**Before The Hon'ble State Administrative Tribunal At Shimla**

O. A. No:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Application Under Section 19 of the Administrative Tribunals Act, 1985

Shimla Applicant

\_\_\_\_\_\_ Through, Advocates

Respectfully Sheweth :

1. Particulars of the Applicant

As given in the Memo of Parties.

2. Particulars of the Respondents

As given in the Memo of Parties.

3. Impugned Order:

That the applicant is aggrieved by the impugned action of the respondents whereby they are not allowing the pay to the applicant equal to the regular counterparts on the same and similar post on the principal of 'Equal Pay for Equal Work' as per Government of Himachal Pradesh, Finance Department [Pay Revision Section] notification No. Fin-[PR]B[7]-1/98 dated 1st September, 1998 (page 44) under which the rules called the Himachal Pradesh Civil Services [Revised Pay] [First Amendment] Rules, 1998 have been framed and made applicable wef 1st January 1996, and also not allowing the salary to the applicant for the period of vacations.

The said impugned action is arbitrary, illegal, malafide, violative of the Constitutional Rights and natural justice and issued in colourable exercise of power.

4. Jurisdiction:

That the applicant declares that the subject matter is within the jurisdiction of this Hon'ble Tribunal.

5. Limitation:

That the applicant further declares that the application is within the limitation.

6. Facts of the Case:

6.1 That the applicant submits that he was initially engaged as Contract Junior Basic Training Teacher on contract basis through a prescribed proper procedure against the regular sanctioned post by the respondent department wef \_\_\_\_\_\_ at the fixed monthly salary of Rs. 1200/- plus allowances.

6.2 That ever since the applicant is performing the duties to the entire satisfaction of his superiors and students.

6.3 That the applicant is performing the duties equal to the regular counterparts and the qualification for both regular appointment and the contract/adhoc/temporary appointment is the same and similar and the applicant is possessing the qualification B.A., M.A. & B. Ed.

6.4 That the pay scale for the regular hand on the same post as per the Rules 1998 supra in the revised pay scale for the post of JBT is Rs. 4550-7220. As compared to this the applicant is being paid only a fixed salary of Rs. 1200 plus allowances for the same and similar type of job.

6.5 That it is pertinent to mention that when the applicant was initially engaged there was specific stipulation in the agreement that the applicant shall be paid monthly honorarium equal to of the basic pay in the pay scale of Rs. 1200/- fixed plus other allowances admissible at the station on the basic pay including HRA and CCA. The initial pay was thus equal to the scale of the regular hand in the pre-revised scale. And with the revision of the scale, the applicant was also entitled for the revised scale of Rs. 4550/- plus other allowances admissible at the station on the basic pay including HRA and CCA and other allowances.

GROUNDS

6.6 That feeling aggrieved by such an arbitrary, malafide, discriminatory and illegal actions of the respondents, the applicant seeks the indulgence of this Hon'ble Tribunal on the following grounds amongst others, which may be taken at the time of arguments, each one of which is without prejudice to and independent of others :-

(a) That the impugned action of the respondent is arbitrary, malafide, illegal, ultra vires, against the Article 39 (d) read with 14 and 16 of the Constitution of India, dehors the rules and regulations and against the natural justice.

(b) That the applicant was initially appointed against a vacant regular and sanctioned post. The post for the regularisation of the service of the applicant is available.

(c) That the qualification for the regular post is same and similar as for the temporary/contract post. The applicants have put in considerable period of their service so as to entitle them for regularisation against the regular post of JBT.

(d) That the nature of duty of the applicant is same and similar as that of the regular counterparts. Rather more duties are being extracted from the applicant.

(e) That there is qualititative and quantitative commonality in the nature of work being performed by the regular counterparts and by the applicant.

(f) That the applicant is entitled to the salary equal to his regular counterparts performing the same, similar and equal duties in accordance with the principles of law settled by the Hon'ble Apex court and this Hon'ble Tribunal in catena of cases.

(g) That the respondent department has chosen a novel method in getting services of teachers at cheaper rates. The job of the teachers can not be equated with that of manual labour since it is a dignified job carrying a status in the society. If the respondent department is taking the work from the applicant or other similarly situated persons in almost the same manner like regularly appointed teachers then there is hardly any basis for paying a lesser amount to him or them, as the case may be, only because they are termed as contract/adhoc/temporary teachers engaged on period basis. Engagement of this kind by the respondent department is simply an exploitation and against the principles laid down in Article 39 (d) of the Constitution which has been raised to the status of Fundamental Right inasmuch as violation of the Directive Principles of the State Policy violates Article 14 and 16. Therefore, the applicant is entitled to at least the minimum of the pay scale of regularly appointed teachers of the respondent department of the same rank.

(h) That it is also pertinent to mention here that such an action on the part of the respondents is also against the constitutional mandate enshrined in Article 21, 39 (f) and 45, which are the substantial goal of the state which ought to have been achieved by now. But exploitation of teacher by hiring them on cheap rates directly and substantially affect the quality of education being parted to the students studying under them.

(i) That the respondents are estopped due to their own act, deed and conduct. The principle of the Promissory Estopple applies against the respondents.

(j) That the impugned order is against the well settled principles of the law as laid down by the Hon'ble Supreme Court and this Hon'ble Tribunal in catena of cases.

(k) That the applicant is also entitled for the salary for the period of vacations.

7. Reliefs Sought:

That the applicant, therefore, prays that your Lordship be pleased to issue an appropriate writ, orders or directions to grant the following reliefs in favour of the applicant in the interest of justice:-

(a) Quash the impugned action of the respondents being arbitrary, malafide and illegal;

(b) Direct the respondents to pay at least the minimum of the scale in the Revised Pay Scale for the same post held by the regular counterparts, to the applicant wef date of initial appointment alongwith arrears and interest @ 18% thereon and all other consequential benefits as well as pay the salary for the period of vacations;

(c) Direct the respondents to produce all the relevant documents alongwith their reply for perusal by this Hon'ble Tribunal;

(d) Allow the cost of this O.A.;

(e) Pass such other order or directions as deemed fit and proper in favour of the applicant.

AND FOR THIS ACT OF KINDNESS, THE HUMBLE APPLICANT AS IN DUTY BOUND, SHALL EVER PRAY.

8. Interim Orders, If Prayed:

It is prayed that the respondent department be directed to grant provisional pay scale of regular counterpart to the applicant with immediate effect.

9. Details of Remedies Exhausted:

That the applicant submits that since the matter being of an urgent nature, there is no other alternative speedy and efficacious remedy available to him except to approach this Hon'ble Tribunal.

10. Matter not Pending with any Other Courts Etc:

That the applicant further declares that the matter regarding which this application has been made, is not pending before any court of law or any other Authority or any other bench of this Hon'ble tribunal.

11. Particulars of Court Fees:

Court fees worth Rs 50/- is attached herewith.

12. Details of Index:

An index containing the details of the documents to be relied upon is enclosed herewith.

Shimla Applicant

\_\_\_\_\_\_ Through, Advocates

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No: \_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

Affidavit in support of O.A. under Section 19 of the H.P. Administrative Tribunals Act 1985.

I,\_\_\_\_\_\_, do hereby solemnly, affirm and declare as under :-

1. That the accompanying O.A. has been prepared under my instructions.

2. That the contents of paras 1 to 12 of the accompanying application are correct and true to the best of my knowledge.

3. That I further solemnly affirm and declare that this affidavit of mine is correct and true to the best of my knowledge and no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the \_\_\_\_\_\_.

Deponent

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

O. A. No:\_\_\_\_\_\_ of 2004

Applicant

Versus

Respondents

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Shimla Applicant

\_\_\_\_\_\_\_ Through, Advocates

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

M. A. No:\_\_\_\_\_\_ /2004 in

O. A. No:\_\_\_\_\_\_ /2004

Applicant

Versus

Respondents

 M. A. under Rule 4 (4) (b) of HP Administrative Tribunal (Procedure) Rules 1986

Respectfully Sheweth:

1. That the applicant have filed the above mentioned O. A. in the representative capacity on behalf of the members of the above Association as per the list annexed to the O. A.

2. That on perusal of the above O. A. and documents therewith it is amply evident that all the members as per list annexed with the OA have common cause of action and common nature of relief prayed for by them and are desirous of joining in a single application as they have a common interest in the matter and necessary resolution passed in this behalf is also annexed alongwith the main O. A..

3. That interest of justice demands that the Association is allowed to file the O. A. in the representative capacity on behalf of all the interested members as per list annexed with the O. A. in the interest of justice.

4. It is therefore, most respectfully prayed that this application may be allowed in the interest of justice and the Association may be allowed to file the above O. A. in the representative capacity. Such other orders be also passed as deemed fit and proper in the facts and circumstances of the case.

Shimla Applicants

\_\_\_\_\_\_ Through, Advocate

**BEFORE THE HON'BLE STATE ADMINISTRATIVE TRIBUNAL AT SHIMLA**

M. A. No:\_\_\_\_\_\_ /2004 in

O. A. No: \_\_\_\_\_\_ /2004

Applicant

Versus

Respondents

Affidavit in support of M. A. under Rule 4 (4) (b) of HP Administrative Tribunal (Procedure) Rules 1986

I,\_\_\_\_\_\_, do hereby solemnly affirm and declare as under:-

1. That I am the president of the above association and duly authorised to file the present MA and am fully conversant with the facts of the case.

2. That the accompanying M. A. has been drafted under my instructions.

3. That the contents of paras 1 to 4 of the M. A. are correct and true to the best of my knowledge.

4. That I further solemnly affirm and declare that this affidavit of mine is correct and true, no part of it is false and nothing material has been concealed therein.

Affirmed at Shimla this the \_\_\_\_\_\_.

DEPONENT