

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4060 of 2016 (O&M)

Date of Decision: 11.03.2016

Kartar Singh and others

... Petitioners

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. H.C. Arora, Advocate,
for the applicant-petitioners.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

CM No.2758 of 2016

The application is allowed as prayed for and Annex P-15 is taken on record.

Main Case

1. The petitioners hold teaching assignments in the Sarv Sikhiya Abhiyan (SSA) under a centrally sponsored scheme administered by the State of Punjab. They are not directly covered by any of the policies of the Punjab Government either on regularization of services or to be afforded minimum of the pay scales of holders of regular office on corresponding posts in the Education Department of the Government of Punjab. When this matter came up on February 29, 2016 this Court passed the following order:-

“The petitioners holding teaching assignments in the Sarv Shikhiya Abhiyan and would not qualify as ‘workmen’ under the Industrial Disputes Act, 1947. They

claim regularization of service and the minimum of the pay scale of holders of regular office on corresponding posts. This Court is prohibited in exercise of its power under Article 226 of the Constitution to issue directions regularizing services of persons like the petitioners in view of the Constitution Bench decision of the Supreme Court in Secretary, State of Karnataka & others Vs. Umadevi & others; (2006) 4 SCC 1 (Umadevi) 3.

Mr. Arora submits that the cases of the petitioners are well be considered under the policies of the Punjab Government. However, I find that the petitioners are employed in the Sarv Sikhiya Abhiyan, which a Central Government sponsored Scheme in Punjab and are not directly covered by any of the policies of the Punjab Government. None has been shown prevailing in the Sarv Sikhiya Abhiyan with which cases could be considered. However, there is any such policy, this order would not preclude the petitioners from making respective representations to their competent authority, who will consider and decide the same in accordance with law within a reasonable time.

So far as the issue in respect of minimum pay scale is concerned, Mr. Arora submits that he is aware of a letter of the Central Government addressed to the Director General, Sarv Sikhiya Abhiyan Authority, Punjab to give the same service conditions to the employees working under the Sarv Sikhiya Abhiyan as given to the Teachers in the Education Department, Punjab, itself. Since the letter is not on record, he prays for time to place the same on record.

Adjourned sine die for the needful."

2. In response to the query the petitioner has filed miscellaneous application placing letter dated March 04, 2013 (P-15) on the record of the case. The letter is addressed to the State Project Director, Sarva Shiksha Abhiyan relating to the year 2012-13 dated March 04, 2013 issued by the Government of India, Ministry of Human Resource Development,

Department of School Education & Literacy on the subject the proposal for provision of additional funds for salary of teachers under Sarva Shiksha Abhiyan for 2012-13. The letter reads as under:

“Sir,

With reference to your Memo No. 4/27-SSA Plg/A WP&B/2012-13/000844 dated 16.1.2013, I am directed to bring the following points to your notice:

SSA provides support for new teachers in schools sanctioned under SSA and also additional teachers in existing schools based on the enrollment. The support to States for additional teachers and teachers' salary is given at the same scale and service conditions as of the teaching cadre of the State. There are no separate SSA scales or norms/rules for teacher recruitment.

It is found that in Punjab a separate “SSA” cadre of contractual teachers has been created for whom different service arrangements have been spelt out and they are posted only in “SSA schools”. This is an erroneous phenomenon. All schools receiving SSA funding are schools of the State Government and so are all teachers. SSA is only a programme providing additional funding to the State for elementary education development and reform.

The State is advised to kindly desist from creating any anomalous situation on this account.

Yours sincerely,

Sd/-

(Rajender Prasad)

Under Secretary to the Government of India

Tel No.23381622”

3. The Central Government informs in the letter that in Punjab a separate SSA cadre of contractual teachers has been created for whom different service arrangements have been spelled out and they are posted only in SSA schools. Punjab Government has been advised that this is an

erroneous phenomenon since all schools receiving SSA funds are schools of the State Government and so are all the teachers. The SSA is only a program providing additional funding to the State for elementary education department and reform of school education. This letter has been issued in clarification of memo dated January 16, 2013 proposed by the State Project Director, Punjab, Chandigarh seeking advice.

4. There are 17 petitioners who have approached Court in this joint petition make prayers that run into 5 pages. It is difficult to make head or tail of the prayers (ii) to (vi), the first being formal in nature. In the first instance they pray that letter dated September 15, 2014 (wrongly typed as September 15, 2004 in the prayer clause) and May 18, 2015 declining request for regularization of services of the petitioners who are working as Education Providers/Education Volunteers under SSA be quashed. The letter dated September 15, 2014 rejects the prayer of the petitioners that without appearing for the ETT test they should be still be appointed against regular posts. The request for regularization has been rejected. The second letter relates to the same subject of regularization which request has also been rejected and consigned to record. The request for regularization made for the first time in writ jurisdiction of contract Education Volunteers is liable to be rejected in view of the principles laid down by the Constitution Bench of the Supreme Court in **Secretary, State of Karnataka v. Uma Devi**, (2006) 4 SCC 1. The petitioners are teachers and, therefore, do not qualify as workman under the Industrial Law from which forum alone constituted under the Act could such a relief be considered. Thus, the relief is only grantable by the administration but not the Court, in case, there is a

policy formulated while there is none pressed or prevailing. The petitioners then compare their case with Computer Teachers employed in PICTES a society set up by the respondent State. Those Computer Teachers were on contract basis and have been regularized vide order dated December 02, 2010 (Annex P-8). The petitioners claim they deserve parity of treatment. Those Computer Teachers have been granted the initial pay scale at par with Vocational Masters. The Director General, School Education (DGSE) was named their appointing authority and their services are to be governed under Punjab Civil Services Rules w.e.f. July 01, 2011. PICTES is not centrally funded scheme but a society over which the State exercises deep and pervasive control and if it has chosen to regularize the services of Computer Teachers on contract it will not necessarily follow on principles of Article 14 those petitioners should also be granted relief of regularization on ground of unreasonable discrimination. Employees of PICTES are reasonably classified as against Education Volunteers/Education Providers in SSA.

5. Mr. Arora submits that some of the petitioners possess qualification of PSTET-1 or PSTET-2 and, therefore, are eligible for appointment as ETT Teachers and Masters in the concerned subjects. The petitioners he asserts were recruited as Education Volunteers by following due process by PASWAK Committees set up for the purpose and was selected on the basis of merit. However, no order or decision has been shown which equates Education Volunteers with ETT teachers or Masters in SSA with the others in the Education Department of the State of Punjab.

6. The second prayer is for payment of salary at par with regular

teachers working under the SSA Authority which has been rejected by detailed office order dated December 14, 2015 at Annex P-5 passed under Court directions in CWP No.12732 of 2012 titled *Tarandeep Kaur and others v. State of Punjab etc.* and connected cases calling upon the State to take final decision. The Director General, Secondary Education-cum-State Project Director, SSA Authority, Punjab has applied his mind and discussed the issues threadbare in the order by referring to all conceivable angles of their request for regularization and for grant of minimum of the pay scale of regular teachers. It has been explained with reference to Para.39.16 of the Manual of SSA, namely, Financial Management and Procurement of Staff and the instructions issued by the Government respecting the manner and mode of appointment of regular teachers as Block Resource Persons (BRPs) and Education Volunteers in lieu of regular teachers as BRPs. Regular teachers were appointed as BRPs to ensure that the entire SSA project was implemented. On appointment of regular teachers as BRPs there would be a temporary shortage of teaching faculty in the schools concerned, therefore in order to overcome this problem SSA Authority issued instructions/guidelines from time to time for appointment of Education Volunteers/Shiksha Karmis/Service Providers in the schools concerned in lieu of appointment of regular teachers as BRPs. These Education Volunteers were granted honorarium according to qualifications ranging from Rs.2500/- per month to Rs.3500 per month. The Education Volunteers were appointed by Village Education Development Committees (VEDCs) of the Village concerned. A decision has been taken not to appoint any Education Volunteer w.e.f. April 29, 2011 and the supervision and control

of Education Volunteers have also been taken under the domain of SSA Authority, Punjab after being withdrawn from the VEDC. The DGSE has also paid due attention to the provisions of the Right of Children to Free and Compulsory Education Act, 2009 and qualifications prescribed by the National Council for Teacher Education. The State cannot compromise with educational qualifications of teachers which prescribes the minimum qualification of teachers involved in primary and senior secondary level education. It has been disclosed that 6575 Education Volunteers were appointed by the respective VEDCs from 2004 to April 29, 2011 to impart education in Government schools in the State of Punjab, out of the total 6575 Education Volunteers, 5602 of them are trained and the remaining 973 are untrained. Academic qualifications of trained Education Volunteers are as follows:-

<i>Qualification</i>	<i>No. of Education Volunteers</i>
<i>B.A, B.Ed</i>	<i>2292</i>
<i>M.A., B.Ed</i>	<i>3148</i>
<i>B.P.Ed</i>	<i>78</i>
<i>E.T.T.</i>	<i>72</i>
<i>Arts and Craft</i>	<i>12</i>
	<i>Total-5602</i>

7. On the question of equal pay for equal work viz.-a-viz. teachers appointed on contractual basis after following due process of law as claimed by Education Volunteers, the DGSE explains in this regard in the order that not only are the educational qualifications and mode of selection but the nature of job and tenure of service of Education Volunteers are completely different from the teachers appointed on contractual basis. The distinction has been explained by minimum qualification of Education Volunteers and contractual teachers teaching Classes 1 to 5 and 6 to 8 under SSA and

teachers working under RMSA. The officer has tabulated for ready reference the minimum qualification, the nature of the selection process, the length of service and nature of duties of the groups under comparison which are as follows:-

A. MINIMUM QUALIFICATION

<i>Education Volunteer</i>	<i>Teachers for Classes 1-5 under SSA</i>	<i>Teachers for Classes 6-8 under SSA</i>	<i>Teachers under RMSA</i>
<i>Graduation only</i>	<i>Qualification Senior Secondary with ETT Diploma or equivalent with specified percentage of marks and in case requisite candidate with above mentioned qualification not available then candidates with BA, B.Ed can also be considered. After 2011 it is compulsory to clear Teaching Eligibility Test (TET) under Right to Education Act, 2009</i>	<i>Qualification of BA/B.Sc., B.Ed with specified percentage of marks. After 2011 it is compulsory to clear Teaching Eligibility Test (TET) under Right to Education Act, 2009</i>	<i>Qualification of BA/B.Sc., B.Ed with specified percentage of marks. After 2011 it is compulsory to clear Teaching Eligibility Test (TET) under Right to Education Act, 2009</i>

B. SELECTION PROCESS

<i>Education Volunteer</i>	<i>Teachers for Classes 1-5 under SSA</i>	<i>Teachers for Classes 6-8 under SSA</i>	<i>Teachers under RMSA</i>
<i>Without any selection process. Appointment by Village Education Development Committees from the concerned Village only and in case no eligible candidate is available then candidates from adjoining Villages.</i>	<i>Guidelines laid down by National Council for Teacher Education are followed and candidates are appointed after conducting State Level merit/written test</i>	<i>Guidelines laid down by National Council for Teacher Education are followed and candidates are appointed after conducting State Level merit/written test</i>	<i>Guidelines laid down by National Council for Teacher Education are followed and candidates are appointed after conducting State Level merit/written test</i>

C. LENGTH OF SERVICE

<i>Education Volunteer</i>	<i>Teachers for Classes 1-5 under SSA</i>	<i>Teachers for Classes 6-8 under SSA</i>	<i>Teachers under RMSA</i>
<i>No specific period and no formal contract. Appointments are made as per stop gap arrangement against temporary vacancy of regular teacher who is sent on deputation as Block Resource Person under SSA Project.</i>	<i>On Contract basis with assured term of one year subject to fulfillment of contractual terms and with an option of extension subject to approval of post and receipt of grant from the Ministry of Human Resource and Development, Government of India and performance of candidates.</i>	<i>On Contract basis with assured term of one year subject to fulfillment of contractual terms and with an option of extension subject to approval of post and receipt of grant from the Ministry of Human Resource and Development, Government of India and performance of candidates.</i>	<i>On Contract basis with assured term of one year subject to fulfillment of contractual terms and with an option of extension subject to approval of post and receipt of grant from the Ministry of Human Resource and Development, Government of India and performance of candidates.</i>

D. NATURE OF DUTIES

<i>Education Volunteer</i>	<i>Teachers for Classes 1-5 under SSA</i>	<i>Teachers for Classes 6-8 under SSA</i>	<i>Teachers under RMSA</i>
<i>Discharging duties of teacher. They don't have any knowledge about specialized teaching skills.</i>	<i>Each contractual teacher appointed under Sarva Shiksha Abhiyan Project is assigned duties as are assigned to regular teachers. They have undergone specialized teaching courses.</i>	<i>Each contractual teacher appointed under Sarva Shiksha Abhiyan Project is assigned duties as are assigned to regular teachers. They have undergone specialized teaching courses.</i>	<i>Each contractual teacher appointed under Sarva Shiksha Abhiyan Project is assigned duties as are assigned to regular teachers. They have undergone specialized teaching courses.</i>

8. The DGSE has discussed the issue with reference to Article 16 of the Constitution and acquainted himself with the law of precedents of the Supreme Court, Allahabad High Court and this Court to come to the

conclusion that the claim of the petitioners for salary at par with teachers appointed on contract basis under SSA/Rashtriya Madhyamik Shiksha Abhiyan Authorities, Punjab is not tenable on equal pay for equal work principles is thus not maintainable and the prayer stands rejected.

9. There is significant differential in the evaluation parameters in the group compared which have been well brought out in the impugned order (Annex P-5) and this Court would be loath to interfere with the order which is a complete answer to the orders dated September 04, 2015 passed by this Court in *Tarandeep Kaur* (Supra) directing DGSE, Punjab to consider and decide the demands of regularization, for equal pay for equal work and minimum of the pay scale paid to regular teachers in Government service or in Education Department and on contract in SSA and RMSA facilities. The decision of the Full Bench of the Allahabad High Court in **Anand Kumar Yadav and others v. Union of India and others**, 2015 (6) All. LJ 433: LAWS (ALL)-2015-9-95 is nearer home on the issue involved when it deals with Shiksha Mitras bringing them to regular service of the State as against regular Assistant Teachers and such enabling provision for appointments/regularization were quashed and set aside by striking down the provisions of the Uttar Pradesh Right of Children to Free and Compulsory Education (First Amendment) Rules 2014 enabling the State Government to regularise the services of Shiksha Mitras and bringing them to the cadre of Assistant Teachers as arbitrary and ultra vires the constitutional scheme of appointments. The amendment to the rules prescribing Shiksha Mitras/Education Volunteers as a source of recruitment in Rule 5 (2) of the Rules has been declared unconstitutional and ultra vires

the Act.

10. For the many reasons recorded above this court finds no legal infirmity in the impugned order declining the reliefs prayed for and interference is not called for in writ proceedings. Consequently, the impugned order of the DGSE, Punjab is upheld and the petition is hereby dismissed.

11.03.2016
manju

(RAJIV NARAIN RAINA)
JUDGE