

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil)...../2012

(CC 12103/2012)

(From the judgement and order dated 17/11/2009 in CWP No.14232/2008 of The HIGH COURT OF H.P AT SHIMLA)

STATE OF H.P. AND ORS.

Petitioner(s)

VERSUS

NEK RAM AND ORS.

Respondent(s)

With I.A.1 (C/delay in filing SLP and office report)

Date: 05/09/2012 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s)

None

For Respondent(s)

UPON hearing counsel the Court made the following  
O R D E R

This petition is directed against order dated 17.11.2009 of the Division Bench of the Himachal Pradesh High Court whereby the writ petition filed by the respondents was allowed and the decision taken by the State Government that they shall not be entitled to the benefit of Memorandum dated 10.06.2005 was quashed. The operative portion of the order passed by the High Court reads as under:

"Consequently, the writ petition is allowed. Annexure A-2 dated 24.9.2005 is quashed and set-aside. The respondents are directed to permit the petitioners to exercise their option whether they would like to be regulated under letter dated 9.5.2006 or as per the terms and conditions of their contract which they have entered into in the year 2000. It is made clear on the basis of clarifications No.1 and 2 that the emoluments which the petitioners were getting before 9.5.2006, including merger of 50% dearness allowance with the basic pay shall not be reduced. In case the petitioners exercise their options to be governed under the order 9.5.2006, the consequences would ensue and they will be paid their salary as per this letter dated 9.5.2006. No costs."

Although, the case was taken up twice, no one has appeared on behalf of the petitioners.

We have carefully perused the record of the case including the averments contained in the application for condonation of delay. In paragraphs 2, 3 and 4 of the application for condonation of delay, the petitioners have made the following averments:

"2. The petitioner submits that after the judgment was delivered by the Hon'ble High Court, certified copy thereof was applied on 05.08.2010 through the office of the Advocate General and the same was made available on 13.08.2010. On receipt of the same the said judgment was taken up with the Finance Department of the Government. The Finance Department has observed that memorandum dated 10.06.2005 was applicable only to the regular employees. This letter was never applicable to the contract employees for the simple reason, that there is a

specific condition therein govern the relationship between employer and employees. Moreover, this letter was relevant only to the employees who were covered by the HPCS (RP) Rules, 1998. However, contract employees were not covered by these Rules as per Rule-2(2) of the said Rules.

3. That on 08.10.2010 matter was taken up with the Government with details of financial liabilities upon the petitioner State if these orders are implement.

4. That on 18.01.2011 the Government of H.P. Department of Education after obtaining finance department approval for filing Special Leave Petition has been received on 29.01.2011. The Law Department has advised as per direction the Hon'ble High Court passed in the CWP (T) No. 14232 of 2008 as nothing fruitful is going to be achieved by further agitation vide their letter dated 25.11.2011. Simultaneously, the matter was again taken up with the Law Department, who finally conveyed its approval to the petitioner State with the direction to explore the possibility to file Special Leave Petition."

In our view, the explanation given by the petitioners for delayed filing of the special leave petition, to say the least, is wholly unsatisfactory. Therefore, the petitioners' prayer for condonation of delay is rejected.

Even on merits, we are satisfied that the High Court had rightly declared that the respondents herein are entitled to the benefit of policy contained in Memorandum dated 10.06.2005 and the State Government was not justified in withdrawing the benefit of the policy contained in that Memorandum.

The special leave petition is accordingly dismissed on the ground of delay and also on merits.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master