dated 24.10.2003 for payment of honorarium to the maximum limit of Rs. 4,000/- the limitation prescribed for 6 periods in a day has been withdrawn.

The Director of Education, on 12.12.2003 has clarified certain aspects in pursuance to the aforesaid G.Os. which reads as under:-

- 1. The honorarium shall be paid only, if the PTA Teacher is working on the post, which is recognized and aided,*
- 2. The post on which, the honorarium is to be paid to the PTA Teacher is sanctioned in accordance with the Rules and is vacant and is still surviving and has not been withdrawn on creation of new posts and is in financial survey,*

3. *The eligibility condition for the PTA Teacher would be the same, which are prescribed for appointment of Teachers in recognised and aided Colleges and it was further provided that the honorarium be not paid in any circumstances to the ineligible Teachers and the teaching by such ineligible Teachers is violates of condition of recognition,*
4. *No honorarium is to be paid to the Teachers working in the minority institution,*
5. *The honorarium is not to be paid to PTA Teachers in case of long leave,*
6. *This arrangement shall be made available only on Districtwise post, for which the Government has issued the Government Order dated 20.09.2003,*
7. *No claim for regular appointment of PTA Teachers shall be entertained.*

Subsequently, the Govt. amended the numbers of PTA Teachers, after taking into consideration the entire material available on record and the Government modified the pre-decided numbers of PTA Teachers (as on 01.05.2000) vide Govt. Order dated 15.09.2004, stipulating therein that the concerned District Education Officer would ensure that on 05.09.2003 the numbers of PTA Teachers was according to the said amendment. Thereafter, the Govt. issued another G.O. dated 19th October 2005 directing that the appointment to be made by the Colleges, leaving the posts occupied by the PTA Teachers.

Vide letter dated 07.11.2005, it was provided that only those posts should not be filled up in accordance with law, against which the PTA teachers are working and are being paid honorarium from the State Exchequer.

In some petitions, though the petitioners have claimed to have been appointed by the Parent Teacher Association, but have not arrayed the Parent Teacher Associations as party respondent, nor process of selection, proceeding of selection and appointment order issued by the Parent Teacher Association have been brought on record.

I have gone through the various Government Orders issued in this respect time to time.

Learned Standing Counsel has contended that only those PTA Teachers who are selected by the PTA and are qualified in accordance with the provision contained in the Act and were appointed against a sanctioned post, alone, are entitled for grant of honorarium and those who are not covered within the purview of such G.Os. and those who do not possess the requisite qualification and those who are selected and appointed subsequent to 05.09.2003 are not entitled for honorarium and would be getting their emoluments as they have been provided by Parent Teacher Association since before and they cannot claim any relief against the state Government and from the State exchequer.

Further, no PTA Teacher is entitled for being regularized, as per the directions issued by the Director of Education.

It is well settled proposition of service jurisprudence that no selection can be made without advertising the posts and engaging/ appointing a person on its own without notification/advertisement of post cannot be termed or treated as a selected person. Further while accepting the terms and conditions of employment, the incumbent should have aware of

the terms and conditions and he is always at liberty to accept the appointment or refuse the same and there is no compulsion to accept the appointment, if the emoluments are being paid too meager. In this connection the decision of the **Apex Court in the Case of the Secretary, State of Karnataka vs. Uma Devi, reported in 2006 (4) Supreme Court Cases, page-1** is fully applicable.

Learned Standing Counsel has further contended that since the petitioners were appointed subsequent to the issuance of the Govt. Order dated 20th September 2003, therefore the petitioners cannot be given honorarium from the State Exchequer and only the incumbents having been appointed as PTA Teachers from 5th September 2003 or before this cut of date and possess the requisite qualification and continuously working against the substantively vacant post, are entitled to honorarium @ Rs. 4,000/- per month, which is now fixed at the rate of Rs. 7,000/- vide G.O. dated 29.12.2006 from the State Exchequer, but since the petitioners were appointed much after the cut of date, they are not entitled for the same.

Submission of the learned counsel for the petitioners that there is no cut of date mentioned in any of the Govt. Orders and the persons selected as PTA Teacher, even after issuance of the G.Os., are entitled for honorarium, has no substance as per the G.O. dated 20.09.2003 read with G.O. Dated 02.09.2004, it is evident that only those PTA Teachers are entitled to honorarium who have been appointed prior to 05.09.2003. Submission of the learned counsel for the petitioners that PTA Teachers is a different cadre and the number mentioned in the Govt. Orders, is the number of post

earmarked for PTA Teachers, also has no substance. There is no cadre of PTA Teachers, in fact, the number given in the G.Os. dated 20.09.2003 and 02.09.2004 is the actual number of PTA Teachers working in the different Institutions in the State. There is no cadre of PTA Teachers, but it was a stopgap arrangement made by the Parent Teachers Association, initially from its own resources.

Another submission of the learned counsel for the petitioners is that in few places, the District Education Officers are paying honorarium to those candidates who have been appointed as PTA Teachers subsequent to the cut of date; hence the petitioners are also entitled for honorarium. In case, some of the District Education Officers have paid honorarium to those persons who are not entitled and against the Govt. Orders issued in this regard time to time, the petitioners cannot claim negative parity and this Court cannot issue mandamus to repeat the wrong. The Department is competent to take action against those erring officers who are paying honorarium against the Govt. Orders. The petitioners who have been appointed after 05.09.2003, which is the cut of date prescribed in the Govt. Orders and also under Section 41 of the Uttaranchal Education Act, are not entitled for the relief claimed for payment of honorarium. So far the cut of date is concerned, the Govt. may fix cut of date specially when it involves finances. The submission of the learned counsel for the petitioners that the cut of date is arbitrary and has no nexus with the object sought to be achieved is incorrect. I find no substance in the submission of the learned counsel for the petitioners.

For the reasons recorded above, since none of the petitioners were appointed as Assistant Teacher by the Parent Teachers' Association prior to 05.09.2003, therefore all the writ petitions are dismissed. No order as to costs.

Let a certified copy of this judgment be placed in all the above connected writ petitions.

(M.M. Ghildiyal, J.)

July 31, 2007:
VKS/NDM: