

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 11503 of 2011

Date of Decision: 29.04.2017

Surender Kumar Kaundal

.....Petitioner.

Versus

State of Himachal Pradesh & Others.

...Respondents.

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting¹?

For the petitioner: Mr. Ajay Sharma, Advocate.

For the respondents: Mr. P.M. Negi, Addl. Advocate General,
with Mr. Ramesh Thakur, Deputy
Advocate General.

Sandeep Sharma, J. *(Oral)*

By way of instant writ petition filed under Articles 226/227 of the Constitution of India, petitioner has prayed for following main relief:-

- a) That impugned orders dated nil, Annexure P-5 passed by respondent No.2 may very kindly be quashed and set aside with directions to the respondents to grant Special J.B.T certificate to the petitioner forthwith without any further delay;***

2. Briefly stated facts, as emerged from record are that the petitioner, who was appointed as a teacher on 15.04.1991 in Sudha Model High School, preferred an original application before the H.P State Administrative Tribunal, which came to be registered as O.A. No.2778/1998, laying therein challenge to the letter of the Government dated 17.04.1999 (**Annexure P-3**), whereby the respondents decided to issue Special J.B.T. Certificate to the teachers, who have put in approved continuous service in Primary Education Department for not less than 5 years.

3. Subsequently, the aforesaid Original Application came to be transferred to the Registry of this Court and accordingly was registered as CWP(T) No.6101/2008. This Court vide judgment dated 21.09.2010 quashed aforesaid Notification (**Annexure P-3**), dated 17.04.1999 and directed the respondents to consider the case of the petitioner for the award of Special J.B.T. Certificate on the basis of Notification (**Annexure P-2**), dated 11th December, 1998 within a period of two months. It would be profitable to reproduce relevant para of the said Notification as under:-

No. EDN-C-B(2)-1/98
Government of Himachal Pradesh,
Department of Primary Education

From

The Commr.-cum-Secretary (Edu) to the
Government of Himachal Pradesh

To

The Director of Primary Education,
Himachal Pradesh, Shimla-171001

Dated, Shimla-171002, the 11th December, 1998

Subject:- Amendment of Education Code and regularization of
Volunteer Teacher.

Sir,

.....

“ J.B.T. Special Certificate may be granted to the teachers who have put in approved continuous service in Primary Department of a recognized school for not less than five years on the date of submission of application. The awardee should have at least passed the Middle Standard Examination and he/she should be a teacher of good moral character duly certified by the Head Office.”

4. As per judgment dated 21.09.2010 passed in CWP No. 6101 of 2008 by this Court, the case of the petitioner was required to be considered afresh in the light of the decision contained in aforesaid communication, dated 11th December, 1998. But, perusal of Annexure P-5, suggests that respondent

while rejecting the case of the petitioner again took into consideration, the decision/ instructions as contained in notification dated 17.04.1999, which was admittedly quashed and set aside by this Court in CWP No.6101 of 2008.

5. Learned Counsel representing the petitioner vehemently argued that since instructions, as contained in Notification, dated 17.04.1999 (**Annexure P-3**) were quashed and set aside, there was no occasion, whatsoever, for the respondents to decide the case afresh in the light of those instructions. With a view to substantiate his aforesaid arguments Mr. Sharma, specifically invited the attention of Court to Annexure P-5, perusal whereof, certainly suggests that respondents again applied the instructions as contained in Notification, dated 17.04.1999 while deciding the case of the petitioner in the light of the judgment passed by this Court in CWP No.6101 of 2008, dated 21.09.2010.

6. After having carefully perused Annexure P-5 i.e. impugned September, 2011, this Court sees force in the aforesaid arguments having been made by the learned counsel for the petitioner that perusal of Annexure P-5, clearly suggests that Directorate of Elementary Education has again taken into

consideration instructions as contained in the notification, dated 17.4.1999, which was set-aside by this Court in CWP No.6101 of 2008. Learned Additional Advocate General has admitted that the judgment dated 21.09.2010, passed in CWP No.6101 of 2008 has attained finality because no appeal, whatsoever, was filed against the same.

7. Consequently, in view of the above, the impugned order (Annexure P-5) is quashed and set aside and the respondents are directed to consider the matter afresh in the light of the specific directions contained in the judgment dated 21.09.2010, whereby respondents were called upon to consider the case of the petitioner afresh for grant of Special J.B.T. Certificate on the basis of the instructions dated 11.12.1998, within a period of two weeks from the date of this judgment. Needless to say, authority concerned while taking decision afresh shall afford due opportunity of being heard to the petitioner. However, it is made clear that in case petitioners still remain aggrieved with the passing of the order of the respondent, he is at liberty to approach appropriate forum in accordance with law.

Accordingly, the present petition is disposed of along with pending applications, if any.

(Sandeep Sharma),
Judge.

29th April, 2017
shankar