

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

LPA No.15 of of 2023
Decided on:03.03.2023

State of Himachal Pradesh & Another Appellants

Versus

Neetu Sharma & Another ...Respondents

Coram:

Hon'ble Ms. Justice Sabina, Acting Chief Justice.

Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?

For the appellants : Mr. Anup Rattan, Advocate General with Mr. Rakesh Dhaulta, Additional Advocate General.

For the respondent : Mr. Sanjeev Bhushan, Senior Advocate with Mr. Rajesh Kumar, Advocate, for the respondent.

Sabina, Acting Chief Justice

Appellant-State has filed the Letter Patent Appeal, challenging the order dated 13th April, 2022, passed by the learned Single Judge, whereby, writ petition filed by the respondent was allowed.

2. We have heard learned counsel for the parties and have gone through the record available on the file, carefully.

3. The case of the respondent was that she had appeared in the interview conducted on 20.09.2007 for

appointment of Lecturer(Chemistry) in Government Senior Secondary School, Amni, District Kangra. However, the Selection Committee recommended the name of Upender Kumar as a selected candidate on the basis of merit for securing 55.36 marks, whereas, respondent was placed at second position with 53.89 marks. Respondent had challenged the appointment of Upender Kumar on the ground that 5.08 marks, awarded to Upieder Kumar towards teaching experience, were on the basis of a fake and fabricated experience certificate. An Inquiry Committee was ordered to be constituted by this Court, headed by concerned Sub Divisional Magistrate, and the writ petitions filed by the respondent as well as other similarly situated candidates were disposed of. The Inquiry Committee found that the experience certificate produced by Upender Kumar was fake and it was opined by the Inquiry Committee that the recommendation of the Selection Committee was not acceptable.

4. Upender Kumar challenged the decision of the Inquiry Committee by filing CWP No.2480 of 2008 and the same was disposed of by this Court vide order dated 11.11.2010, alongwith other similar petitions, directing the State

to decide the cases of appointments of PTA Teachers afresh in terms of the guidelines issued by this Court.

5. The case of Upender Kumar was considered by the Committee and the appointment of Upender Kumar was set-aside. The appeal filed by Upender Kumar before the Deputy Commissioner, Kangra at Dharamshala, was disposed of vide order dated 27.02.2013, directing the Sub Divisional Magistrate-cum-Chairman of Inquiry Committee to hold a fresh inquiry, after associating the concerned authority, who had issued the experience certificate in favour of Upender Kumar. However, Upender Kumar did not appear before the Inquiry Committee. Consequently, respondent approached the department for her appointment in place of Upender Kumar. Respondent was informed by the department that appointment/selection process on PTA basis had been stopped in view of the instructions dated 03.01.2008, issued by the State. Hence, the respondent approached the erstwhile Himachal Pradesh Administrative Tribunal (hereinafter referred to as the "*Tribunal*" in short) by filing an Original Application, seeking the following relief:

- i) *That the respondents may kindly be directed to issue appointment letter in favour of the applicant as lecturer in Chemistry on PTA basis under Grant-in-Aid scheme in Govt. Sr. Sec. School, Amni, Tehsil Jawali, District Kangra w.e.f. 2008 with all consequential benefits.”*

6. The Original Application was transferred to this Court after the abolition of the Tribunal.

7. The learned Single Judge, vide the impugned order, has allowed the writ petition of the respondent. Hence, the present Letters Patent Appeal has been filed by the Appellant-State.

8. Learned Single Judge while allowing the writ petition, has taken in consideration the fact that the selection process was initiated in the year 2007. The Selection Committee selected Upender Kumar as Lecturer(Chemistry) by awarding him 55.36 marks. So far as the respondent is concerned, she had secured 53.89 marks. Upender Kumar had been awarded 5.08 marks on the basis of experience certificate. However, the experience certificate produced by Upender Kumar was found to be fake in an enquiry. Thus,

Upender Kumar had got $55.36 - 5.08 = 50.28$ marks, whereas, respondent had secured 53.89 marks. Consequently, the respondent, who was at Serial No.2 in the merit-list, was liable to be offered appointment in place of Upender Kumar.

9. Admittedly, the Government instructions dated 03.01.2008, whereby, appointments of teacher on PTA basis was stopped, came in existence after the selection process had been completed on 20.09.2007. Hence, the learned Single Judge rightly held that so far as the Government instructions dated 03.01.2008 were concerned, the same were not applicable to the selection process, which already stood culminated on 20.09.2007.

10. The learned Single Judge while allowing the writ petition, has observed as under:

“15. In aforesaid facts and circumstances, rejection of claim of appointment of petitioner as Lecturer Chemistry on PTA basis in Government Senior Secondary School, Amni, District Kangra, H.P. is quashed and respondents are directed to offer appointment to the petitioner on or before 30.5.2022 as Lecturer Chemistry on PTA basis in Government Senior Secondary School Amni,

District Kangra, H.P. w.e.f. 20.9.2007 on notional basis with all consequential benefits, except monetary benefits, till her actual appointment and thereafter she shall be entitled for all consequential benefits on the basis of length of service counting from date of initial appointment. In case there is no vacancy available as on date in that school, then in any other school in District Kangra on or before 30th May, 2022 and in case there is no vacancy available in District Kangra, then anywhere in State of Himachal Pradesh. It is made clear that petitioner shall be entitled for all consequential benefits, except monetary benefits till her actual appointment, including continuity, seniority and counting of service for all such benefits which have been extended to similarly situated PTA appointees including appointment on contract/regularization on completion of requisite length of service treating her in service since 20.9.2007.

16. *Failing in appointment of petitioner on or before 30th May, 2022, respondents shall also be liable to pay monetary benefits to her from August, 2015 onwards alongwith all consequential benefits including increments etc.*

The petition is allowed in aforesaid terms.”

11. The learned Single Judge had, thus, rightly directed the State to appoint the respondent as Lecturer (Chemistry) on PTA basis, w.e.f. 20.09.2007, on notional basis. Respondent has been declined the relief of the monetary benefits, but has been allowed all consequential benefits on the basis of length of service counting from the date of her initial appointment.

12. In the facts and circumstances of the present case, the order passed by the learned Single Judge, calls for no interference.

13. Dismissed.

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

(Sabina)
Acting Chief Justice

March 03, 2023
(Yashwant)

(Satyen Vaidya)
Judge