

THE HIGH COURT OF SIKKIM: GANGTOK

(Civil Extra Ordinary Jurisdiction)

S.B: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

WP(C) No. 24 of 2017

1. Shri Ganesh Bhandari,
Son of Shri Punya Prasad Bhandari,
Resident of Tareythang,
East Sikkim.
2. Smt. Amrita Sharma,
Wife of Atmaram Sharma,
Resident of Pacheykhani,
P.O. Pakyong,
East Sikkim.

..... **Petitioners**

Versus

1. State of Sikkim
Represented by and through
The Chief Secretary,
Government of Sikkim,
P.O. Gangtok,
East Sikkim.
2. The Principal Secretary,
Human Resource Development Department,
Government of Sikkim,
P.O. Gangtok,
East Sikkim.
3. The Joint Secretary,
Human Resource Development Department,
Government of Sikkim,
P.O. Gangtok,
East Sikkim.
4. The Secretary,
State Public Service Commission,
Government of Sikkim,
P.O. Gangtok,
East Sikkim.

5. The Secretary,
Department of Personnel,
Administrative Reforms & Training,
Government of Sikkim,
P.O. Gangtok,
East Sikkim.

..... **Respondents**

Application under Article 226 of the Constitution of India.

Appearance:

Mr. A. Moulik, Sr. Advocate with Mr. Ranjit Prasad, Advocate for the Appellant.

Dr. Doma T. Bhutia, Additional Advocate General, Mr. S.K. Chettri, Government Advocate for the Respondents no. 1, 2, 3 and 5 and Mr. Zigmee Bhutia, Standing Counsel for Education Department.

Mr. Bhusan Nepal, Advocate for Respondent No.4.

Date of hearing : 9.11.2020, 19.11.2020 and 23.11.2020

Date of judgment: 14.12.2020

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. The writ petition alleging violation of petitioners' fundamental rights guaranteed under Article 14, 16, 19 and 21 as well as Article 300A of the Constitution of India, has been preferred by the two petitioners who have been issued office orders no. 278/HRDD/ADM and 279/HRDD/ADM (impugned office orders) by which the Human Resource Development Department (HRDD), had cancelled their promotion orders no.

06/DIR/HRDD(SE)/PGT and 07/DIR/HRDD(SE)/PGT both dated 14.05.2015 (promotion orders) with retrospective effect. By the impugned office orders, they were also repatriated to their respective schools as Graduate Teachers and directed to refund any excess payment made on account of their promotion. Pursuant thereto, the petitioners were issued show cause notice no. 277/ADM/HRDD dated 04.07.2016 (impugned show cause notice) by the HRDD, directing them to show cause why their co-terminus service should not be terminated and why inquiry should not be initiated against them for concealing the facts.

2. Heard Mr. A. Moulik, learned Senior Advocate for the petitioners, Dr. Doma T. Bhutia, Additional Advocate General, for respondents no. 1, 2, 3 and 5 (State respondents) and Mr. Bhusan Nepal, learned Counsel for respondent no. 4, i.e., the State Public Service Commission (Commission).

3. Mr. Moulik submits that the petitioners were eligible to be considered for the posts of Post Graduate Teachers through direct recruitment and as such, they applied for the said posts by filling in the form meant for in-service candidates, genuinely believing that they themselves were in-service candidates as they had been working as Graduate Teachers on co-terminus basis. He, therefore, submits that filling the wrong form was only procedural in nature and the petitioners should not be terminated for innocent violation of the procedural requirement.

He relied upon ***Udai Shankar Triyar vs. Ram Kalewar Prasad Singh & Another***¹, to submit that non-compliance with any procedural requirement should not entail automatic dismissal or rejection. These defects and irregularity, according to Mr. Moulik were procedural and should not therefore be allowed to defeat their substantive rights or to cause injustice. He submitted that the Commission which is a public authority entrusted with public functions was required to act fairly, reasonably, uniformly and consistently in public good and in public interest. He relied upon ***Central Board of Secondary Education & Another vs. Aditya Bandopadhyay & Others***², for the said proposition. It was his case that the State respondents had failed to follow the principles of natural justice before issuance of the impugned office orders cancelling their appointment as Post Graduate Teachers with retrospective effect. He relied upon ***S.L. Kapoor vs. Jagmohan & Others***³, to explain the concept of natural justice in administrative law. Mr. Moulik also submitted that the records would reveal that both the Commission, as well as the State respondents, had grossly failed, in as much as, they had issued forms without any clear indication for what purpose it was, misleading the petitioners to fill the wrong forms and therefore, they could not take advantage of their own wrong.

¹ (2006) 1 SCC 75

² (2011) 8 SCC 497

³ (1980) 4 SCC 379

4. The learned Additional Advocate General, *per contra*, contended that the writ petition was not maintainable as no fundamental or statutory right of the petitioners had been violated. She relied upon ***Union of India & Another vs. Arulmozhi Iniarasu & Others***⁴ and submitted that a writ of mandamus can be issued by this court only when there exists a legal right in the writ petitioner and corresponding legal obligation on the state. Only because an illegality has been committed, the same cannot be directed to be perpetuated. It is trite law that there cannot be equality in illegality. It was her submission that the petitioners have not approached this court with clean hands and therefore, the writ petition should be dismissed. For the said purpose, she relied on a judgment of this Court in ***The Principal Secretary, Department of Commerce and Industry vs. Ms. Mobile Automobile Pvt. Ltd.***⁵. The learned Additional Advocate General also submitted that when the petitioners were not eligible to be promoted and they were given promotion, it was their duty to inform the Government that they were wrongly promoted. She submitted that there was deliberate suppression of facts on the part of the petitioners and therefore, they could not claim a right to continue in service. She relied upon ***Jainendra Singh vs. State of Uttar Pradesh***⁶.

⁴ (2011) 7 SCC 397

⁵ (SLR) 2018 Sikkim 1005

⁶ (2012) 8 SCC 748

5. The petitioners were appointed as Graduate Teachers (Sanskrit language) on 04.03.2003 and 01.03.2003 on co-terminus basis under HRDD. They were posted at Government Senior Secondary Schools, Singtam and Linkey, both East Sikkim respectively, during the year 2014-15. It is the petitioners' case that pursuant to an advertisement dated 04.06.2014, published in Sikkim Express on 08.06.2014, they applied for the posts of Post Graduate Teachers through direct recruitment. It is their case that they fulfilled all the criteria required by the advertisement and thus, they applied in the "prescribed application forms" for the said posts. Along with the forms for in-service candidates, they also annexed their appointment orders appointing them on co-terminus basis as Graduate Teachers in Sanskrit along with the no objection certificates from their employer and other documents as required. The petitioners submit that the authorities scrutinised their application forms and having found them eligible they were invited to appear for the written examination and thereafter, for viva-voce on 13.04.2015. They were successful in the written examination as well as viva-voce. Both the petitioners were issued "promotion orders" and posted as Post Graduate Teachers (Hindi) in Lingee Senior Secondary School and Tikalall Niraula Senior Secondary School, respectively. The petitioners have also annexed their promotion orders. After they received their promotion orders, the petitioners joined their service on

20.05.2015 and they have worked there continuously. However, on 04.07.2017, the impugned office orders issued by the respondent no. 3, were received by them cancelling their promotions with retrospective effect and repatriating them to their respective old posts as Graduate Teachers. They were also directed to refund the excess payment made on account of their promotion. It is their case that the petitioners were paid for the services they have rendered as Post Graduate Teachers. The petitioners were also issued impugned show cause notice, directing the petitioners to show cause as to why their co-terminus service should not be terminated and inquiry not be initiated against them for concealing facts about their qualifying service and for submitting the in-service application forms when they were required to fill the forms for direct recruitment. The petitioners responded to the show cause notice by submitting their replies dated 18.09.2016 and 27.09.2016. The petitioners plead that they were not aware of any other advertisement apart from the advertisement no. 09/SPSC dated 04.06.2014 published in Sikkim Express for direct appointment (advertisement for direct recruitment) by the Commission. They further plead that they were not aware of the two separate forms available for promotion and direct recruitment. As the advertisement for direct recruitment did not have any restrictions for application by in-service teachers like the petitioners, holding co-terminus post, they applied for direct recruitment to the posts

of Post Graduate Teachers. The petitioners also aver that a combined written test for Post Graduate Teachers for both direct recruitment as well as promotion was held, and a combined result published on 18.03.2015, in which both of them featured as successful candidates. The petitioners aggrieved by the impugned office orders and impugned show cause notice sent a legal notice to the State respondents. However, the State respondents in their reply dated 06.02.2017 declined to entertain their grievances. It is in these circumstances that the petitioners have approached this court praying for the following:

- “(i) A writ or order or direction or declaration that:
 - (a) the common show cause notice issued to petitioner nos. 1 and 2 bearing no. 277/Adm/HRDD dated 4/7/16 (annexure-P6) and
 - (b) Office Order nos. 278/HRDD/Adm and 279/HRDD/Adm both dated 4.7.16 (Annexures-P4 and P5) are set-aside, quashed and cancelled.
- (ii) A writ or order or direction or declaration that the petitioners are regular Government servants as PGT (Hindi) they are entitled to all benefits of employment including seniority in their respective posts.
- (iii) A writ or order or direction or declaration that the promotion orders of the petitioners as PGT (Hindi) be treated as their appointment orders in the regular establishment either by conversion or otherwise as will be found fit.
- (iv) Costs of the proceedings;
- (v) Any other Writ or Order or direction or declaration as this Hon’ble Court may deem fit and proper in the facts and circumstances of the present case.”

6. In so far, prayers (i)(a) are concerned, the learned Additional Advocate General submitted that the petitioners have now been appointed as Graduate Teachers on a regular basis

vide office order no. 646/ADM/HRDD dated 24.07.2019 and as such, the prayers are infructuous. Mr. A. Moulik submits that in fact the petitioners have been so appointed. A copy of the office order dated 24.7.2019 has been filed by the respondent no. 2 in its affidavit dated 24.11.2020, with the leave of this court. It reveals that by the office order dated 24.07.2019, the word “co-terminus” appearing in the initial appointment order in respect of both the petitioners have been removed and they have been treated as appointed on regular basis. In the circumstances, the impugned show cause notice seeking to terminate their co-terminus appointment would be infructuous and consequently, there would be no need for a direction that the show cause notice bearing no. 277/ADM/HRDD dated 04.07.2016 be set aside.

7. The State respondents have filed a counter-affidavit dated 19.08.2017. According to the State respondents, the Human Resource and Development Department (respondent no.3) forwarded two requisitions bearing no. 567/DIR/HRDD(SE) dated 28.02.2014 and 568/DIR/HRDD(SE) dated 28.02.2014 to the Commission. It is the case of the State respondents that the petitioners, pursuant to the advertisement for direct recruitment, applied against the 5 posts of Post Graduate Teachers (Hindi) to be filled up by in-service candidates. It is the specific case of the State respondents that the Commission forwarded a merit list of selected candidates after completing the selection process vide

letter dated 298/SPSC/2015 dated 20.04.2015 recommending the selected candidates. The petitioners were selected for the posts of Post Graduate Teacher (Hindi) through in-service quota and accordingly, appointment orders dated 14.05.2015 were issued to the petitioners. Subsequently, when it was revealed that the petitioners had worked only on co-terminus basis and therefore, not eligible to apply under promotion/in-service candidates' quota, their appointments were cancelled vide order dated 04.07.2016.

8. The Commission has filed their counter-affidavit. According to them, the Commission received a requisition dated 28.02.2014 from the respondent no.3, HRDD, for filling 127 posts of Post Graduate Teachers including 16 posts of Post-Graduate Teachers for Hindi on direct recruitment basis. The Commission also received another requisition on the same date from the HRDD for filling 35 posts of Post Graduate Teachers in different subjects including 5 posts for Post Graduate Teacher (Hindi) for promotion/in-service candidates. Pursuant to the first requisition, advertisement for direct recruitment was published by the Commission inviting applications from eligible candidates. On 10.06.2014, the Commission issued employment notice no. 51/SPSC/2014 dated 10.06.2014 inviting applications from eligible in-service candidates (advertisement for promotional candidates) for filling up 35 posts of Post Graduate Teachers in

different subjects including Hindi by way of promotion. The commission decided to conduct a combined examination for both direct recruitment as well as promotion on 13.11.2014. It is the case of the Commission that pursuant to the advertisement for in-service candidates, the petitioners applied against the 5 posts of Post Graduate Teacher (Hindi) to be filled by in-service candidates. The written examination for both direct recruitment and promotion was conducted on 13.11.2014, in which 154 candidates were shortlisted for classroom demonstration and viva-voce test which was held on 11th, 13th and 15th of April 2015, after which the Commission finalised the merit list. On 20.04.2015, a final list of selected candidates for direct recruitment as well as for promotion were recommended by the Commission for appointment to the posts of Post Graduate Teachers. It is the specific stand of the Commission that the petitioners were recommended for appointment under the in-service category as both had applied as in-service candidates.

9. On 28.02.2014, the HRDD wrote to the Commission forwarding filled in proforma statement for filling up the posts of Post Graduate Teachers (subject wise) through direct recruitment. Sixteen posts were available for Post Graduate Teachers (Hindi) as against the total of 127 posts. The relevant notification no. 02/GEN/ADM/HRDD dated 07.01.2011 for manpower Management Guidelines of Post Graduate Teachers

(Guidelines notification) was also enclosed. The Commission has not furnished a copy of the proforma with regard to direct recruitment.

10. On the same date, i.e. 28/02/2014, the HRDD wrote to the Commission forwarding filled in proforma statement for filling up the posts of Post Graduate Teachers (subject wise) through promotion. Five posts were available for Post Graduate Teacher (Hindi) as against the total of 35 posts. The Guidelines notification was also enclosed. The proforma for promotion required twelve information to be filled. The proforma forwarded by the HRDD to the Commission, is as under:

1	Name of Post and Department	Post Graduate Teacher (HINDI)
2	No. of posts to be filled up	05
3	Pay band and Pay Grade	PB(2) 9300-34800+5000/-GP
4	Total number of Posts of this grade in the Department with their nomenclature if any	
5	List of officers already holding posts in this grade, including those on Adhoc basis, in order of seniority duly indicating mode of recruitment to this grade.	
6	Complete upto date seniority list of persons in lower grade with full service particulars	Enclosed with Notification no; 02/Gen/Adm/HRDD Dated; 07/01/2011
7	Upto date confidential reports for the number of years as per rules, of all the persons who are to be considered for promotion.	
8	Whether Vigilance Clearance certificates in respect of all persons to be considered for promotion are enclosed.	
9	Whether Annual Property Return in respect of all persons to be considered for promotion is enclosed.	

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10	Whether Departmental Clearance certificates of all eligible persons are enclosed.	
11	Number of date of Notification along with copy thereof under which the relevant promotion rules including up to date amendments are published	Notification No; 04/Gen/Adm/HRDD Dated; 21.03.2011
12	Total number of enclosures. 1. List of Officers mentioned at Sl. No.5 2. Seniority list vide SL. No; 6 3. ACRs 4. Vigilance Clearance (<i>sic</i>) 5. Departmental Clearance (<i>sic</i>) 6. Annual property return 7. Others (please verify) 8. Grant total	

11. It would be relevant to note that details to be filled in the proforma, especially in serial no. 6 to 12, would have given the Commission the relevant information of those candidates who were eligible to be considered for promotion. According to the proforma, complete upto date seniority list of persons in lower grade with full service particulars were enclosed by the HRDD and forwarded to the Commission.

12. The advertisement for direct recruitment required the following eligibility criteria:

“3. (a) ELIGIBILITY CRITERIA

- | | | |
|-----------------------------------|------|---|
| Minimum Educational Qualification | (i) | Master’s Degree in respective subject with B.Ed. |
| | (ii) | Master Degree without B.Ed. with 50% and above for General Category and 45% and above for reserved category in respective subject can also apply. On selection, they shall be given conditional appointment and they should acquire the B.Ed. qualification within 3 (Three) years, failing which their service is liable to be |

terminated.

- (iii) Should have attained the age of 18 years, but should not have exceeded the age of 30 years.
- (iv) In the case of Government servant not more than 40 years.
- (v) 45 (Forty five) years for presently working (temporary including those working on adhoc, contract, Co-terminus) under Human Resource Development Department, Govt. of Sikkim, Substituted vide corrigendum No. 617/DIR/HRDD/SE dated 05.04.2014.
.....”

13. The advertisement for promotional candidates invited applications from “*In-service Primary Teachers and Graduate Teachers working in the Government School having eligible criteria for filling up for following posts of Graduate Teachers and Post Graduate Teachers*”. A master’s degree in respective subjects with B.Ed. and eight years of regular service as Graduate Teacher was the eligibility criteria for the posts of Post Graduate Teacher (Hindi). The candidates were required to go through a written examination and after qualifying, to appear for classroom demonstration/personality test. Application form was required to be downloaded from the official website of the Commission.

14. On 08.07.2014 and 28.07.2014, the petitioners no. 1 and 2 respectively, filled the application forms for in-service applicants. This was the form required to be filled by promotional candidates pursuant to advertisement for promotional candidates. In serial no.13 of the form, the petitioners gave their designation as Graduate Teacher (Sanskrit). However, they did

not mention that they were appointed on co-terminus basis. The petitioners have stated that they had enclosed a copy of their co-terminus appointment letters along with the forms. There is no specific denial about this fact in the counter-affidavits filed by the Commission as well as the State respondents.

15. According to the Commission, the petitioners also submitted no objection certificates, dated 30.06.2014 and 18.07.2014, along with the application forms. The no objection certificates certified that the HRDD had no objection for the petitioners appearing in the interview for the posts of Post Graduate Teachers being conducted by the Commission.

16. The written examination was conducted on 13.11.2014. On 18.03.2015, a notice for viva-voce and classroom demonstration was issued based on the evaluation of marks obtained by the candidates in the written examination. Both the petitioners' roll numbers were featured in the list. Those candidates selected in the written examination were to be called for viva-voce and classroom demonstration on a date to be announced later. They were asked to come with original certificates of all relevant documents listed there. The viva-voce and classroom demonstration took place on 11th, 13th and 15th of April 2015. On 18.04.2015, the Commission issued a notice declaring ninety-six candidates qualified on the basis of the

written examination, classroom demonstration and viva-voce. The petitioners were also selected.

17. On 20.04.2015, the Secretary of the Commission wrote to the respondent no. 2, stating that pursuant to their letters, both dated 28.02.2014, for direct recruitment and promotion, the Commission advertised the posts in the local newspapers/dailies as well as in the Commission's website. After receiving applications, the Commission issued admit cards to 1738 candidates and conducted the written examination on 13.11.2014 and out of which, 154 candidates were shortlisted for classroom demonstration and viva-voce. The classroom demonstration and viva-voce interview were conducted on 11th, 13th and 15th April, 2015. On the basis of the marks obtained in the written examination and classroom demonstration/viva-voice test, 96 candidates were provisionally recommended for appointment. Petitioner no.2 featured in serial no. 53 and petitioner no. 1 featured in serial no. 56, in order of merit in the said list. They were both recommended for promotion. The letter also stated that the applications and other documents of the selected candidates were being forwarded and that the list was provisional subject to police verification report, medical fitness and verification of all required documents by the State government. It was also notified that all the original certificates

and documents as well as original admit cards were to be checked before issuing formal office order by the HRDD.

18. It seems that both the petitioners, satisfied that they fulfilled the eligibility criteria demanded in advertisement for direct recruitment for the posts of Post Graduate Teachers, filled the forms titled “Application Form for In-service” meant for promotional candidates. The form, which the petitioners were required to fill, was, however, the form titled “Application Form” meant for direct recruitment. There is no explanation from the Commission why they could not title them in any other manner to give a clear indication to the applicants that one form was for direct recruitment and the other for promotional candidates. Although, as per the learned counsel for the Commission, there was a difference in the two forms, in as much as, it was only in the form titled “Application Form”, that local Employment Card Number was sought which would reflect that it was meant for direct recruitment. It is the petitioners’ case that as they were in service, in co-terminus basis, they presumed that they were required to fill the form titled “Application Form for In-service”, filled the details therein and submitted to the Commission. Even in the forms filled by the petitioners they did not disclose that they were appointed on co-terminus basis in item no. 13, which sought information about their present designation. On scrutiny of their application forms, it is apparent that the Commission

called them for written examination and classroom demonstration/viva-voce. If the Commission had gone through the information provided by the State respondents through the proforma giving an updated seniority list of persons in the lower grade with full service record, it is apparent that the petitioners would have not even have been invited to sit for the written examination. Apparently, the Commission completely ignored the information given by the State respondents. Again, there is no explanation as to why the Commission thought it fit to hold a combined examination for direct recruitment as well as promotion. There is also no explanation as to why the Commission thought it fit to publish the result of the written examination of both direct recruits as well as promotional candidates together. However, the notice dated 18.03.2015, publishing the list of candidates selected for viva-voce and classroom demonstration did point out that this was for “both direct & In-service promotional candidates”. Further, a list of thirteen documents was sought from the candidates to be brought with them in the original. Items “i” and “j” in the said list were as follows: -

“i. Minimum eight years of service experience certificate as regular graduate teacher (in case of in-service candidates of HRDD from respective district Joint Director) and In-service candidates shall invariably bring existing substantive post’s office order.

j. Work experience certificate (if any, in case of direct candidates)”

19. Admittedly, the petitioners did not have eight years of service experience as regular Graduate Teachers and therefore, they being considered as being in-service candidates for the promotional posts did not arise at all. Obviously, the petitioners had not furnished such certificates.

20. However, it transpires that both the petitioners were called for, sat for the viva-voce and were also selected by the Commission. The Commission, thereafter, published a notice dated 18.04.2015 declaring ninety-six candidates qualified on the basis of written examination, classroom demonstration and viva-voce once again for both direct and promotional candidates. The petitioner no.1 featured in serial no. 56 and the petitioner no.2 in serial no. 53. In the notice dated 18.04.2015, both the petitioners were shown as promoted and not as directly recruited. The petitioners' appointment orders dated 14.05.2015 also clearly records that they were promoted to the posts of Post Graduate Teachers (Hindi). It is possible that there may have been confusion created by the method adopted by the Commission in the process of recruitment. It is also, therefore, possible for the petitioners to have got confused by the wrong form for in-service candidates they filled for direct recruitment on the presumption that they too were in-service candidates. However, it is apparent that both the petitioners were absolutely clear that they were applying for the post of Post Graduate

Teachers through direct recruitment. Thus, when the petitioners read the notice dated 18.04.2015 showing them as qualified for promotion they ought to have been alarmed. However, the facts reveal that both the petitioners accepted the promotional orders without any demur or protest. They enjoyed the promotional posts, the salaries, and perks, till the State respondents realised that they had been promoted without even being qualified. The advertisement for the promotional posts required eight years of regular service as Graduate Teacher as eligibility condition, which they apparently and admittedly, did not possess.

21. The Commission is a commission under Article 315 of the Constitution of India for the purpose of fulfilling the functions as provided in Article 320 of the Constitution of India. It is the duty of the Commission to conduct examinations for appointment to the services of the State. The explanation given by the Commission for such gross failures are wanting. According to the learned counsel of the Commission, the petitioners were selected for promotion solely on the basis of the no objection certificates issued by the HRDD, dated 30.06.2014 and 18.07.2014, certifying that the department had no objection for the petitioners appearing in the interview for the posts of Post Graduate Teachers. The certificates, according to the petitioners, were furnished to the authorities along with the forms for in-service candidates they had filled and submitted. These

certificates said nothing else. The proforma submitted by the State respondents to the Commission for promotion provided them with an updated seniority list of eligible persons that could be considered. Clearly, this information was ignored. Failure of the Commission to ignore such relevant information, without anything more, is grossly and patently irresponsible. Conducting examination for all government posts is a serious affair. It is unfortunate that the conduct of the examination as well as the scrutiny of the petitioners has been lacking in the responsibility demanded of the Commission to fulfil its constitutional functions. It was also the duty of the State respondents to have verified the recommendations before issuing the promotion orders. More so, when the Commission had itself cautioned the State respondents against doing so. Apparently, the State respondents trusted the Commission's recommendation and gave effect to it by promoting the petitioners who were not even in the zone of consideration.

22. In such circumstances, the question is whether the prayers as prayed for in the writ petition could be granted in favour of the petitioners. Admittedly, both the petitioners do not have the necessary eligibility criteria of eight years of regular service required for the promotional posts of Post Graduate Teacher (Hindi). Admittedly, again the petitioners did not apply for the promotional posts. In the circumstances, the question of

them continuing their service in the promotional posts they held before the issuance of the impugned office orders, cancelling their promotion orders, does not arise.

23. That takes us to the next question raised by them as to the illegality of the impugned office orders, as apparently, no show cause or opportunity of hearing were afforded to the petitioners before their issuance. The impugned office orders cancelled the petitioners' appointment to the promotional posts of Post Graduate Teacher (Hindi). The promotion orders were issued to the petitioners apparently without even they applying for it or having the necessary qualifications. Therefore, it cannot be said that they had established right to be heard before the apparently illegal appointment orders dated 14.05.2015 were cancelled.

24. The petitioners have also prayed for a direction that they be treated as direct recruits Post Graduate Teacher (Hindi). The petitioners are Graduate Teachers holding Post Graduate Degrees. When they apply for any post, it is incumbent upon them to be careful and fill the right form for the right job. The records reveal that right from the submission of the forms for in-service candidates, the Commission has evaluated them as promotional candidates. According to the petitioners, pursuant to the advertisement for direct recruitment, they filled the forms and applied for the direct recruitment posts of Post Graduate

Teacher (Hindi). It is also their case that the petitioners were invited for viva-voce on 13.04.2015. Although, the petitioners have sought to make out a case that they became aware of the notices dated 18.03.2015 and 18.04.2015 after obtaining information under the Right to Information Act, 2005, there is no other notices by which the petitioners could have known that they had been called for viva-voce to be held on 13.04.2015, besides the said notices. There is also no explanation given by the petitioners as to how they accepted their promotional orders dated 14.05.2015, although they had not applied for it and admittedly, not qualified too. Even if the petitioners had been confused about the form they filled, at least on the receipt of office orders dated 14.05.2015, they ought to have realised that they had not been considered for the posts of direct recruitment. Even when the petitioners replied to the show cause notice they insisted that their promotions were on the basis of a selection procedure. However, the records reveal that they continued to enjoy the promotional posts of Post Graduate Teacher (Hindi) for more than a year and two months before the authorities realised their folly and rectified the same by issuing the impugned office orders cancelling their promotional orders. The writ petition was filed on 11.05.2017, almost after ten months after issuance of the impugned office orders dated 04.07.2016. The conduct of the petitioners are also wanting. It was incumbent upon them to have notified the authorities of their having wrongly promoted

them, although they had not applied for promotion, at least on the receipt of the promotional orders dated 14.05.2015. Much water would have flowed under the bridge from the time of the advertisement in the year 2014 till the filing of the writ petition in the year 2017. They have enjoyed more than a year's salary, perks for holding posts they were not even eligible for. This court is of the considered opinion that the petitioners have also disqualified themselves by their own error of judgment to their own detriment. They cannot at this juncture be considered for the direct recruitment posts advertised in the year 2014 as well. However, this would not be an impediment to them to be considered for either promotional or direct recruitment avenues in the future.

25. The only question left now is whether the petitioners should be directed to refund the excess payment made on account of their promotion. Besides the error of judgment of the petitioners, it is also apparent that both the Commission as well as the State respondents have been grossly irresponsible and wanting. It is an admitted fact that the petitioners have rendered their service during the period they served in the promotional posts of Post Graduate Teacher (Hindi) in their respective schools. Had it been a clear case of concealment of facts committed by the petitioners, which although alleged by the State respondents have not been proved, the issue would have

been different. The allegation of concealment of facts would in any way not hold much water as the State respondents have thought it fit to regularise the petitioners' co-terminus service in spite of issuance of the impugned show cause notice. In the circumstances, this court is of the considered view that the State respondents could not have demanded the refund of the excess payment made on account of their illegal promotions. However, it is apparent that there has been a loss of financial resources from the State exchequer due to the follies of the Commission and the State respondents. This court is of the opinion that it should be left to their wisdom to realize the amount from their erring officers, if found guilty.

26. The writ petition is partly allowed in the above terms and disposed.

27. No order as to costs.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting: **Yes/No**
Internet : **Yes/No**

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