

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. : 8068 of 2013

Reserved on : 20.09.2023

Decided on : 29.09.2023

Avinash Chander & Others.

...Petitioners.

Versus

State of Himachal Pradesh & Others.

...Respondents.

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹ Yes

For the petitioners : Mr. Praveen Chandel, Advocate.

For the respondents : Mr. Pushpender Jaswal, Additional Advocate General with Mr. Gautam Sood, Mr. Rahul Thakur and Ms. Priyanka Chauhan, Deputy Advocate Generals, for respondents No. 1 and 2.

: Ms. Shashi Kiran, Advocate, for respondent No.3.

Satyen Vaidya, Judge

Petitioners have prayed for following substantive reliefs:-

- i) *For directing the respondents to release 95% grant in aid to the petitioners w.e.f. their dates of appointments till the time their services are taken over by the State Government.*

¹ Whether reporters of the local papers may be allowed to see the judgment?

(ii) *For directing the respondents to take over the services of the petitioners in terms of Annexure P-8 dated 20.07.2011.*

2. The Public Senior Secondary School, Sugh Bhatoli, Tehsil Indora, District Kangra, H.P. (for short 'the school') was covered under 'Grant-in-aid' (GIA) scheme of the State Government. The school alongwith its staff was taken over by the Government w.e.f. 07.07.2012.

3. Petitioners 1 to 3 were working in the School as lecturer mathematics, senior clerk and DPE respectively. The dates of appointments of the petitioners in the school were as under:-

Petitioner No.1- 05.05.2003.

Petitioner No. 2 – 15.07.2009.

Petitioner No. 3 – 09.04.2008.

4. Neither the State Government paid grant-in-aid to the school in respect of the posts held by the petitioners nor their services were taken over.

5. Petitioners claim that their appointments in the school were against the sanctioned posts. According to them, the school management had been repeatedly asking the state Government to allow it to fill-up the vacant posts and when no response was received, the management of its own had

filled-up the posts. It has also been submitted that had the management not filled-up the vacant posts, on one hand the students would have suffered and on the other the very existence of the school would have been threatened on account of less numbers of students in the school caused by drop out.

6. Petitioners claim the grant-in-aid against their posts and also directions against respondents No. 1 and 2 to take over their services on the premise that the petitioners were not at fault. They cannot be made to suffer for inaction on the part of respondents No. 1 and 2. It is further submitted that in case of failure of the officials respondents to accord permission to the management to fill-up the vacant posts, the management was within its right to do so. Reference has been made to an order passed by a Division Bench of this Court on 23.11.2011 in COPC No. 351 of 2011, wherein the managements of the schools were granted permission to proceed with the selection process for filling-up the posts in the privately managed and government aided schools, notwithstanding, the failure of the government to intimate their nominee for the selection process.

7. The management of the school has supported the cause of the petitioners. In its reply, the management has submitted that the state authorities were requested time and again by the management to allow it to fill-up the vacant posts and on failure of the authorities to respond, the management had no option but to fill-up the vacant posts with a purpose to protect the interest of the students and to avoid the drop outs from the school for want of staff.

8. Respondents No. 1 and 2 have contested the claim of the petitioners by alleging that the grant-in-aid was applicable only to the eligible staff. Only such staff was eligible for grant-in-aid, who were appointed in terms of grant-in-aid rules framed by the State Government. In respect of petitioners, there was no concurrence of the state Government, therefore, they were not entitled to any grant-in-aid. The schools have been taken over alongwith such staff, which was found eligible and for whom the grant-in-aid was being paid.

9. I have heard learned counsel for the parties and have also gone through the record of the case carefully.

10. It is admitted by the petitioners as also the school management that the appointment of petitioners was made by

the management at its own level and the nominee of the Government had not participated in the selection process. It is also not disputed by the parties that the participation of nominee of the Government in selection process was a settled norm.

11. As per petitioners and the management the inaction of the authorities was reason for appointment of petitioners without association of Government nominee. Despite repeatedly requests to authorities to permit the management to fill-up the posts no response was received and the management was left with no other alternative but to make the appointments at its own end.

12. *Per contra* the officials respondents have maintained the stand that the appointment of petitioners was *de-hors* the rules. No permission was sought from the authorities before filling-up the vacant posts by appointing the petitioners.

13. During the pendency of the instant petition, respondent No. 2 filed an affidavit dated 16.08.2016 highlighting the fact that even as per the document annexed with the petition, the permission was sought by the management for filling-up the posts on 22.10.2008, whereas

petitioner No. 1 had been appointed on 05.05.2003 and petitioner No. 3 had been appointed on 09.04.2008 i.e. before the issuance of communication dated 22.10.2008 as relied upon by the petitioners. As regards petitioner No. 2, it was submitted that there was no material to suggest that any permission was ever sought by the management in his case.

14. In response to the above affidavit, petitioners also filed their supplementary affidavit and placed on record copies of additional documents. On the strength of such documents, it has been tried to be established that process for seeking permission of the authorities had been initiated in the year 2002 itself.

15. Petitioners and the management allege to have made due correspondence with the official respondents, whereas official respondents deny such fact. The copies of documents placed on record on behalf of the petitioners do not *prima facie* reveal the receipt or acceptance of such documents by the official respondents. Be that as it may, a dispute as to the question of fact has arisen. This Court in exercise of writ jurisdiction will not enter into the adjudication on disputed questions of facts.

16. In the background as noticed above, it will not be possible for this Court to adjudicate upon the rights as claimed by the petitioners.

17. Another fact which matters against the petitioners is their failure to seek legal remedy at the earliest. Long delay coupled with laches stare at the face of petitioners. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. In *State of Tamil Nadu Vs S. Sechalam (2007) 10 SCC 13* Hon'ble Supreme Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:-

"16. ... filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. [Article 14](#) of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant."

18. The petitioner No. 1 was appointed in 2003 and petitioners No. 2 and 3 were appointed in 2008 and 2009, respectively. The school was taken over in July, 2012. Till such date, petitioners had not raised any claim at their level for grant-in-aid. There is no material on record to suggest that the petitioners had raised such claim either against the management or the official respondents. That being so, the inaction of petitioners for such a long time turns out to be an impediment in grant of any relief in their favour. Not only that, even after the State Government had confirmed its intent to take over the Government aided schools, vide communication dated 30.07.2011, the petitioners remained silent. The instant petition was filed on 01.10.2013 i.e. after more than one year from the date when the school had been taken over.

19. A long time has elapsed and petitioners have been out of job for more than eleven years. It is well settled that the stale claims need to be rejected only on account of delay and laches, if delay and inaction remains unexplained.

20. In the facts of the case in hand, there is no explanation, as to why the petitioners did not raise their alleged claim in time. It is not a case where the petitioners

have been paid by the management at par with other teachers who were getting grant-in-aid and it was management who had to seek the reimbursement. In these circumstances, the correspondence, if any, made by the management cannot be said to have provided or renewed the cause of action for petitioners.

21. In result, I find no merit in this petition and the same is, accordingly, disposed of.

22. Pending miscellaneous application(s), if any, shall also stand disposed of.

29th September, 2023
(sushma)

(Satyen Vaidya)
Judge