

No: EDN-U (E-IV) Elem-Court case CWP -1811/2008 Dev Raj- 34/80-216
Office of the ,
Deputy Director Elementary Education,
Una, Distt Una (H.P.)
Dated: 8 December/2016

OFFICE ORDER

In Compliance to the Directions conveyed by the Director of Elementary Education H.P Shimla letter No EDN-H(2)B(2) 4273/12-CC dated 07.11.2016 , the undersigned has verified the facts from the copies of CWPs / OA No /LPAs produced by the following TGTs through concerned Principals / Headmasters, and found that the following petitioners as mentioned against each CWP are squaerly covered under the judgement delivered in CWP No 1811/2008 Titled as Dev Raj VS State of HP and others and all other related matters) and as ordered by the Director of Elementary Education HP Shimla letter under reference shall be deemed to be the regular employees of the state from their initial appointment subject to the final outcome of the SLP NO 25678/2016 Titled as State of HP and others V/S Manju Bala and others filed by the Government .

Sr No	Name of the TGT & desination	Present place of posting	CWP / OA Number and Sr. Number of the teacher in petitioners list
1	Revti Raman , TGT NM	GSSS Budhan	CW P No 7440/2010 at Sr No 4
2	Sunita Devi TGT NM	GSSS Rora	CW P No 7440/2010 at Sr No 1
3	Ashwani Kumar TGT NM	GGSSS Santokhgarh	CWP No 5614 of 2010 (Individual case)
4	Rajesh Kumar, TGT NM	GS Chattarpur U/C GGSSS Santokhgarh	OA NO376/2016 (individual case)
5	Rajeev Kumar , TGT NM	GSSS Lathiani	CWP No 5766 of 2010 (Individual case)
6	Aman Dev TGT , Med	GSSS Takoli	CWP No 5763 /2010 at Sr No 38
7	Meenakshi Sharma , TGT Med	GSSS Sanoli	CWP No 5763 /2010 at Sr No 41
8	Rajan Kumar, TGT Med	GSSS Bhanjal	CWP No 5763 /2010 at Sr No 39
9	Rajeev Kumar Bhardwaj, TGT Med	GSSS Marwari	CWP No 5763 /2010 at Sr No 47
10	Gargi Kalia , TGT Med	GHS Bharolian Kalan	CWP No 5763 /2010 at Sr No 42
11	Pooja Guleria , TGT Med	GSSS Baliwal	CWP No 5763 /2010 at Sr No 52
12	Monika Chaudhary, TGT Med	GSSS Saroh	CWP No 5763 /2010 at Sr No 40
13	Suman Parmar, TGT Med	GSSS Talai	CWP No 6190 of 2010 at Sr No 10
14	Shiv Mohan TGT Arts,	GSSS Daulatpur	CWP No 1363 of 2015 at Sr No 75
15	Uma Patial , TGT Arts	GMSArniala Upper U/C GSSS Una Boys	CWP No 1363 of 2015 at Sr No 87
16	Rajesh Kumar TGT Arts	GSSS Saloe	CWP No 1363 of 2015 at Sr No 66
17	Asha Devi , TGT Arts	GSSSLohara	CWP No 1363 of 2015 at Sr No 67

18	Jyoti Dogra ,TGT Arts	GSSS Lohara	CWP No 1363 of 2015 at Sr No 68
19	Ashok Kumar ,TGT Arts	GSSS Joh	CWP No 1363 of 2015 at Sr No 74
20	Shalini Sharma , TGT Arts	GSSS Bhanjal	CWP No 1363 of 2015 at Sr No 71
21	Vijay Kumar TGT Arts	GSSS Behar Jaswan	CWP No 1363 of 2015 at Sr No 72
22	Sanjeev Kumar , TGT Arts	GSSS Basal	CWP No 1363 of 2015 at Sr No 82
23	Kuldeep Singh , TGT Arts	GSSS Dulehar	CWP No 1363 of 2015 at Sr No 80
24	Ramesh Kumar, TGT Arts	GMS Kante U/C GSSS Haroli	CWP No 1363 of 2015 at Sr No 79
25	Saroj Kumari ,TGT Arts	GSSS Kuneran	CWP No 1363 of 2015 at Sr No 76
26	Tek Chand, TGT Arts	GHS Dangoh	CWP No 1363 of 2015 at Sr No 73
27	Poonam Sharma ,TGT Arts	GSSS Ispur	CWP No 1363 of 2015 at Sr No 88
28	Sadha Ram , TGT Arts	GSSS Haroli	CWP No 4443/2012 (Individual case)
29	Juga Kishore, TGT Arts	GSSS Kutharbeet	LPA No 237 of 2012 at Sr No 12
30	Kuldeep Singh Dhiman	GSSS Thanakalan	TA No 2472/2015 At Sr No 1

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Deputy Director Elementary Education,
Una Distt Una (H.P.)

Endt No

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dated

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Copy is forwarded to :-

1. The Director of Elementary Education HP Shimla for information w.r. to their letter No EDN-H(2)B(2)4273/12-CC dated 07.11.2016

2. The Principals /Headmasters of GSSS/GHS Budhan ,Rora ,Santokhgarh (G) Lathiani, Takoli, Sanoli, Bhanjal, Marwari, Baliwal, ,Saroh, Talai,Daulatpur, Una Boys,Saloe, Lohara Joh, Behar jaswan,Basal,,Dulehar, Haroli, Kuneran ,Ispur ,kutharbeet, Thanakalan,Dangoh, Bharlian Kalan Distt Una ,for information and with the directions that the Judgement delivered in CWP NO 1811/2008- Dev Raj V/S State of H.P and all related matters) may be downloaded from the official website of this office www.ddeuna.in and be implemented in its letter & spirit subject to the final outcome of SLP No 25678/2016 Titled as State of HP and others VS Manju Bala and others filed by the Govt . An Affidavit to this effect may be obtained from all the official concerned and be kept in the office record while implementing the judgement . You are further directed that the copy of CWP filed by the official concerned may also be obtained from him/her for office record to avoide any shortcoming at the time of Audit .

Manu
Deputy Director Elementary Education,
Una Distt Una (H.P.)

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

CWP No. 1811 of 2008 alongwith CWP No. 1054, 5554, 5555, 5556, 5557, 5558, 5559, 5597, 5613, 5614, 5616, 5735, 5737, 5738, 5739, 5740, 5763, 5766, 5767, 6190, 6563, 6833, 6893, 6908, 6909, 6910, 7137, 7376, 7440, 7813 and 8336 of 2010, 601 of 2011 and 982 of 2011

Reserved on: 31.10.2011

Date of Decision: 14.11.2011

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|------------|--|-----|---------------------------|
| 1. | <i>CWP No. 1811 of 2008</i>
Dev Raj | vs. | State of H.P. and others |
| 2. | <i>CWP No. 1054 of 2010</i>
Anil Kumar | Vs. | State of H.P and another |
| 3. | <i>CWP No. 5554 of 2010</i>
Deena Nath | vs. | State of H.P. and another |
| 4. | <i>CWP No. 5555 of 2010</i>
Ranjit Singh | vs. | State of H.P. and another |
| 5. | <i>CWP No. 5556 of 2010</i>
Kamal Kumar | vs. | State of H.P. and another |
| 6. | <i>CWP No. 5557 of 2010</i>
Anjana Kumari | vs. | State of H.P. and another |
| 7. | <i>CWP No. 5558 of 2010</i>
Karam Chand | vs. | State of H.P. and another |
| 8. | <i>CWP No. 5559 of 2010</i>
Vikas Kumar | vs. | State of H.P. and another |
| 9. | <i>CWP No. 5597 of 2010</i>
Rajiv Kaundal | vs. | State of H.P. and another |
| 10. | <i>CWP No. 5613 of 2010</i>
Jagjeet Singh | vs. | State of H.P. and another |
| 11. | <i>CWP No. 5614 of 2010</i>
Ashwani Kumar | vs. | State of H.P. and another |
| 12. | <i>CWP No. 5616 of 2010</i>
Piar Singh | vs. | State of H.P. and another |
| 13. | <i>CWP No. 5735 of 2010</i>
Subhash Chand and others | vs. | State of H.P. and another |
| 14. | <i>CWP No. 5737 of 2010</i>
Akhlesh Rana and others | vs. | State of H.P. and another |
| 15. | <i>CWP No. 5738 of 2010</i>
Rakesh Sharma and others | vs. | State of H.P. and another |

16. **CWP No. 5739 of 2010**
Om Parkash Verma and others vs. State of H.P. and another
17. **CWP No. 5740 of 2010**
Ravinder Singh and others vs. State of H.P. and another
18. **CWP No. 5763 of 2010**
Joginder Kumar Sopta and others vs. State of H.P. and others
19. **CWP No. 5766 of 2010**
Rajiv Kumar vs. State of H.P. and another
20. **CWP No. 5767 of 2010**
Ajay Kumar vs. State of H.P. and another
21. **CWP No. 6190 of 2010**
Jyoti Dhiman and others vs. State of H.P. and others.
22. **CWP No. 6563 of 2010**
Manju Kumari vs. State of H.P. and another
23. **CWP No. 6833 of 2010**
Mahender Pal Sharma & others vs. State of H.P. and another
24. **CWP No. 6893 of 2010**
Manju Bala vs. State of H.P. and another
25. **CWP No. 6908 of 2010**
Pawan Kumar Sharma vs. State of H.P. and another
26. **CWP No. 6909 of 2010**
Alok Singh vs. State of H.P. and another
27. **CWP No. 6910 of 2010**
Bandana Bhardwaj vs. State of H.P. and another
28. **CWP No. 7137 of 2010**
Gulshan Kumar and others vs. State of H.P. and others.
29. **CWP No. 7376 of 2010**
Mahender Pall and others vs. State of H.P. and another
30. **CWP No. 7440 of 2010**
Sunita Devi and others vs. State of H.P. and others
31. **CWP No. 7813 of 2010**
Rajesh Kumar and others vs. State of H.P. and another
32. **CWP No. 8336 of 2010**
Arti Gupta vs. State of H.P. and others.
33. **CWP No. 601 of 2011**
Ranjit Singh vs. State of H.P. and another
34. **CWP No. 982 of 2011**
Kamlesh Kumar vs. State of H.P. and another

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting? Yes.

(In CWP No. 1811 of 2008)

For the petitioner: Mr. M.A.Khan, Advocate.

For the respondents-State: Mr. Vivek Thakur, Addl. A.G.

(In CWP No.1054, 5554, 5555, 5556, 5557, 5558, 5559, 5597, 5613, 5614, 5616, 5766, 5767, 6893, 6908, 6909, 6910 of 2010)

For the petitioner(s): Mr. B.C.Negi, Advocate.

For the respondents: Mr. Vivek Thakur, Addl. A.G.

(In CWP No.5735, 5737, 5738, 5739, 5740, 6833 of 2010, 601 of 2011 & 982 of 2011)

For the petitioner(s): Mrs. Ranjana Parmar, Advocate

For the respondents-State: Mr. Vivek Thakur, Addl. A.G.

(In CWP No. 5763, 6190, 7137, 7440, 8336 of 2010)

For the petitioner(s) : Mr. Onkar Jairath, Advocate.

For the respondents-State: Mr. Vivek Thakur, Addl. A.G.

For the H.P.S.S.B: Mr. Inder Sharma, Advocate.

(In CWP No. 7376 and 7813 of 2010)

For the petitioners: Mr. Rajiv Rai, Advocate.

For the respondents-State: Mr. Vivek Thakur, Addl. A.G.

(In CWP No. 6563 of 2010)

For the petitioners: Mr. Onkar Jairath vice counsel.

For the respondents-State: Mr. Vivek Thakur, Addl. A.G.

Deepak Gupta, J:

1. All the aforesaid writ petitions are being disposed of by a common judgement since similar questions of law and facts are involved in these cases.

2. The following question arises for decision in all these cases:

“Whether the Recruitment and Promotion Rules relating to the posts in question existing on the date when the advertisement was issued are applicable while filling in the posts or the employer has the right to change the Rules after advertisement has been issued and selection can be made on the basis of the amended/new rules?”

3. There are three sets of cases before the Court. They relate to the appointment of Steno-typists in the Irrigation and Public Health Department, appointment of TGT (Non Medical) and appointment of TGT (Medical) but the basic issue is almost identical.

CWP No. 1811 of 2008:

4. On 10.10.2002 the H.P.Subordinate Services Selection Board, Hamirpur (hereinafter referred to as the Board) issued an advertisement inviting applications for various posts including those of Steno-typists. The petitioner applied for the said post. Though the process started in the year 2002, screening test was held in the year 2007 and thereafter skill test was conducted on 28.08.2007 and the petitioner was found eligible for appointment. He was declared successful on 4.6.2008. Thereafter a letter was issued to him on 1.9.2008 offering him appointment as Steno typist in the Irrigation and Public Health Department. The appointment

was, however, offered on contract basis and not on regular basis. The petitioner filed the present writ petition and on 29.9.2008 this Court passed an interim order permitting the petitioner to join service pursuant to the aforesaid letter without prejudice to his rights to claim regularization in the present petition.

5. The claim of the petitioner is that the Recruitment and Promotion Rules which were issued on 27.1.1997 did not contain any provision permitting the State Government to make appointment on contractual basis. It was only on 3rd July, 2008 that a fresh set of Recruitment and Promotion Rules was issued, which permitted recruitment to be made on contract basis. It is contended by Shri M.A.Khan, learned counsel for the petitioner, that the Rules of 2008 could not be made applicable in the case of the petitioner wherein the post was advertised in the year 2002, screening and skill test held in the year 2007 and the petitioner selected on 9.6.2008. It is also contended that the other persons selected in the same process as Steno-typist(s) but posted in other departments were given regular appointment whereas the petitioner who happened to be posted in the Irrigation and Public Health Department was offered the appointment on contract basis only.

6. The stand of the State is that the offer is in accordance with the rules as framed on 3rd July, 2008 and the appointment

of the petitioner was made thereafter on 1.9.2008 and the petitioner has no right to claim regular appointment.

CWP Nos. 5763/10, 6190/10, 7137/10, 7440/10, 7813/10 and 8336 of 2010.

7. The petitioners in the aforesaid petitions are all Trained Graduate Teachers (Medical). On 5.7.2002 the Board issued an advertisement inviting applications for different posts in various departments and 273 posts of TGT (Medical) in the pay scale of Rs.5480-8925 were advertised. The petitioners applied for the said post and they alongwith others appeared in the written test conducted on 15.09.2002. The result of the written test was declared on 4.10.2002 and the petitioners were successful in the screening/written test. The petitioners were thereafter called for interviews on various dates in the months of October and November, 2002 and on 10.12.2002 the Board recommended the names of 267 candidates including the petitioners for appointment to the post of TGT(Medical).

8. In the meantime, the H.P. State Assembly was dissolved and elections were announced and as such model code of conduct came into operation. A fresh Government came into power on February, 2003. The new Government was of the opinion that the selection made earlier was not fair and therefore no offer of appointment was made to the petitioners. Thereafter, the petitioners alongwith other candidates filed original applications before the erstwhile

H.P.State Administrative Tribunal praying that the appointments be made in accordance with the merit drawn up by the Board as per the procedure prescribed under the Rules. The matter remained pending in the erstwhile H.P.State Administrative Tribunal for many years.

9. In the meantime, the State Government referred the matter to the Enforcement Department for inquiry/investigation. A detailed inquiry was conducted and nothing illegal was found in the selection of candidates applying to the post of TGT (Medical). The petitioners were, however, denied appointment. In December, 2007 elections were again held and power changed hands again. Thereafter, the matter was re-examined again and it appears that the Government took a decision to offer appointments to those people who had been selected pursuant to the advertisement issued in the year 2002. Letter Annexure P-3 dated 16th June, 2008 shows that the Government decided to offer appointment to the candidates if they withdrew the Court cases filed by them. The petitioners accordingly withdrew the Court cases but they were appointed only on contract basis and not as regular TGT(Medical). Their grievance is that they should have been given regular appointment.

10. The teachers had earlier also filed a petition in representative capacity wherein it was ordered that the petitioners should file writ petitions on individual basis. The

petitioners then filed individual writ petitions. In these cases the petitioners were selected in December 2002 but the decision to offer them appointment was taken by the Government on 16th June, 2008. The Rules as they stood earlier did not envisage contract employment as a means of employment. Fresh Rules were promulgated on 12.10.2009 and for the first time these Rules also recognized contract employment as a means of recruitment.

CWP Nos. 1054/10, 5554/10, 5555/10, 5556/10, 5557/10, 5558/10, 5559/10, 5597/10, 5613/10, 5614/10, 5616/10, 5735/10, 5737/10, 5738/10, 5739/10, 5740/10, 5766/10, 5767/10, 6563/10, 6833/10, 6893/10, 6908/10, 6909/10, 6910/10, 601/11 and 982/11

11. The petitioners in all these writ petitions are also trained graduate teachers on the non-medical side. The facts in their case are virtually identical to those of Trained Graduate Teachers (Medical). The posts were invited vide the same advertisement issued on 5.7.2002. The written test was conducted in the month of October, 2002 and the result was declared on 4.10.2002. Interviews were held from October, 2002 to 5th December, 2002 and result wherein the petitioners were declared successful was declared on 11.12.2002. The petitioners herein had also filed original applications before the erstwhile Tribunal which were pending but in their cases the decision to offer appointment was not taken earlier. In their cases there was some doubt with regard to the fairness of the selection. Though the results were declared in the year 2002

the Government ordered a fresh inquiry in the year 2009 and this inquiry committee found that as far as the present petitioners are concerned, except for one petitioner, the appointment of the others was not tainted and recommended the appointment of all the petitioners except petitioner Shri Kamlesh Kumar. As far as this petitioner (Kamlesh Kumar) is concerned he filed CWP No. 3796 of 2009, which was allowed by this Court and it was held that the petitioner Kamlesh Kumar was also entitled to be offered appointment and therefore, he is also to be treated as a non-tainted candidate.

12. Counsel appearing for the petitioners in all these cases have urged that in view of the fact that the selection was made much earlier the Government had to apply the Rules as they existed on the date of issuance of advertisement and they had to be given regular appointment and could not be given contractual employment. On the other hand Shri Vivek Thakur, learned Additional Advocate General for the State submits that the advertisement and the rules only lay down the eligibility criteria and it was not stated in the advertisement that regular appointment would be offered. According to him it is within the power of the employer to offer employment on regular or contractual basis. He further submits that the select list does not confer any right of appointment upon the selected candidates and therefore they cannot seek regular appointment. It is argued that the Government has taken a policy decision to

offer appointments to these persons only on contract basis and this being a policy matter the same cannot be adjudicated upon by this Court. A number of judgements have been cited by both the sides.

13. The Apex Court in **Indian Railway Service of Mechanical Engineers Association and others vs. Indian Railway Traffic Service Association and another 1993 Supp (4) SCC 473** held that the employer could amend the rules by specifying the percentage for the feeder categories and this was a matter of policy and no Court or Tribunal can compel the Government to change the policy. In my view this judgement is not at all applicable since the question as to whether such amendment could be made after issuance of the advertisement and after the selection process was virtually complete was not considered by the Apex Court.

14. In **Union of India and others vs. K.V.Vijeesh (1996) 3 SCC 139** the selected persons were not offered appointment. According to the Government it had to absorb certain surplus staff and therefore, it took a policy decision to reduce the number of vacancies with a view to adjust the staff which would become surplus. The Apex Court upheld the contention of the Government. This judgement is also not applicable to the facts of the present case because admittedly there is no reduction in the number of posts available.

15. Shri Vivek Thakur, learned Addl. A.G has placed reliance on the judgement of the Apex Court in **Dr. K.Ramulu and another vs. Dr. S.Suryaprakash Rao and others (1997) 3 SCC 59**. In that case panel for promotion was not prepared. The stand of the Government was that it had taken a conscious decision in the year 1988 to amend the Rules of 1977 and therefore, it had decided not to fill up any such vacancy till such amendment was made. A Commission was set up by the Government to examine the anomalies in the Rules of 1977 and thereafter recruitment was made pursuant to the Rules which were promulgated in the year 1996. The petitioners in that case submitted that they should have been appointed as per the Rules of 1977. The Apex Court held as follows:-

“13. It is seen that since the Government have taken a conscious, decision not to make any appointment till the amendment of the Rules, Rule 3 of the General Rules is not of any help to the respondent. The ratio in the case of, Ramesh Kumar Choudha v. State of M.P. is also not of any help to the respondent. Therein, this Court had pointed out that the panel requires to be made in accordance with the existing Rules and operated upon. There cannot be any dispute on that proposition or direction issued by this Court. As stated earlier, the Government was right in taking a decision not to operate Rule 4 of the General Rules due to their policy decision to amend the Rules.

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15. Thus, we hold that the first respondent has not acquired any vested right for being considered for promotion in accordance with the repealed Rules in view

of the policy decision taken by the Government which we find is justifiable on the material available from the record placed before us. We hold that the Tribunal was not right and correct in directing the Government to prepare and operate the panel for promotion to the post of Assistant Director of Animal Husbandry Department in accordance with the repealed Rules and to operate the same."

16. Reliance is also placed on the judgement of the Apex Court in **State of A.P. and others vs. D.Dastagiri and others (2003) 5 SCC 373**, wherein the Apex Court held as follows:-

"4.. Be that as it may, even if the selection process was complete and assuming that only select list remained to be published, that does not advance the case of the respondents for the simple reason that even the candidates who are selected and whose names find place in the select list, do not get vested right to claim appointment based on the select list. It was open to the State Government to take a policy decision either to have prohibition or not to have prohibition in the State. Certainly, the Government had right to take a policy decision. If pursuant to a policy decision taken to impose prohibition in the State there was no requirement for the recruitment of Constables in the Excise Department, nobody can insist that they must appoint the candidates as Excise Constables. It is not the case of the respondents that there was any mala fides on the part of the appellants in refusing the appointment to the respondents after the selection process was complete. The only claim was that the action of the appellants, in not appointing the respondents as Excise Constables, was arbitrary. In the light of the facts that we have stated above, when it was open to the Government to take a policy decision, we fail to understand as to how the respondents can dub the action of the respondents as

arbitrary, particularly, when they did not have any right as such to claim appointments. In the absence of selection and publication of select list, mere concession or submission made by the learned Government pleader on behalf of the appellant-State cannot improve the case of the respondents. Similarly, such a submission cannot confer right on the respondents, which they otherwise did not have."

17. In my opinion this judgement is also not applicable since in that case the policy decision taken by the Government was to enforce the policy of prohibition and therefore, there was no need to appoint any Constables in the Excise Department. In this case there is no policy decision not to make the recruitment. The posts were lying vacant and in fact it is the petitioners who in fact were offered appointment, on the basis of the earlier selection.

18. The Apex Court in **P.Mohanan Pillai vs. State of Kerala and others (2007) 9 SCC 497** held as follows:-

"9. Why such a decision had been taken after the publication of the result of the written examination and after calling 36 candidates for interview is not known. Why the Company intended to enlarge the zone of consideration from 1: 3 to 1: 4 has also not been disclosed. Why the cut-off mark was also lowered remained a mystery.

10. It may be that in a given situation, a decision of the State may be changed, but therefor good and sufficient reasons must be assigned. The Company failed to do so. The decision taken in this behalf smacks of arbitrariness. It prejudiced the candidates like the appellant.

11. It is now well-settled that ordinarily rules which were prevailing at the time, when the vacancies arose would be adhered to. The qualification must be fixed at that time. The eligibility criteria as also the procedures as were prevailing on the date of vacancy should ordinarily be followed."

19. The Apex Court in **Arjun Singh Rathore and others vs. B.N.Chaturvedi and others (2007) 11 SCC 605** held that the vacancies occurring prior to the promulgation of the new Rules have to be filled in according to the old rules even though the interviews were held after the promulgation and notification of the new Rules.

20. In **Mohd. Raisul Islam and others vs. Gokul Mohan Hazarika and others (2010) 7 SCC 560** the Apex Court dealing with similar questions held as follows:-

"37. There can be no dispute that as a matter of policy the Government may take a conscious decision not to fill up vacancies for justifiable reasons, but at the same time, having started a process of selection under the unamended Rules, it cannot take the stand that it still was entitled not to make appointments of persons from amongst the candidates selected in terms of the process initiated under the old Rules. In fact, in the instant case, the recommendation made by the APSC was submitted to the Government on 22nd June, 1986, before the amended Rules came into operation on 21st July, 1986 whereby the quota system was discarded. In such a situation, in our view, the decision in K. Ramulu's case cannot be applied to the facts of this case.

38. We are unable to agree with Mr. Hansaria that the High Court had committed an error in relying on the unamended Rules since the law has been well settled that

the process of selection commenced on the basis of the Rules then in existence would continue under the said Rules, even though the Rules may have been amended in the meantime. Accordingly, the seniority of members of the service would, no doubt, be governed under Rule 19, but the selection process has to be completed under Rule 4 in order to attract the provisions of Rule 19. The vacancies for which the advertisement had been published in 1984 were directed to be filled up by the High Court on the basis of the unamended Rule 4 which provided for quota between promotees and direct recruits and, accordingly, placed 45 of the direct recruits immediately below the first 45 promotees out of the list of 129 promotees in keeping with the said quota system for the year 1986.

39. We agree with the view taken by the High Court which has been reiterated by Mr. Goswami in keeping with the well-established principle that once a process of selection is started on the basis of the existing Rules of recruitment, the said Rules will continue to govern the selection process, notwithstanding any amendment which may have been effected to the said Rules in the meantime."

21. **In State of Bihar and others vs. Mithilesh Kumar (2010)**

13 SCC 467 the Apex Court held as follows:-

"19. Both the learned Single Judge as also the Division Bench rightly held that the change in the norms of recruitment could be applied prospectively and could not affect those who had been selected for being recommended for appointment after following the norms as were in place at the time when the selection process was commenced. The Respondent had been selected for recommendation to be appointed as Assistant Instructor in accordance with the existing norms. Before he could be appointed or even considered for appointment, the norms

of recruitment were altered to the prejudice of the Respondent. The question is whether those altered norms will apply to the Respondent.

20. The decisions which have been cited on behalf of the Respondent have clearly explained the law with regard to the applicability of the Rules which are amended and/or altered during the selection process. They all say in one voice that the norms or Rules as existing on the date when the process of selection begins will control such selection and any alteration to such norms would not affect the continuing process, unless specifically the same were given retrospective effect?"

22. In fact the matter actually stands squarely covered by a judgement of a learned Single Judge of this Court in **Parveen Kumar and others vs. State of H.P. and others, 2011(1) Him.L.R.298** wherein the learned Single Judge held that the Rules as applicable on the date when the process was started would be applicable and the petitioners were entitled to regular appointment on the basis of the said Rules.

23. There can be no manner of doubt that in normal course it is the Rules which are in existence when the selection process starts i.e. advertisement issued, will be applicable and the appointments have to be governed by these Rules. No doubt selection by itself does not give an indefeasible right to the selected candidates to be appointed. As pointed out by the Apex Court in a number of decisions that the State may for various reasons take a policy decision not to fill up the posts and unless it is shown that the policy is arbitrary or

discriminatory the Court would not normally interfere in such policy decision. However, it is for the Government to show that it has taken such a conscious decision.

24. In the present case, the advertisement process started in the year 2002 and the only reason that appointments were not made was that a change in Government took place and some doubts were raised with regard to the fairness and validity of the selection procedure. The candidates were not at fault. They legitimately expected that they would be appointed in the year 2002 or early 2003. To their ill-luck the Government changed and the whole selection process was put under scrutiny. Even after inquiries, none of the selections has been found to be illegal.

25. At the time when the selection process was initiated and selection made the Government had not even thought of making contractual appointments. All appointments under Government are expected to be made as per the Recruitment and Promotion Rules and if the Rules do not permit, the Government cannot make contractual appointments. The decision to make direct recruitment on contractual basis was taken at a later stage. The argument of Shri Vivek Thakur, learned Addl.A.G. that when the Government has the power to appoint it also has the power to appoint on contractual basis cannot be accepted. Government appointments are made in accordance with the Rules framed under Article 309 of the

Constitution of India. When such Rules are framed the Government is expected to act and make appointments in accordance with the Rules. If the Rules do not permit the Government to make appointments on contract basis they must be made on regular basis.

26. It has been contended on behalf of the State that since there was irregularity in the selection process the amended rules would apply. This argument is an argument of desperation. In the present case, the State itself has found that the process of selection was valid and legal in all the cases and only the selection of a few teachers under the Non Medical category was found to be tainted. Those persons were not offered appointment and are not the petitioners before this Court. It is only those candidates whose selection is not in doubt who are before this Court. Why should these employees, who were selected as far back in the year 2002, be denied the benefit of regular appointment as per the Rules existing at that time? In my view, there is no reason why should they be denied regular appointment.

27. The last submission made on behalf of the State is that the panel is valid only for a year and had expired in 2003. This contention is totally without force because it is not disputed that when the appointments were not made the selected candidates approached the Tribunal and thereafter this Court and the matter was always sub judice and therefore in view of

the judgement of the Apex Court in **State of U.P. vs. Ram Swarup Saroj AIR 2000 SC 1097** the plea that the select list remain valid only for one year is totally unsustainable. In any event since the State has made appointments on the basis of the selection made in the year 2002 it cannot now turn around and say that the panel was not a valid panel. In view of the above discussion, I am of the considered view that the petitioners should have been offered appointment on regular basis and not on contract basis.

CWP No. 7376 of 2010.

28. The petitioners in this case are TGT (Non Medical). When they were not appointed for many years despite being selected they applied for and were offered appointments either on contract basis or as Para Teachers. In the year 2009 they alongwith other TGT (Non Medical) were offered contractual appointments. Since they were already working on contract basis or as Para teachers and would be regularized earlier they did not accept the fresh appointment. Their plea is that in case regular appointment is given to them as TGT (Non Medical) they are willing to join on regular basis. In my view, the petitioners are entitled to the relief claimed by them since they did not accept appointment on contractual basis as they were already working and were better placed than the candidates who were offered appointments only in the year 2009. The petitioners in this case, already had the benefit of some years of

service, and were justified in refusing fresh contractual appointments in the year 2009. They are also entitled to be considered teachers on regular basis w.e.f. the date when the other non medical teachers were given regular appointment.

29. In view of the above discussion, all the writ petitions are allowed and the petitioners except the petitioners in CWP No. 7376 of 2010 shall be deemed to be regular employees of the State Government from the date of their appointment. As far as the petitioners in CWP No. 7376 of 2010 are concerned they shall be deemed to be regular teachers from the dates their colleagues were offered contractual appointment in the year 2009 and have now to be treated as regular employee. Their earlier appointment on contractual basis or as para teachers will not be counted towards seniority and their seniority shall be governed as per the merit list of the Subordinate Selection Board. The petitioners shall be entitled to all consequential benefits.

30. The writ petition is allowed in the aforesaid terms and the respondent-State is directed to grant all financial benefits to the petitioners latest by 31st March, 2012 failing which the State shall be liable to pay interest @ 9% per annum.

No costs.

14th November, 2011.
TM

(Deepak Gupta)
Judge.