

No.EDN-H(19)B(1)-14/2012-SMC-CC.

Directorate of Higher Education, H.P.

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Dated: Shimla-1, the 22nd Sept., 2016.

To

All the Deputy Directors of Hr. Education,
Himachal Pradesh.


Subject:-

Reg. CWP no. 8317 of 2014-Manorma Devi versus State of HP and
others and connected matters.

On the subject cited above, the State Government has examined the
matter relating to CWP No. 8317/2014-titled as Manorma Devi versus State of HP and
connected court cases in the light of Hon'ble High Court of HPs directions given in the CWPs,
ibid, and issued Order No. EDN-C-A(4)1/2011-VOL-III-L dated 05.09.2016 copy enclosed for
ready reference.

You are, therefore, directed to take necessary action in the matter to
comply with the directions contained in the Order dated 05.09.2016 issued by the Principal
Secretary Education to the Govt. of HP in letter and spirit, immediately.


This may be given TOP PRIORITY being COURT MATTER.


Director of Hr. Education,
Himachal Pradesh, Shimla.

Endst. No. As above dated Shimla- 171001, 22nd Sept., 2016

Copy for information & Necessary action to :

- 1 The Principal Secretary (Education) to the Govt. of Himachal Pradesh with reference to
letter No. EDN(D)1-1374/2014 dated 14.09.2016.
- 2 All the Principals Govt. Sr. Sec. Schools in Himachal Pradesh with the directions to
comply with the directions and communicate orders dated 05.09.2016 to all concerned
petitioners/ applicants whose CWPs/ OAs have been disposed of in the light of
judgment passed in CWP no. 8317/2014-Manorma Devi versus State of HP and
connected matters under intimation to this directorate.
- 3 The Superintendent (Internal) Legal Cell/ Transfer Cell/ Budget Branch.
- 4 The Incharge IT Cell with the directions to upload these instructions on departmental
website.


Director of Hr. Education
Himachal Pradesh, Shimla

EDN-C-A(4)1/2011-VOL-III-L
Government of Himachal Pradesh
Elementary Education Department

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In the matter of CWP No.8317/2014 a/w connected matters

CWP No. 8317 of 2014, titled Manorma Devi vs. State of H.P.
and others, and connected matters

..... Petitioners

Versus

State of Himachal Pradesh & others

..... Respondents

ORDER

The Hon'ble High Court vide its judgment dated 22-12-2014 disposed of the CWP No. 8317 of 2014 titled Manorma Devi vs. State of H.P. & ors. connected matters, with the following directions:-

"Keeping in view the facts and circumstances of the cases read with the urgency involved, we deem it proper to dispose of all these writ petitions at this stage by directing the respondents competent authority to examine and consider the cases of the writ petitioners sympathetically and make a decision within eight weeks. Interim directions granted in some of the writ petitions shall govern all the writ petitions and shall remain in force till the decision is made by the respondents."

I have gone through the entire record of the case. I have also perused the orders passed by the Hon'ble High Court in CWP No. 8317 of 2014 titled Manorma Devi vs. State of H.P. and others, and connected matters. In brief, facts of the case are the State Government had notified SMC policy on 17.7.2012 to engage teachers through the School Management Committees (SMCs) purely on period basis in tribal/difficult areas for the smooth instructional work of the schools in the said areas.

The above mentioned policy was notified in respect of Tribal/difficult areas, but in some of the schools situated in the area other than Tribal/difficult area, the S.M.C. had engaged the teachers on their own prior to notification of SMC Policy. These

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SMCs were never authorized by the State Govt. to appoint teachers and those appointees were being paid for by the respective SMCs at the local level. Moreover State Govt. is not even aware what procedure was followed by these SMCs and with what authority such appointments were made. Thereafter some of teachers so engaged filed the various writ petitions before the Hon'ble High Court and sought the relief for their continuance as such and also claimed the grant in aid from the government. All such cases were decided by the Hon'ble High Court vide its judgment passed in C.W.P. No. 3162/2013 titled as Harish Kumar V/S State. The Hon'ble High Court in CWP No. 3162 of 2012 and connected matters, decided on 25.10.2013, has passed the following orders:-

"Considering the opinion of the third Judge, all these petitions are disposed of on the following terms:

Re: Non-tribal Areas.

- a) *The relief claimed against the State Government to bear the liability of remuneration of the petitioner and similarly placed persons appointed on contract basis by the concerned SMCs in non-tribal areas, is rejected.*
- b) *The SMCs in non-tribal areas shall pay the remuneration to the teachers appointed by it on contract basis for the period they have worked regularly as per the terms specified in the contract.*
- c) *The State Government may consider of formulating a policy to compensate the SMCs in non-tribal areas by providing commensurate grant-in-aid in respect of contract teachers appointed by it due to fortuitous situation.*
- d) *The State Authorities shall make inquiry on case to case basis against the respective SMCs in non-tribal areas and take action, as may be warranted by law, including against the members of the SMC.*

Re: Tribal Areas:

- a) *The assurance given by the State through the learned Advocate General that the contract teachers appointed by the SMCs in tribal areas*

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will be paid remuneration as per the policy document, is accepted. The contract teachers appointed by the SMC in tribal areas would be entitled to receive amount as specified in the policy document, dated 17th July, 2012.

Re: Tribal and non-tribal areas:

- a) The relief of continuing the petitioners beyond the contract period and until the appointment of regular teacher by following R & P Rules, is rejected.
- b) The relief claimed by the petitioner to give similar benefit as given to PTA and Vidya Upasakas, is rejected.
- c) The State shall ensure strict compliance of the provisions of the Right of Children to Free and Compulsory Education Act, 2009, more specifically, Sections 25, 26 and 27 and the relevant Rules framed thereunder.

4. The State Government vide notification dated 16-08-2014 has extended the SMC policy dated 17-07-2012 to all schools in the state which were upgraded during the academic session 2013-14 and 2014-15 irrespective of the area in which they fall and to all sanctioned post of teaching cadre which have remained vacant for over two years from the date of issue of the said notification. When the process to fill up the posts started some of the teachers who were already engaged by the SMCs without following any procedure before the notification dated 16-08-2014 filed various writ petitions before the Hon'ble High Court in which they sought the relief that they may not be replaced and further claimed the grant-in-aid. While disposing of the applications in the CWP No. 8448/2014-D and CMP No. 18240/2014 the Hon'ble High Court in its order dated 18-11-2014 has directed the parties to maintain status quo till further orders.

5. All these cases were listed before the Hon'ble High Court on 22.12.2014 along with CWP No. 8317/2014 titled as Manorma Devi V/S State of H.P. and Ors. The Hon'ble High Court in present case i.e. CWP No. 8317/2014 dated 22-12-2014 titled as Manorma Devi V/S State of H.P. and Ors has directed the respondents-competent authority to examine and consider the cases of the writ petitioners sympathetically and

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make a decision within eight weeks.

6. The teachers engaged by the SMC prior to the SMC Policy have been engaged without following any procedure of R & P Rules of the respective categories of teachers whereas in the SMC Policy notified on 17-07-2012 and 16-08-2014, it has been explicitly mentioned under clause 7 & 8 of the SMC Policy that only those candidates who fulfils educational qualification in accordance with R & P Rules of respective categories shall be eligible to be engaged as teachers under SMC Policy. It has also been provided in the SMC Policy dated 17-07-2012 under Clause 3, 4 & 5 that such teachers shall be appointed after approval from respective Dy. Directors after following the transparent procedure after vide publicity etc. It has been further provided under clause 9 of the SMC Policy that the services of the said SMC provided teachers will automatically be terminated as and when regular / contract teacher appointed / transferred by the Government joins against the said post or after completion of the academic session of the institution, whichever is earlier. Clause 11 of the Policy specifically provides that the Grant-in-Aid is permissible only in favour of those Teachers, who have been provided by the SMCs after following these terms and conditions only.

7. The matter has been examined by the competent authority. In view of facts and circumstances of the instant case as stated in the previous paras, following orders are passed to comply with the orders of Hon'ble High Court in CWP No. 8317 of 2014, titled Manorma Devi vs. State of H.P. :-

- (a) the teachers engaged by local SMCs at their own level prior to notification of SMC Policy dated 17-07-2012 have no claim against Govt. of H.P. since no permission was granted by State Govt. to such SMCs to engage them and they are being paid for by the respective SMCs from their own funds. Their services shall automatically stand terminated on joining of regular/contract teacher appointed or transferred as per Rules.
- (b) the teachers engaged by the SMCs of concerned schools possessing educational qualification as per R&P Rules of respective categories

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mentioned under clause 7 of SMC Policy shall only be eligible for grant-in-aid from the date of their engagements under SMC Policy notified by the Government on 17-07-2012 further extended on 16-08-2014.

(c) the teachers who have been engaged by the concerned SMCs after following all the provisions of the clauses of SMC Policy notified on 17-07-2012 further extended on 16-08-2014 shall only be eligible for grant-in-aid.

(d) the services of SMC engaged teachers will automatically be terminated as and when regular / contract teacher appointed / transferred by the Government joins against the said post, or, after completion of the academic session of the institution, whichever is earlier

The orders be brought to the notice of all concerned.

(R.D. Dhillon)

Pr. Secretary (Education) to the
Government of Himachal Pradesh

Dated, Shimla-2. 5-09-2016

Copy to:-

1. The Advocate General, H.P. High Court, Shimla-1.
2. The Director of Higher/Elementary Education H.P. Shimla-1. He is requested to made available copy of orders to all the concerned petitioners.
3. The Under Secretary (Education-D) to the Govt. of Himachal Pradesh for information and necessary action.

Under Secretary (H.E. Edu.) to the
Government of Himachal Pradesh