

**(2018) 04 SHI CK 0048**  
**High Court of Himachal Pradesh**  
**Case No:** CWP No. 1606 of 2012

Anju Devi

APPELLANT

Vs

Govt. of India, Ministry of Culture  
& ors.

RESPONDENT

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**Date of Decision:** April 12, 2018

**Acts Referred:**

- Code of Civil Procedure, 1908 - Section 151, Order 1 Rule 10

**Citation:** (2018) 2 SimLC 1087

**Hon'ble Judges:** DHARAM CHAND CHAUDHARY

**Bench:** Single Bench

**Advocate:** Amit Singh Chandel, Lokinder Paul Thakur, Rohit Chauhan, Suneet Goel

**Final Decision:** Dismissed

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**Judgement**

Dharam Chand Chaudhary, J.

1. Petitioner herein is aggrieved by the action of the respondents No. 2 & 3 in not regularizing her services as TGT (Social Studies) in respondent No.

3 Sanskrit Vidyalaya situated at Keylong in District Lahaul and Spiti, Himachal Pradesh. The grouse of the petitioner, in a nut shell, is that the judgment

of Single Bench dated 5.5.2011 (Annexure P-8) of this Court in previously instituted Civil Writ Petition No. 3308 of 2010 has not been implemented by the respondents.

2. The petitioner herein was petitioner No. 1 in the previously instituted writ petition. That writ petition was filed against the advertisement issued by

the respondents for filling up various posts of teachers in respondent No. 3 School after the same was taken over by the second respondent on the

grounds inter alia that she was duly qualified for the post of TGT (Social Studies) and was appointed as such after selection by a Committee

constituted for the purpose. Therefore, according to her, she was required to be regularized after taking over of the School by the second respondent

without resorting to the selection process again to fill up the posts she is holding. Learned Single Judge on appreciation of the pleadings of the parties

and other material available on record, has however, held as under in judgment Annexure P-8: "I am of the view that clause-4 clearly provides

that after taking over the school the appointment of the petitioners was to be for a period of six months on a consolidated salary. Thereafter, their case

for regular appointment was to be considered. In case, the employees who were working at the time of taking over the school fulfilled all essential

qualifications as per the bye laws of the Central Institute of Buddhist Studies, Leh then these persons were to be subjected to interviews and in case

not found unsuitable they should have been regularized. The clause is worded in such a way that it is apparent that it did not envisage the holding a

fresh open interviews. However, that does not mean that the petitioners are to be automatically regularized. First of all the respondents have to be

satisfied that the petitioners fulfill all requisite qualifications. In case the petitioners fulfill all the requisite qualifications they alone are to be called for

the interviews and in case they successfully passed the interview then they would have to be regularized. However, if they are found unsuitable in the

interviews then fresh selection from the open market can be held and the petitioners can also take part in such process. Therefore, the petition is

allowed to the limited extent and the respondents are directed to consider the case of the petitioners in light of the aforesaid observations. If the

petitioners fulfill all the academic qualifications then they alone may be called for interviews. In case, the petitioners do not fulfill the requisite

qualifications then they can have no claim to the post and need not be called for interviews. It is for the interview board to decide whether the persons

called for interviews have passed the same or not."

3.The plea raised in the writ petition that the services of those teachers who were held on roll at the time of taking over the management of

respondent No. 3 (Vidalya) by respondent No. 2 were not required to undergo the selection process afresh for their regularization after the School

was taken over by the second respondent was rejected by learned Single Judge while holding that the petitioners cannot be regularized automatically.

Also that, they were required to satisfy the respondents that they are fulfilling all requisite qualification and had it been so, it is only in that situation the

respondents had to call them for interviews. On their having passed the interview successfully, it is only in that event they were entitled to

regularization. In case found unsuitable in the interviews, the respondents were competent to make fresh selection from the open market. Therefore,

with these observations, the writ petition was partly allowed.

4. Reply to the Writ Petition filed on behalf of respondents No. 2 & 3 prima facie reveals that the petitioner though was having essential qualification for

the post of TGT (Social Studies), and was called for interview by a Committee constituted for the purpose. She, however, was not found suitable for

the post being not in merit. Therefore, the post of TGT (Social Studies) was filled in from open market on regular basis. One Prabhat Kumar was

appointed in her place. Though, said Sh. Prabhat Kumar is not a party to the writ petition, however, subsequently an application registered as CMP

No. 7211 of 2017 was filed under Order 1 Rule 10 read with Section 151 CPC for impleading said Sh. Prabhat Kumar and also the members of the

selection Committee as respondents No. 4 to 8. This application is still pending disposal.

5. In view of what has been said hereinabove, though in compliance with the judgment Annexure P-8, the petitioner was called for interview, however,

being found to be not suitable on merits, she has not been regularized as TGT (Social Studies) in respondent No. 3 School. Even if the rejection of

the case of the petitioner in the matter of her regularization in the school is contrary to the judgment Annexure P-8, the remedy available to her was

either to initiate proceedings under the Contempt of Courts Act or Execution proceedings. Accordingly, prima facie opinion in the matter was formed

by this Court yesterday on 11.4.2018 when the matter was heard for some time. The order passed reads as follows: "Heard for sometime."

Prima facie in writ jurisdiction a direction to the respondents to implement the judgment passed by this Court in previously instituted writ petition

cannot be sought. The appropriate course available would have been either to initiate contempt proceedings or to file execution petition. Had the

respondents made the appointment contrary to the directions in the judgment Annexure P-8, the execution proceedings or the proceedings for

Contempt of Court if initiated would have taken care of that part of the controversy also. Any how, learned counsel for the petitioner seeks

adjournment to have further instructions. Allowed. List on 12th May, 2018.â€

6.Today, when the matter was again taken up for further hearing learned counsel representing the petitioner has not pressed the prayer qua issuance

of a direction to the respondents to implement the judgment Annexure P-8 passed in a previously instituted writ petition. He, however, made an effort

to persuade this Court to take view of the matter that the petitioner is entitled to be appointed against the post TGT (Social Studies), she had occupied

before taking over the respondent No. 3 School and the issuance of advertisement dated 18.5.2010. As a matter of fact, from her pleadings, no case is

made out to substantiate the prayer she made at (b) in the prayer clause. The entire case she pleaded in the writ petition is that the appointment on

regular basis has not been given to her as directed by this Court. This Court is refraining itself from touching this aspect of the matter on merits

because in that event prejudice is likely to be caused to the petitioner in case she opts for initiating contempt proceedings or the proceedings to execute

the judgment Annexure P-8. If she still feels that the judgment has not been implemented and succeeds in making out a case in this regard, the

proceedings for contempt of Court /to execute the previous judgment Annexure P-8 will take care of the controversy brought to this Court by filing the

present writ petition.

7.In view of what has been said hereinabove, there is no merit in this writ petition and the same is accordingly dismissed with the above observations

and leaving it open to the petitioner to initiate contempt/execution proceedings, if she still feels that the judgment Annexure P-8 has been violated by

the respondents. The writ petition is accordingly disposed of. Pending application(s), including CMP No. 7211 of 2017 shall also stand dismissed.