IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 4433 of 2015

Date of Decision: 04.09.2020

Nisha Devi ....Petitioner.

Vs.

State of H.P. and others .....Respondents.

Coram:

The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?[1] *Yes.*

For the petitioner:	Mr. Shyam Singh Chauhan, Advocate.
For the respondents:	M/s Somesh Raj and Dinesh Thakur, Additional Advocate Generals, for respondents No. 1 to 3. None for respondent No. 4. (Through Video Conferencing)

Ajay Mohan Goel, Judge *(Oral):*

By way of this writ petition, the petitioner has prayed for the following reliefs:

> *"(i) That the order dated 30.08.2011 & 07.04.2015 orders passed by the enquiry committee and Ld. Deputy Commissioner may kindly be quashed with all consequential benefit while issuing the writ of certiorari.*

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

(ii) That the petitioner may kindly be allowed to work as PTA teacher as per grant in aid Rules while issuing the writ in the nature of mandamus and any other order which the Hon'ble Court may deem fit be passed in the interest of justice."

2. Brief facts necessary for the adjudication of present petition are that the petitioner was initially appointed as a Lecturer in the subject of Economics under the Grant-in-Aid Rules in September, 2007 in Government Senior Secondary School Baryara, Tehsil Sadar Mandi, District Mandi, H.P. Her appointment was assailed by one Promila by way of a complaint. The appointment of the petitioner was set aside by the Inquiry Committee comprising of SDM, Sadar Mandi, District Mandi, H.P., who was the Chairman of the Committee, Principal of the concerned School as well as Subject Specialist. A copy of order dated 15th October, 2008, passed by the Inquiry Committee is appended with the petition as Annexure P-1. The reasonings on which the Inquiry Committee set aside the appointment of the petitioner are reproduced hereinbelow:

*"**Findings:***

In view of above discussions, the committee has come to the conclusion that proper procedure to select the candidate for the above said post was not followed and adopted by the PTA and hence the appointment of Nisha Devi as

> *Lecturer (Economics) in GSSS Baryara made by the PTA of the said School is not acceptable as per instructions contained in Para No. 11 of the guidelines of the notification No. EDN-A-Kha(7)3/2006, dated the 27th May, 2008. Since proper procedure has not been followed by the PTA selection committee, the claim of the complainant for appointment in place of respondent also do not succeeds. Copy of this enquiry report be sent to the Principal-cum-Chairman (PTA) GSSS Baryara and PTA of the concerned school for further necessary action."*

An appeal was preferred by the petitioner against this order, which was also dismissed by the Appellate Authority vide Annexure P-2, dated 06.02.2009.

3. Feeling aggrieved, the petitioner filed a Writ Petition before this Court, i.e., CWP No. 1099 of 2009, which was disposed of by this Court alongwith other writ petitions by a common judgment dated 18th March, 2010 in the following terms:

> *"..In view of the above clarification issued by the Director of Higher Education, Himachal Pradesh, the impugned orders are liable to be set aside. Ordered accordingly. However, we make it clear that it will be open to the Enquiry Committee to consider the matters afresh in the light of the instruction referred to above.*

The needful, if required, shall be done within a period of four months from the date of the production of a copy of this judgment by either side. It is also made clear that in the cases of those teachers who are working in the schools, in case they have not been paid their due wages, the same shall be paid and the State shall ensure that the required grant-in-aid is given to the Schools, as per the Rules forthwith."

4. Thereafter, the Inquiry Committee had a re-look in the entire matter in terms of the judgment passed by this Court and vide Annexure P-4, the candidature of the petitioner was again held to be bad for appointment on the ground that in terms of the criteria adopted by the Committee for assessing the merit of the candidates concerned, the petitioner was 6th in the merit list. This order passed by the Inquiry Committee dated 30th August, 2011 was assailed by way of an appeal by the petitioner in the year 2015 and the same was dismissed by the learned Appellate Authority vide Annexure P-6, dated 07.04.2015, *inter alia*, on the ground that the appeal stood preferred by the appellant after a lapse of more than 3 ½ years and the same was not accompanied by an application for condonation of delay and appeal against the recommendations of the Committee could be made to the Deputy Commissioner only within thirty days.

5. Feeling aggrieved, the petitioner has filed this writ petition praying for the reliefs mentioned hereinabove.

6. I have heard learned counsel for the parties and have also gone through the pleadings as well as the documents appended therewith.

7. The initial appointment of the petitioner was set aside by the Inquiry Committee vide order dated 15th October, 2008, *inter alia,* on the ground that proper procedure to select the candidate for the post in issue was not followed by the PTA and Instructions contained in Para-11 of the Guidelines of Notification dated 27th May, 2008 were not adhered to while offering appointment to the petitioner. This order was upheld by the Appellate Authority. When the petitioner filed a writ petition before this Court, the same was disposed of by this Court vide judgment dated 18th March, 2010 with the direction that the matter shall be looked into afresh by the Inquiry Committee in terms of the contents of the judgment of this Court as well as communication dated 24th September, 2009, which stands quoted in the said judgment.

8. The contention of learned counsel for the petitioner is that subsequent order passed by the Inquiry Committee is not sustainable in law, as the Committee has failed to appreciate that this Court in CWP No. 525 of 2009, titled as *Ravinder Singh Vs. State of H.P. and others,* decided on 04.08.2009, has held that the subsequent

Committee is not to interfere with the earlier selections made, if the PTA which made the previous appointment, had followed a valid criteria for making the appointment.

9. Learned counsel for the petitioner has argued that as the procedure which was followed by the earlier PTA while offering appointment of the post in issue to the petitioner was a valid criteria, the subsequent order passed by the Inquiry Committee holding that the petitioner was not eligible for the post in issue on merit in not sustainable in law.

10. No other point has been urged.

11. In my considered view, there is no merit in the arguments put forth by learned counsel for the petitioner. This Court in *Ravinder Singh's case (supra),* in fact, laid down that the earlier appointment, if properly made, are not to be interfered by the subsequent Inquiry Committee until and unless subsequent Inquiry Committee comes to the conclusion that the criteria adopted by the earlier PTA for appointment of the candidate, was not sustainable in law.

12. Facts of this case demonstrate that the Inquiry Committee vide its earlier order dated 15th October, 2008 (Annexure P-1), had set aside appointment of the petitioner by holding that the process which stood initiated by the PTA for selecting the candidate, was not in consonance with the Notification in issue pertaining to the appointment

of teachers by the PTA. These findings have not been set aside on merit. The subsequent Committee formulated a criteria for assessing the eligibility of the candidates, as is evident from the contents of the report of the Inquiry Committee and the criteria so adopted was completely objective, which assessed the merit of a candidate on the basis of marks scored by him or her Matriculation onwards and the same included the marks obtained in Matric, +2, BA/Graduation, B.Ed. and MA. Maximum 10 marks were envisaged for all these classes and assessment of a candidate was made out of 50 marks. The subsequent Selection Committee by applying this criteria, held that amongst the candidates, who had appeared for the post in issue, the petitioner was placed at 6th in merit.

13. During the course of arguments, leaned counsel for the petitioner could not demonstrate that the marks which were so granted to the petitioner by the Selection Committee, were contrary to the record. That being the case, as from amongst the candidates who appeared for being appointed as teacher on PTA basis, as the petitioner was not most meritorious and further as her initial appointment stood set aside by the Inquiry Committee initially on the ground that her appointment was made in violation of the provisions of selection in vogue at the relevant time, this Court does not find any infirmity with the report of the Inquiry Committee, which held that the petitioner was not entitled to be given

appointment, as she was placed 6th in merit amongst candidates who had participated in the process. As far as the contention that order passed by the Appellate Authority holding that the appeal filed was barred by limitation is concerned, though there is no infirmity in the same, however, no further observation is required to be made in this regard, as this Court has decided this petition on merit.

14. Accordingly, in view of the observations made hereinabove, as there is no merit in this petition, the same is dismissed, so also pending miscellaneous applications, if any.

(Ajay Mohan Goel)
Judge

September 04, 2020
(bhupender)