SED-EDU7010/13/2023-5EDU7 I/948300/2024

Government of Punjab
Department of School Education
(Education-7 Branch)

ORDER

Memo No. SED-EDU7010/13/2023-5EDU7 **Dated:-** 14/10/2024

Sh. Nirmal Singh and others had filed CWP No. 1180 of 2021 beforethe Hon'ble Punjab and Haryana High Court with the prayer for issuance of writ of certiorari for quashing the order (Annexure P-1) dated 18.09.2020 issued by respondent no.2, rejecting the claim of petitioners for regularization of their services. The petitioners had further prayed for issuance of directions to the respondents to regularize their services on the ground that the services of entire teaching staff working under "RashtriyaMadhyamikSikhiyaAbhiyan" have been regularized and absorbed in the Education Department w.e.f 01.04.2018. The above mentioned writ petition has been disposed offalongwith bunch of petitions by the Hon'ble High Court vide its common order dated 13.08.2024. The relevant portion of the order dated 13.08.2024 reads as under:

1. "Learned counsel for the petitioners submit that the question of law raised in the present petitions was also raised in CWP No. 16932 of 2024 titled as Ashish Kumar and others Vs. State of Punjab and others, decided on 23.07.2024, wherein, the State has undertaken to consider the claim of the petitioners for regularization of their services and to pass appropriate order within a period of eight weeks.

2. Learned counsel for the petitioners further submit that the State had undertaken in Ashish Kumar and others (supra) that in case it is found feasible to grant the relief to the petitioners, the same will be granted otherwise, due reasons will be mentioned for not accepting the claim of the petitioners, which will be conveyed to the petitioners, hence, the present petitions be also disposed of in terms of Ashish Kumar and others (supra).

3. Learned State counsel raises no objection for the grant of the said relief.

4. Keeping in view the above, the present petitions are disposed of with the direction to the respondent-State to consider the claim of the

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petitioners for absorption with the Education Department, Punjab and appropriate speaking order be passed on the said claim within a period of eight weeks from the date of receipt of copy of this order and in case, it is found feasible to grant the relief, the same be granted and in case it is not found feasible to grant the relief, due reasons for arriving at the said conclusion be mentioned in the speaking order, which reasons be conveyed to the petitioners.

5. It may be noticed that while passing the order, the judgment of this Court in CWP No. 7764 of 2015 titled as Balbir Singh and others Vs. State of Punjab and others, decided on 04.12.2018 be kept in mind which judgment has already been upheld in LPA No. 706 of 2020 titled as State of Punjab and others Vs. Balbir Singh and others, decided on 29.03.2022."

Whereas, in due compliance with the above-said order dated 13.08.2024 passed by the Hon'ble High Court, the claim of the petitioners as raised vide present Writ petition have been duly deliberated in the light of official record vis-à-vis factual position. The petitioners vide present Writ petition have prayed that petitioners are working on the various non-teaching posts, on yearly contract basis under the Samagra Shiksha Abhiyan, Punjab, since last 14 years. The petitioners have claimed in their Writ petition that they have been appointed through the proper channel, however, their services have not been regularized as that of similarly situated teaching staff.

And whereas in response to the contentions raised by the petitioners, it is necessary to consider the backdrop of the petitioners creation of Rashtriya Madhyamik Shiksha Abhiyan (RMSA) and its preamble, regarding their appointments. It is essential to mention here that these posts came into existence with the RMSA. All the employees of the respondent-Society were appointed on contract basis as per the Para 8.2.5 of Chapter VIII of the Framework for Implementation of Rashtriya Madhyamik Shiksha Abhiyan Scheme, which clearly states that:

"The scheme will be implemented through the existing society and administrative setup of SarvaShikshaAbhiyan. While there will be a separate State Mission Director as Nodal Officer at State Level to be designated by the States, the same Mission Director for SSA in Union Territories will act as Mission Director for RashtriyaMadhyamikShikshaAbhiyan. The State Mission Director will be supported with a Technical Support Group to be established with the appointment of consultants on contractual basis as per rules and as per the requirements subject to the ceiling on management costs and other supporting Officers and Staffs. Keeping in mind the efficient & effective cost of administration, the

existing capacity and strength of the administrative set up of the SSA in the larger states will be enlarged at all level (From district level to the State level), if required and the additional manpower will be deployed. In the smaller states and Union Territories the same administrative set up of SSA may be utilized to implement the scheme. However, in these states and Union Territories also, the additional manpower at any level may be deployed, if considered necessary. All recruitments under the scheme will be done by the Society only".

In the financial year 2018-19, a new scheme namely 'SamagraShikshaAbhiyan' had been introduced by Government of India. The SamagraShiksha Scheme is an integrated scheme for School Education covering the entire gamut from pre-School to Class XII. The scheme aims to ensure that all children have access to quality education with an equitable and inclusive Classroom Environment, which should take care of their diverse background multilingual needs, different academic abilities and make them active participants in the learning process. It subsumes the three Schemes of SarvaShikshaAbhiyan (SSA), RashtriyaMadhyamikShikshaAbhiyan (RMSA) and Teacher Education (TE).

Whereas with regard to the claim of the petitioners, it is clarified that, the petitioners were appointed on yearly contract basis under the RashtriyaMadhyamikShikshaAbhiyan (RMSA) Scheme in view of the Framework for Implementation of said Centrally Sponsored Scheme. It is clearly mentioned in framework for Implementation of the above mentioned Scheme that in the states this centrally sponsored scheme is implemented through separately registered societies with staff deputed from the State Government or appointed on contract basis. The contractual appointment of the petitioners was to be renewed every year on the basis of their performance, keeping in view work and conduct as per conditions mentioned in their appointment letters.

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And whereas, the Government of Punjab has notified policy dated 07.10.2022, "POLICY FOR WELFARE OF ADHOC, CONTRACTUAL, TEMPORARY TEACHERS (NATION BUILDERS) AND OTHER EMPLOYEES IN SCHOOL EDUCATION DEPARTMENT". The said policy has been framed for the purpose of grant of continuation to the contractual/ adhoc/ temporary employees etc. and giving them security of tenure, subject to good work and conduct, till the age of fifty-eight (58) years. Such employees will be placed on a post, which shall not be a

cadre post, by creating special cadre of posts personal to them in the rank that they are working on and the said posts be carried by them on whichever post they are consequently placed and would stand automatically abolished when they are relieved on attaining the age of fifty eight (58) years. The said policy has superseded all previous instructions/policies issued regarding regularization of services of employees/workers.

And whereas, as per the terms and conditions of the notification dated 07.10.2022, the Department of School Education has issued a public notice vide which employees were informed to fill online data after login into their account at the e-punjab school portal. All the petitioners have applied online at the e-punjab school portal after login in their account. Later on, the contractual employees working under SamagraShikshaAbhiyan demanded regularization on same terms as of the Notification dated 09.10.2018 as granted to the teaching staff of SSA/RMSA.

And whereas, the claim of the petitioners regarding absorption in the Department of School Education treating them equivalent to the teachers is not acceptable. The petitioners are working on yearly contract basis against posts in the Society and not against any sanctioned post of the Department. The notification dated 09.10.2018 was issued for Teaching Staff of all cadres (ETT, Master, Lecturer, Head Master and Principal) working under SarvaShikshaAbhiyan and RashtriyaMadhiyamikShiksha Authority (including Adarsh and Model Schools). Since the notification dated 09.10.2018 was issued only qua the teachers, as a consequence, not applicable in the case of other staff i.e. Non-Teaching Staff. Thus, the petitioners not being members of above mentioned cadre, cannot claim any parity on the basis of notification dated 09.10.2018.

And whereas, the petitioners have placed reliance upon judgment passed by the Hon'ble High Court of Punjab & Haryana in CWP No. 7764 of 2015 titled as "Balbir Singh &Ors. Vs State of Punjab &Ors". The said judgment of the Hon'ble High Court has been perused and the same is not applicable on the facts of the present case and the petitioners cannot draw any benefit out of the said judgment. In Balbir Singh's case (supra), the petitioners (therein) were claiming regularization in the 'Punjab ICT

Education Society', on the same post, where they were working. Whereas, in the present case, petitioners are claiming regularization against the sanctioned post in the Department of School Education, whereas they are the employees of the Society and also working in the Society as per terms and conditions of the Society.

And whereas, the services of the petitioners cannot be regularized in the Department being non-teaching staff as petitioners are working on contractual basis under Society. Moreover, the petitioners being employee of society don't fall in the definition of civil servant. Hence, any decision to regularize their services in the Department would be illegal and would be construed as a back door entry of recruitment and the same will be in violation of the judgment passed by the Hon'ble Supreme Court of India in "Secretary, State of Karnataka Vs Uma Devi", (2006) 4 SCC 1.

And whereas, the petitioners are working on contract basis in the society. The Hon'ble Supreme Court of India in "State of UP Vs Anand Kumar Yadav", (2018) 13 SCC 560 has held in the case of "Official Liquidator Vs Dayanand" (2008) 100 SCC 1 [as also held in State of Karnataka Vs Uma Devi and Ors. (2006) 4 SCC 1] that contractual employees by their nature of appointment cannot work against the sanctioned post. They have a fixed tenure and such appointment is designed to come to an end after completion of such term. Merely because such employees have even worked on posts similar to those of regular government employees would give them no right of regularization.

Whereas it is settled law that a mere appointment on temporary/daily wage basis cannot constitute a right for the employees to claim regularization or permanent absorption.Moreover the claim of petitioners of CWP No 16932 of 2024 titled as Ashish Kumar and others Vs State of Punjab and others have already been considered and rejected vide order dated 19.09.2024.

Thus, in view of the above facts and circumstances, I, Kamal Kishor Yadav, IAS,Secretary to Govt. of Punjab, Department of School Education, is of the considered view that there is no substance in the stand of the petitioners in their Writ petition filed by the petitioners regarding their claim. Hence, the claim raised by the petitioners is not

based on any merit or any condition in their appointment letter, thus, the same is hereby ordered to be rejected.

Kamal Kishor Yadav, IAS
Secretary to Government of Punjab
Department of School Education

Dated, Chandigarh
13.10.2024

Endst. No. SED-EDU7010/13/2023-5EDU7 **Dated:-** 14/10/2024

A copy is forwarded to the following for information and necessary action.

1. Sh. Nirmal Singh son of Late Sh. Joginder Singh House No. 1102, Ranjit Nagar, Kharar District Mohali and others. (Through web site)
2. All District Education Officer (SE/EE), Punjab through website
3. Admin Branch, Samagra Shiksha Abhiyan, Punjab.
4. Deputy Manger, MIS Wing, office of Director General School Education, Mohali is requested to upload the copy of the present speaking order on the website.

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Superintendent
Education-7 Branch,
Department of School Education