

Subhash Kumar vs. State of H.P.

CWP No. 20377/2025

23.12.2025 Present: Mr. Avneesh Bhardwaj and Mr. R. L. Verma,
Advocates, for the petitioners.

Mr. Anup Rattan, A.G. with Mr. Raj Negi, Dy.
A.G. for the respondents.

CWP No. 20377/2025 & CMP No. 31646/2025

Notice. Mr. Raj Negi, learned Deputy Advocate
General, appears and waives service of notice on behalf of
the respondents.

2 The case of the petitioners is that they are
eligible to be appointed as JBT/TGT/PGT in the schools, in
the Education Department of Himachal Pradesh and they are
eligible for regular appointment as such as per Recruitment
and Promotion Rules, but the respondent-State instead of
resorting to regular appointment has opted for engagement
of teachers through School Management Committee since
long despite various directions passed by the Court to
replace them through regular appointee teachers in terms of
Recruitment and Promotion Rules.

3 It is further case of the petitioners that vide
judgment dated 14.8.2020 passed in **CWP No. 1728/2019,**
titled as Kuldeep Kumar & ors. vs. State of H.P. & ors.
(Annexure P-3), such appointments of SMC teachers were
quashed and set aside and the said judgment was assailed
by the State of Himachal Pradesh by preferring SLP (C) No.

12139/2020 (Annexure P-4), which was converted into **Civil Appeal No. 3815/2020, titled as State of Himachal Pradesh & ors. vs. Kuldeep Kumar & ors.** and was decided vide order dated 24.11.2020 (Annexure P-4 with following observations:

“We therefore, allow these appeals and set aside the judgment and order passed by the High Court. It is directed that the appointments made by SMCs in terms of Notification dated 17.07.2012 hold good for the purpose for which said appointments were made till regular appointments are undertaken in accordance with 2009 Rules.”

4 It has further been submitted by the learned counsel for the petitioners that SMC teachers had approached the Court earlier by filing **CWP No. 3162/2013, titled as Harish Kumar vs. State of H.P. & ors.**, along with connected matters, which was decided by Division Bench of this Court vide judgment dated, 25.10.2013 (Annexure P-10), whereby claim of SMC teachers was rejected in the following terms:-

“Re: Tribal and nontribal 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 petitioners to give similar benefit as given to PTA and Vidya Upasaks, 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.

Needless to observe that interim relief in the respective cases, if any, shall stand vacated forthwith in view of the disposal of the writ petitions.”

5 It has further been submitted that the SMC teachers had filed some other petitions for their regularization, which were decided by Division Bench of this Court vide judgement dated 30.10.2018 passed in **CWP No. 277/2017, titled as Subhash & ors. vs. State of H.P. & ors.** (Annexure P-11) rejecting their claim in the following terms:-

“7. Similarly, as the petitioners have not been appointed as per the Recruitment and Promotion Rules against the posts which presently are being manned by them, therefore, no direction for regularization of their services can be issued.

8. This Court in case No. CWPIL No. 157 of 2017 titled Court on its own motion Vs. State of H.P. & Ors., has directed the respondent - State to come out with a time schedule to fill up all the vacant posts in various schools of the State on regular/contract basis. Accordingly, subject to orders to be passed in the above mentioned writ petition i.e. CWPIL No. 157/2017, all these writ petitions are disposed of by directing that an endeavour be made by the State to fill up the vacant posts of teachers on regular basis within a period of one year and in the interregnum on contract basis within a period of six months. It is clarified that till the posts in issue are filled up by way of

appointment of teachers either on contract or regular basis, present petitioners shall be permitted to continue to serve. It is further clarified that the petitioners shall be entitled to participate in the process of selection for appointment on contract/regular basis subject to eligibility. It is made clear that continuation of the services of the petitioners as SMC appointees shall not confer any preferential right of appointment upon them.”

6 Learned counsel for the petitioners has submitted that in another judgment, dated 03.11.2020 passed in **CWPIL No. 157/2017, titled as Court on its motion vs. State of Himachal Pradesh** (Annexure P-12), the respondent/State was directed as under:-

“16. In view of the above submissions, the material placed on record and also having regard to the mandatory requirement of Article 21-A of the Constitution of India as well as Rule 20 of the Right of Children to Free and Compulsory Education Rules, 2010, we direct the respondents to take steps to fill up the various vacant posts of teachers in different cadres in the Government Schools within the State of Himachal Pradesh, strictly in terms of the above referred ‘Time Schedules A & B’ for Recruitment Process, as prescribed in Para-2 of the letter No.Per(AP.B)(15)-7/2015, dated 22.08.2016, addressed by the Additional Chief Secretary (Personnel) to the Government of Himachal Pradesh, Department of Personnel (Appointment-II), to all the Head of Departments/ Authorities in the State of Himachal Pradesh and also strictly in accordance with the statutory rules so framed, while making selections by the respondent-State in future.”

7 Admittedly, SMC teachers are appointed by the State of Himachal Pradesh to cope with emergent situation for providing teachers in the various schools, but dehors of Recruitment and Promotion Rules as is evident from Recruitment and Promotion Rules, notified vide notification dated 11.10.2009 (Annexure P-16 colly.)

8 Now, the respondent-State has amended Recruitment and Promotion Rules vide notification dated 17.2.2025 (Annexure P-9) providing therein 5% quota through limited direct recruitment for appointment of SMC teachers on regular basis or contract basis engaged under SMC policy dated 17.7.2012, amended from time to time.

9 It is further case of the petitioners that the respondent-State, instead of resorting to regular appointment as per Recruitment and Promotion Rules, is trying to accommodate SMC teachers, whose claims have already been rejected by this Court as well as the Apex Court being back-door entry and now vide communication dated 25.10.2025 (Annexure P-17) 1427 posts of different categories of TGTs, Shastri, DM, LT & JBT have been proposed to be filled from amongst in-service SMC teachers through limited direct recruitment in Education Department, which is in conflict with verdicts of the Hon'ble Supreme Court, referred supra as well as in **Secretary, State of Karnataka vs. Uma Devi, 2005 (4) SCC 1.**

10 Lastly, it has been submitted by the learned counsel for the petitioners that as on date, vide communication dated 25.10.2025 all vacant posts, which are in excess to even 5% quota provided for SMC teachers, are being proposed to be filled amongst SMC teachers/candidates, which is not permissible under law.

11 Learned Advocate General submits that the judgments passed by this Court have merged in the judgment of the Hon'ble Supreme Court, especially dated 14.8.2020 passed in C.A. No. 3815/2020, whereby SMC teachers have been permitted to be continued till regular appointments are undertaken in accordance with the Recruitment and Promotion Rules, 2009 and now the State, by carrying out amendment vide notification dated 17.2.2025, has introduced 5% quota for regular appointment of SMC teachers and thus exercise being undertaken by the State is in consonance with the Recruitment and Promotion Rules.

12 It has been submitted that the said provision has been introduced keeping in view the fact that SMC teachers are serving since 2012 onwards till date and out of them, maximum have crossed maximum age prescribed for appointment in the government service and for that reason only, age relaxation has also been provided to such SMC teachers in the Recruitment and Promotion Rules itself.

13 It has further been submitted by the learned Advocate General that the State has also undertaken process for regular appointment to the other categories providing 32.5% and 37.5% quota, made available for direct recruits and on batch-wise basis and through competitive examination.

14 Learned Advocate General has submitted that the petition is also not maintainable for want of impleadment for necessary parties i.e. SMC teachers working in various schools, as quota provided to them has been assailed in the present petition.

15 With the aforesaid submissions learned Advocate General submits that before passing any further order, the respondent-State be permitted to place on record its version by filing reply within seven days.

16 Reply, as prayed, be filed within one week.

17 List for further orders on 5.1.2026. In the meanwhile, any process undertaken by the respondent-State shall not create any right in favour of anybody including the respondent-State and that shall be subject to further orders to be passed in this writ petition.

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The applicants/petitioners are exempted from filing typed copies of Annexures P-1(colly.), Annexure P-2 and English translation of Annexure P-13 at this stage,

subject to filing the same within seven days, as and when directed to do so. It is made clear that the petitioners or his counsel shall not be permitted to refer the documents, which would not be legible. Applications are disposed of, in the aforesaid terms.

(Vivek Singh Thakur)
Judge

(Romesh Verma)
Judge

23.12.2025
(pankaj)