

# **Redressal of Teacher Grievances through the Courts**

## ***A Comparative Study Across Nine States in India***



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## TABLE OF CONTENTS

1. Executive Summary.....	4
2. Study Overview - Scope And Methodology .....	8
3. Jharkhand.....	17
4. Karnataka.....	30
5. Madhya Pradesh .....	43
6. Mizoram .....	50
7. Odisha.....	54
8. Punjab And Haryana.....	62
9. Rajasthan .....	70
10. Tamil Nadu .....	78
11. Uttar Pradesh .....	89
12. Comparative Analysis Across States– Findings And Recommendations .....	96

## CHAPTER 1

### EXECUTIVE SUMMARY

This Report presents the analysis, findings and recommendations of a study conducted by the Centre for Law and Policy Research (“CLPR”) on the use of the courts for grievance redressal by teachers in government and government-aided private schools in nine States in India for the period from 2009 to June 2014. The study is based largely on an empirical analysis of the judgements of the High Courts in the nine States and attempts to further our understanding of the grievance redressal process for teachers by presenting a picture of (a) the types of grievances that cause teachers to approach the High Courts in their respective States and (b) how these grievances are then managed and resolved by the High Courts. The impetus for this study arose from a general perception that teachers and state education department officials spend a lot of their time in court trying to resolve teacher grievances. Thus, in addition to presenting our findings, we have also made some recommendations aimed at reducing the volume of teacher-related litigation in the High Courts, while at the same time ensuring that the legitimate concerns of teachers are addressed.

The nine States covered in this study are: *Jharkhand, Karnataka, Madhya Pradesh, Mizoram, Odisha, Punjab and Haryana<sup>1</sup>, Rajasthan, Tamil Nadu and Uttar Pradesh.*

This study involved the following components:

For each of the nine States –

- An analysis of the judgements of the High Courts that related to petitions filed by teachers of government and aided schools, using both quantitative and qualitative methods; and
- An analysis of any relevant Supreme Court judgements that related to teacher grievances and were appealed from the High Courts of the nine States covered in this study.

For three States (Jharkhand, Karnataka and Tamil Nadu) –

- A mapping of the entire grievance redressal process for teachers and, in particular, the trajectory that a grievance takes before it reaches the High Court. This portion of the study involved interviews with education department officials, heads of teacher unions and lawyers representing teachers in such disputes as well as a review of a sample of relevant judgements from the lower courts or tribunals where available.

The primary component of this study involved the analysis of High Court judgements, with the other two components (analysis of Supreme Court cases and mapping out the grievance redressal process for three States) being undertaken to supplement and inform the findings from the analysis of the High Court judgements.

The findings from this study are presented on the basis of three metrics that we have used to review and analyse teacher grievances:

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<sup>1</sup> Punjab and Haryana are dealt with together as the High Court of Punjab and Haryana has jurisdiction over teacher related disputes from both States.

- *Type of grievance:* The type of matter that caused the teacher to approach the High Court;
- *Outcome:* The outcome of the High Court judgement and, in particular, whether it was the teacher or the State that prevailed; and
- *Disposal period:* The time taken for conclusion of the dispute, which was measured as the time between the filing of the petition or the date of the impugned order being challenged and the date of the High Court's judgment on the matter.

Each of these three metrics has also been analysed in relation to the other. Thus, each of the State chapters looks into the relationship between the type of grievance and the outcome of the case and the type of grievance and the disposal period.

### **Summary of Findings**

Our key findings from this study can be characterized as follows:

- ***Case Volumes:*** The number of judgements related to teacher grievances that were revealed from our database searches varied significantly from state to State – with only 5 judgements in the case of Mizoram and over 6,000 for Karnataka. While a portion of these differences may be explained away by variations in size and population across States, these differences alone do not explain all the variations. While further research needs to be done in this area, we believe that some of the factors that may influence the volume of judgements include:
  - The tendency of the High Courts in some States such as Karnataka to club together and dispose a large number of related petitions in one judgement, which results in a higher rate of disposal of cases; and
  - The High Courts may be more accessible to teachers in some States than in others, depending on the resources and support (for example, from teacher unions) available for filing petitions and contesting cases in the High Courts.
- ***Types of Grievances:***
  - The types of grievances that caused teachers to approach the High Courts were very similar across the States. The two most predominant types of grievances related to service benefits, which constituted 47.01% of all cases reviewed, and grievances related to appointments, which constituted 33.2% of all cases reviewed.
  - While not as significant in terms of volume, there were a number of petitions filed by contract teachers and other teachers appointed on an ad-hoc basis some of which were appealed to the Supreme Court. Our review of the judgements suggests that most States do not have consistent policies with regard to contract teachers or even clear definitions of the types of teachers who would fall under these categories.
  - A significant proportion of petitions, particularly in Karnataka, were filed by teachers from aided schools. Their grievances typically related to service benefits and often involved questions of calculation of seniority, parity between teachers in aided schools

and teachers in government schools and, within aided schools, between teachers who held sanctioned and non-sanctioned posts.

- **Outcomes of Decisions:** In terms of the outcomes of decisions, there was no suggestion that the High Courts generally tended to favour either the teachers or the state respondents. On an aggregate basis, 31.88% of the cases reviewed were decided in favour of the state, 28.83% were decided in favour of teachers and 31.02% were remanded to the state respondents with directions to consider the grievance and arrive at a decision.<sup>2</sup> While there were some States where either the state or teachers prevailed in a significant majority of cases, it is difficult to draw any inferences from this data as to whether certain High Courts were particularly likely to favour teachers.
- **Disposal Periods:** There were huge variations in the time taken for conclusion of disputes across States. The State with the slowest disposal rate was Jharkhand where 52.54% of the cases for which this data was available took over 5 years to conclude. At the other end of the spectrum was Rajasthan where 83.9% of the cases for which this data was available were concluded within a year.<sup>3</sup> Further, most grievances that related to policy issues around appointments or service benefits tended to be decided faster than grievances that were of a more individual nature, such as service benefit cases relating to a late salary payment or a grievance related to pension benefits.
- **Alternative Grievance Redressal Fora:** Based on our mapping out of the grievance redressal process in Jharkhand, Karnataka and Tamil Nadu, there appear to be two additional fora for resolution of teacher grievances – grievance redressal sessions held by state education officers at the block and district levels and specialized tribunals that are constituted to hear either education related matters or grievances related to service matters for government employees. While further research is needed on these alternative fora, our initial findings suggest that if they function on a regular basis such fora have the potential to reduce the volume of teacher-related litigation in the High Courts and, at least with respect to less complex issues, provide teachers with a more accessible and efficient mechanism for redressal of their grievances.

## Summary of Recommendations

The following is a summary of our key recommendations aimed at improving the efficiency of the grievance redressal process for teachers in the courts. Each of these recommendations is discussed in greater detail in the final chapter:

### ***Clearer Guidelines on Eligibility Criteria for Appointments and Calculation of Seniority and Communication of these Guidelines by Education Department Officials to the Public:***

A number of cases arose from confusion over the appointment eligibility criteria and service related rules for teacher applicants and teachers in the various States studied. We believe that clearer rules on these issues would go a long way in helping teacher applicants understand the appointment eligibility criteria better and in helping teachers understand the service benefits to which they are entitled. Further, given the very large number of appointment and service benefit grievances in the States studied, clearer rules are also likely to reduce the amount of teacher related litigation on these issues.

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<sup>2</sup> The remaining 10% of cases had outcomes that included partial relief or were disposed of without an indication of the particular relief (or lack of relief) being granted.

<sup>3</sup> As discussed above, data on time periods was only available for a subset of the total number of cases analysed.

***Need for Implementing Decisions of the High Courts:***

One issue that struck us in reviewing cases from each of the States is that there were a number of cases with remarkably similar fact patterns that were heard by the High Courts. We believe that a lot of time and costs of teacher-related litigation could be saved if the State Governments were to implement the decisions of the High Courts for all similarly situated teachers rather than waiting for individual teachers to approach the High Courts in turn to get similar benefits.

***Consider increasing the Use of Alternative Grievance Redressal Fora for Addressing Teacher Disputes:***

In the course of our study, we came across two types of dispute resolution fora that could serve as alternatives to the High Courts. The first of these, which are described in the Karnataka and Tamil Nadu chapters, are grievance redressal sessions offered by state education officers at the block and district levels. The second of these types of fora are specialized tribunals that exist in some (but not all) states for addressing service related matters of government employees (of which teachers from government schools constitute a significant proportion) or for addressing education related matters. While both of these fora could potentially be helpful in bringing down the volume of teacher-related litigation, we do not currently have evidence as to whether this has actually been the case. We believe there is scope for further research into the nature and effectiveness of these alternative grievance redressal fora to study whether they have helped in terms of resolving teacher related grievances more efficiently and in reducing the burden on the High Courts.

## CHAPTER 2

### STUDY OVERVIEW - SCOPE AND METHODOLOGY

*“An education system is only as good as its teachers. Unlocking their potential is essential to enhancing the quality of learning. Evidence shows that education quality improves when teachers are supported – it deteriorates if they are not, contributing to the shocking levels of youth illiteracy captured in this Report.”*

UNESCO, EFA Global Monitoring Report, 2013 - 2014

#### I. Introduction

Teacher motivation is often considered to be one of the keys to enhancing the quality of an education system. This motivation, in turn, depends on a large number of factors – the perception of teaching as a profession, the pre- and post-service training offered to teachers, their working conditions, benefits and opportunities for professional development, to name a few. The National University of Education Planning and Administration (“NUEPA”) has initiated a study of the working conditions of teachers in primary and secondary government schools in 10 states in India. This Report is intended to supplement the NUEPA Study and focuses on one aspect of teacher working conditions – the process by which teachers in government schools and private schools that receive grant-in-aid from the government use the courts to redress their grievances. The Report is based largely on an empirical survey of court cases involving teacher grievances from the High Courts of nine States in India and attempts to provide some insights into the grievance redressal systems across these nine States using both quantitative and qualitative methods of analysis.

We believe that looking into the system for addressing teacher grievances is important for two reasons. First, the mechanisms available for redressal of grievances are a key component of one's working conditions. This study attempts to further our understanding of the grievance redressal process for teachers by presenting a picture of the types of grievances that cause teachers to approach the High Courts in their respective states and how these grievances are then managed and resolved by the High Courts. Second, there is a general perception that teachers and state education department officials spend a significant portion of their time in courts trying to resolve teacher grievances. One of the objectives of this study is, therefore, to understand the grievance redressal process for teachers with a view to making recommendations on how the courts can address and resolve teacher-related grievances more efficiently, while at the same ensuring that the legitimate concerns of teachers are addressed.

#### II. Organization of this Report

This introductory chapter details the scope and methodology used for this study. This is followed by nine chapters that detail our findings on teacher-related grievances in each of the nine States covered by this study. Finally, the concluding chapter compares and consolidates the findings across eight of these nine States<sup>4</sup>, and makes some recommendations aimed at reducing the volume of teacher-related litigation and improving the efficiency of the grievance redressal system as a whole. This study and our findings are largely descriptive in nature and we would caution against drawing any causal inferences

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<sup>4</sup> Mizoram is excluded from the inter-state comparison as our database search revealed only 5 cases in this State.

from the data. However, we have, in some cases, suggested possible hypotheses for the reasons behind some of our findings and have suggested these as areas for further research in the final chapter.

### III. Scope

The nine States covered in this study are: *Jharkhand, Karnataka, Madhya Pradesh, Mizoram, Orissa, Punjab and Haryana, Rajasthan, Tamil Nadu* and *Uttar Pradesh*. For each of these States, we have analysed all the judgements from the High Courts since 2009 that involve petitions filed by primary and secondary school teachers and teacher unions in government schools and in private schools that receive grant-in-aid from the government (hereafter “aided schools”). We have also analysed judgements from the Supreme Court that involved teacher related grievances from any of the nine States in this study. While the judgements from the High Courts have been analysed from both a quantitative and qualitative perspective, the cases in the Supreme Court have only been analysed qualitatively as there were not enough cases to enable a quantitative analysis.

In addition to analysing the data on High Court cases, we have looked at the grievance redressal process at the lower court and tribunal levels in three States – Jharkhand, Karnataka and Tamil Nadu. This is not intended to be an exhaustive or even representative analysis, but is instead based on information that we collected through state visits, interviews and a review of a random sample of decisions from tribunals, where available. The goal of this analysis is to provide a holistic picture of the entire grievance redressal process for teachers in three States to supplement the more detailed review and analysis of those disputes that end up being escalated and resolved through the High Courts.

The focus of the detailed quantitative and qualitative analysis in this Report has been limited to judgements of the High Courts. This is largely because reliable data on grievances decided by the district courts and lower courts are not available and cannot be searched on online databases. However, during the course of our study and, in particular, when mapping out the grievance redressal process for Jharkhand, Karnataka and Tamil Nadu, we learnt that the High Courts would indeed be the right forum to study because a majority of teacher-related grievances are filed as writ petitions in the respective High Courts which would make them the court of first instance. In some States, tribunals may be the first forum to hear grievances of teachers but the instances of such grievances going to the Tribunals are also miniscule. Even in those cases, teachers have the right to appeal the decision of the tribunal to the High Courts. Thus, our survey of High Court cases in these 9 States gives us a good description of all teacher related disputes that were escalated to the courts.

The time period for this study is restricted to the period from January 2009 to July 2014 and we have, therefore, only analysed cases of the High Courts and the Supreme Court that were disposed during this period. While this time period is intended to coincide with the enactment of the Right of Children to Free and Compulsory Education Act, 2009 (the “RTE Act”), the findings of this study should not be seen as indicative of teacher related litigation post enactment of the RTE Act. This is because our study presents a picture of cases that were disposed (as opposed to the cases that were filed or pending) by the High Courts and the Supreme Court during this period, which number includes grievances that were filed prior to the RTE Act. Indeed, in the High Courts of some States with a particularly slow rate of disposal of cases, many grievances filed after the enactment of the RTE Act may be yet to be disposed. Also, many of the cases filed involve issues that are completely unrelated to the RTE Act and thus the RTE Act may not be relevant in such cases.

#### **IV. Methodology**

This study involved the use of both quantitative and qualitative methods to present a landscape of the use of the courts for redressal of teacher grievances in the nine States. The quantitative segment of the study involved four stages:

- *Data Collection:* This stage involved sourcing of judgements of all cases from the High Courts of each of the nine states passed from January 2009 to July 2014 by or against teachers in government or government-aided schools.
- *Empirical Review and Tabulation:* This stage involved reviewing the judgements and tabulating certain characteristics of the judgements for each of the nine states in the form of summary tables for each State.
- *Coding and Analysis of the Data:* In this stage, we coded the empirical data from the summary tables for each State, in order to enable us to analyse the findings within and across States from the High Court judgements.
- *Comparing Findings Across States:* The final stage involved reviewing the findings for each of the States and consolidating these findings to present an aggregate and comparative picture of the grievance redressal process in the High Courts across all nine states.

The qualitative analysis involved:

- Understanding and categorizing the key types of grievances that were disposed by the High Courts of each of the nine States.
- Analyzing the main points in the judgements and reasons for the decisions passed by the Courts.
- A qualitative analysis of the Supreme Court cases that involved teacher-related grievances that were appealed from the High Courts of the nine States studied.
- Mapping out the entire grievance redressal process, and, in particular, the process before a case reaches the High Courts, for three States: Jharkhand, Karnataka and Tamil Nadu.

The methodology for the quantitative and qualitative portions of the study is set out below.

##### ***A. Quantitative Analysis:***

###### ***Stage 1: Data Collection***

We relied primarily on two data sources to obtain the judgements of the High Courts:

1) *World Bank Sourced Cases:* We were provided with a number of cases by the World Bank at the start of the project. These cases have been reviewed to the extent that they relate to litigation by teachers in primary and secondary schools in the relevant time period.

2) *Online Databases*: The complete set of judgements has been obtained through key word searches on the online database, Manupatra. A key word search of “teacher” and “school” in the relevant high courts for the relevant time period was found to yield the broadest and most relevant set of results. The search results were then reviewed in detail to weed out cases that were not relevant to this study. For example, cases relating to teachers in colleges, cases relating to teachers in unaided private schools and cases where petitioners happened to be teachers but had grievances unrelated to their profession or the school were some of the types of cases that had to be weeded out of the list. A similar search was also conducted on another online database, “India Kanoon,” to ensure that a search on a different data base did not yield a dramatically different set of results.

#### *Limitations in the Data Sources:*

While our searches have been thoroughly done, they may not cover every single reported judgement as there are limitations inherent in any key word search. In addition, there are a number of cases that are not reported and do not find their way to online databases. Finally, it is important to note that the judgements we have studied are in cases that were *disposed* by the High Courts during the relevant period as opposed to the number of cases that have been filed or are pending before the High Courts. Thus, to the extent that our findings give any indications of the volume of teacher-related litigation, one must keep in mind that this volume only provides the rate of disposal of cases.

For the above reasons, we do not claim to have done an exhaustive review of all High Court cases that involved teachers of government and aided schools in the nine States.

However, we believe that our searches did yield a broad cross-section of the types of grievances involving teachers in the nine States between 2009 and July 2014, and are, therefore, helpful in providing an accurate picture of (a) the different grievances that cause teachers to approach the High Courts and (b) how these grievances are managed and resolved in the High Courts.

#### *Stage 2: Empirical Review and Tabulation*

The cases from the High Courts were reviewed and organized in the form of summary tables that were prepared for each of the nine States. While every single judgement was read and analysed, the entries in most cells in the summary tables were kept fairly succinct and generic in order to be able to identify meaningful patterns from the data. However, additional information in particular cases was included in the “Remarks” column where needed and we used this information for purposes of the qualitative description of some of the key cases in each state. The following information for each case was collected and entered into the summary tables:

*Case Code*: This is the case identification number. The purpose of using the case number was to avoid repeating case entries. In situations where a number of cases were decided in one judgment (for example, a number of writ petitions dealing with a similar subject), a separate case number and entry was provided for each petition, but the summary table indicated that all of those cases were clubbed and decided in one group. In cases where the case number was absent, the citation from the Manupatra database has been indicated.

*Grievance Type*: While the types of grievances were refined during the course of our review, the broad categories that were ultimately used were:

- Appointment—grievances relating to the selection and appointment process of teachers
- Service Benefits—grievances arising from wage disputes, salary, pay scale, notional benefits for on-going employment, leave encashment, etc.
- Retirement Benefits—grievances over pension benefits (or the lack thereof) of retired teachers or their beneficiaries
- Promotion—disputes arising from application to a higher position/title of employment
- Regularisation—contract teachers, para teachers and other types of teachers who were appointed on an ad-hoc basis seeking the benefits of a permanent appointment. It is important to note that while regularisation disputes related to teachers who were already in the system, appointment related grievances were typically filed by teacher applicants.
- Termination—grievances arising from termination of employment, including reinstatements, or disputes over accepted/attempted withdrawal of resignation
- Contempt—disputes that arise from the state respondents’ non-compliance with a court order
- Transfer—grievances arising from an order to transfer a teacher to a different school
- Examination Standard—grievances arising from the conduct of the teacher eligibility test
- Criminal—dispute arising from criminal proceedings of any kind involving teachers and government or aided schools

*Origin Court:* This indicates the court in which the dispute originated. It was not always possible to discern the origin court from a reading of the judgement. However, a majority of the cases did originate in the High Courts as they are writ petitions. In some situations, the dispute involved challenging a prior order of the High Court (for example, the order of a Single Judge that was subsequently appealed and decided by a Division Bench).

*Petitioner:* This indicates the nature of the petitioner, who, in a large majority of the cases, were either teachers or applicants for teacher jobs. Where applicable, any special feature of the teachers or applicants were also indicated – for example, whether they belonged to a particular reserved category or were contract teachers.

*Respondent:* The cases did not always indicate the specific identity of the respondent and most cases involved multiple respondents not all of whom were named in the judgement. The “State and Others” was the respondent in a substantial number of cases. Where known, the specific governmental authority or department that was named as a respondent (for e.g., the District Superintendent of Education or the District Education Officer) was indicated in the summary tables. There were a small minority of cases where the respondents are private parties, such as other teachers in addition to government departments. In addition, there were some cases where the State had appealed a prior decision in favour of the petitioner teacher/teacher applicant and hence the teachers or teacher applicants were respondents.

*Deciding Court:* This was always the High Court in the relevant State.

*Decision:* This indicates the outcome of the case. While there were nuances to the outcomes, the primary types of decisions were (a) dismissed (favourable outcome for the respondent), (b) allowed (favourable outcome to the petitioner) or (c) remanded to the respondents to make a decision on the petitioner's case. There are also a handful of cases where the court said the decision would be based on a precedent or that the court did not have jurisdiction over the matter. In the case of appeals, we similarly indicated whether the appeal was allowed or dismissed.

*Dispute Start Date:* It was not always possible to obtain the date of origin of the dispute from reading the judgement and there could be different definitions of what constitutes the starting of a dispute. Where data was not available from the judgement, we used two indicators of the possible start date for a dispute: the date on which the petition was filed or the date of the order being challenged. Either of these indicators for start dates were used depending on which data point was available for a particular decision. These start dates should not be considered as definitive but more as a tool to get a general picture of the time period taken for the conclusion of a case.

*Dispute End Date:* This is the date of the judgement.

*Remarks:* The "remarks" column in the summary tables was intended to provide some additional flavour on the nature of the dispute and judgement. This information typically elaborated on the reasoning of a decision, the specifics of the case, or further explanation on the type of case.

### Stage 3: Coding and Analysis of the Data

Following completion of the summary tables for each of the nine States, we consolidated the results from the summary tables to arrive at the following metrics for each State:

- *Volume of Grievances:* The total number of cases analysed on an aggregate basis, and the total number of cases decided during each year of the study.
- *Grievance types:* The number of grievances for each grievance type on an aggregate basis and broken down by year. This metric provides an indication of the predominant categories of grievances that teachers in a particular state had.
- *Outcomes:* The number of cases in which teachers prevailed, the number of cases in which the state prevailed and the number of cases that were remanded to the state respondent. There were also other outcomes that we came across, including petitions that were allowed in part and petitions that were disposed of without any specific indication of the order. In arriving at the number of cases in which teachers or the state prevailed, we first had to disaggregate those cases in which the state was the petitioner and the teacher was the respondent (such cases were mostly appeals), to ensure we got an accurate picture of those cases in which teachers prevailed (regardless of whether they were the petitioner and the respondent).
- *Time taken for disposal:* Where data on the dispute start date was available, the time lapsed between the dispute start date and the date of the judgement was calculated to provide the time taken for the disposal of each case. In presenting our findings on the time taken for disposal, we have provided the number and percentage of cases that were

disposed during a particular 6-month interval (for example, 15 cases were disposed in 0 – 6 months, 25 in 7 – 12 months, etc).

From the above, it is clear that our findings for each of the States are presented on the basis of three metrics – the type of grievance, the outcome of the grievance and the time period taken for conclusion of the grievance. In addition to presenting each of these metrics separately, we have also looked into relationship between these three metrics and how they relate to one another. Thus, for each State, we have included tables that show the relationship between the types of grievances and case outcomes and the relationship between the types of grievances and the time periods taken for conclusion of the disputes. The former provides an indication of whether there were particular categories of grievances in which teachers or the state prevailed more frequently - for example, whether teachers prevailed in more appointment related grievances or that the state prevailed in more disputes related to service benefits. The later is intended to provide an indication of whether particular categories of grievances took longer to conclude than others – for example, whether grievances related to retirement benefits took longer to conclude than grievances related to transfers.

There were also two metrics that were used in the summary tables but were not used for the coding and statistical analysis. These were metrics relating to (a) the origin court and deciding court and (b) the nature of the petitioners and respondents. The reason these metrics have not been used is because the data on these metrics did not present sufficient variation or was not certain enough to allow for a meaningful statistical analysis. Both the origin and deciding courts in a very large majority of cases were the High Courts in the relevant states. In a few States, a very small number (fewer than 10) of cases may have originated in a tribunal or lower court and this is mentioned in the qualitative description.

Similarly, the nature of petitioners and respondents were largely similar across different types of cases and across all states. The petitioners were typically teachers or, in the case of appointment related grievances, teacher applicants. The respondents were various branches of the school education department, school management committees (in the case of aided schools) and other teachers who may have received the benefit or appointment that the petitioner did not receive. However, we could not get this information with a sufficient degree of accuracy because a number of judgements do not list all the petitioners and respondents. Thus, the nature of petitioners and respondents is not part of the statistical analysis but has been described qualitatively in each of the State chapters.

#### Stage 4: Comparing Findings Across States

The statistical findings for each of the states were compared to arrive at aggregate and comparative findings across the States. As in the case above, the comparison across States was also organized based on three metrics – grievance type, outcome and the time taken for disposal. These comparisons provide insights into, for example, whether any type of grievance was more prevalent in one state than another, whether teachers prevailed in greater numbers in a particular state and whether a particular state took very long to dispose of cases.

#### A Note on Case Volumes

One aspect of this study that will jump out at any reader of the state chapters is the enormous variations in the number of cases that our database searched revealed for each State. This ranges from 5 cases for Mizoram to over 6000 for Karnataka. It is important to keep these

variations in case volumes in mind when drawing comparisons across the different States. Further, we would caution against drawing any conclusions on the volume of teacher-related grievances in a particular State based on the number of judgements reviewed in this study. This is because of the limitations in the data discussed above and also because our searches indicate the rate of disposal of cases rather than the number filed or pending. Thus, we would suggest that our study and the data presented in the subsequent chapters are helpful in presenting a picture of the grievance redressal landscape in the courts for teachers in the nine States studied, but should not be relied upon to obtain more than a rough indication of the volume of teacher-related litigation in each State.

## ***B. Qualitative Analysis***

### ***Description of High Court and Supreme Court Judgements***

Our review of the judgements of the High Courts suggested that there were many nuances and complexities to the way in which the High Courts managed and resolved teacher related grievances, all of which could not be captured in a purely statistical analysis. Thus, to supplement our quantitative work on the High Court cases, each of the State chapters describes a few cases from the predominant grievance types for that State. We have typically chosen judgements that disposed off a number of clubbed petitions as these decisions tended to have an impact on a larger number of petitioners and often had policy implications as well. We hope that these descriptions will provide a flavour of the specific types of issues that arose and the reasoning behind the judgements.

There were only a handful of teacher-related grievances from each State that reached the Supreme Court. Each State chapter provides a brief description of the issues, outcome and grounds for the decision for those Supreme Court decisions that were appealed from the High Court of that particular State.

### ***Disputes in Alternate Fora and Lower Courts***

In order to obtain a more complete picture of the entire grievance redressal process and, in particular, the process that occurs before a dispute reaches the High Courts, three of the State chapters (Jharkhand, Karnataka and Tamil Nadu) include the following information on the grievance redressal process as a whole:

- (a) The different fora in the State for resolving grievances (for example, certain states have educational tribunals or mediation centres) and the universe of the types of disputes involving teachers
- (b) A process map of the various steps in the grievance redressal process and the points at which a dispute may be escalated.
- (c) Where available, a qualitative description of a small sample of lower court or tribunal decisions from that state.

This information has been collected based on interviews with heads of teacher unions, teachers, government officials from the education department and lawyers representing teachers or government officials in teacher-related litigation. The sampling of tribunal cases is not in any way intended to be representative of the tribunal cases in that State and does not lend itself to the type of

quantitative analysis that has been undertaken with respect to the High Court judgements. Rather, the purpose of describing some of the tribunal decisions is to provide a flavour for all the different stages in the entire grievance redressal process and, in particular, the trajectory that a dispute takes before it is considered serious enough to be escalated to the High Court.

## CHAPTER 3

### JHARKHAND

#### I. Overview

According to the most recent data collected by NEUPA, Jharkhand had about 121,569 primary school teachers employed across 40,666 government elementary schools and about 23,264 secondary school teachers employed across 4439 secondary schools.<sup>5</sup>

In Jharkhand, there were 187 relevant cases relating to grievances brought by teachers and teacher applicants of government and aided schools that were disposed by the High Court during the period from 2009 to 2014.<sup>6</sup> Almost all of these cases were either appeals from single judge decisions of the High Court or were filed before the High Court as the court of first instance. Four of the cases we reviewed were appeals from judgements of the Jharkhand Education Tribunal (“JET”), which is a tribunal constituted to decide disputes filed by teachers in aided and unaided private schools. Our database search revealed only one case that was an appeal from the District Court. The petitioners in almost all the cases were teachers or relatives of deceased teachers, except for a few cases in which the State of Jharkhand approached the High Court in an appeal. The table below sets out the number of cases that were disposed by the High Court of Jharkhand for each year covered by our study.

Year	No. of Cases	Percentage
2009	35	18.7%
2010	21	11.2%
2011	31	16.6%
2012	25	13.4%
2013	60	32.1%
2014	15	8%
<b>Total</b>	<b>187</b>	

*Table A1 – Year-wise distribution of cases*

Below, we set out the findings of our analysis of the High Court cases based on the types of grievances, the outcomes of the cases and the time taken for conclusion of these cases. We have also provided a qualitative description of the most common types of grievances that were disposed of by the High Court.

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<sup>5</sup> DISE Flash Statistics for Elementary and Secondary Schools for 2013 – 2014. Data as of September 30, 2013. All statistics on the number of teachers and schools used in this report is based on the DISE Flash Statistics prepared by NUEPA, available at <http://www.dise.in/flash.htm> The data on secondary schools does not split out the numbers for government and private schools.

<sup>6</sup> 2014 data is until June 2014.

In addition to our review of the High Court decisions, Jharkhand is one of the three States where we have also attempted to map out the entire grievance redressal process for teachers in government and aided schools and, in particular, the process before a grievance reaches the High Court. In a separate section, we provide a detailed account of the grievance redressal process available to teachers in government and aided schools based on interviews with lawyers and teachers, our own review of the relevant legislation and rules and a review of a sample of decisions from the JET. Finally, we have also provided a separate section on the litigation in the Supreme Court on cases arising out of decisions of the Jharkhand High Court.

## **II. Analysis of High Court Cases**

### ***A. Types of Grievances***

Out of the total number of 187 High Court judgements, appointment related grievances constituted the largest category of cases (31.01% or 58 of 187 cases) followed by service benefits (29.41% or 55 of 187 cases). Service benefit grievances covered a wide range of issues, including non-payment or non-timely payment of salaries, and disputes regarding the pay-scale. Apart from these cases there were also a small number of cases (9 cases) in which the dispute in question related to service benefits and another issue such as promotion, retirement benefits, appointment, termination or suspension. The other major types of grievances disposed by the High Court included cases related to retirement benefits (14.97%), promotion (5.88%) and termination (5.88%). The tables below provide the number and percentage of the different types of grievances, in aggregate for the State and broken down by year.

<b>Grievance Type</b>	<b>Total</b>	<b>Percentage</b>
Appointment	58	31.01%
Service benefits	55	29.41%
Retirement benefits	28	14.97%
Promotion	11	5.88%
Termination	11	5.88%
Regularisation	6	3.21%
Suspension	3	1.60%
Appointment, service benefits	2	1.07%
Miscellaneous	2	1.07%
Service benefits, suspension	2	1.07%
Service benefits, termination	2	1.07%
Contempt petition	1	0.53%

Examination standard	1	0.53%
Promotion, service benefits	1	0.53%
Service benefits, promotion	1	0.53%
Service benefits, retirement benefits	1	0.53%
Termination, service benefits	1	0.53%
Transfer, service benefits	1	0.53%
<b>Total</b>	<b>187</b>	

*Table A2: Number and percentage of grievance types in aggregate*

Type of Grievance	Year of Decision						Total
	2009	2010	2011	2012	2013	2014	
Appointment	12	5	10	11	17	3	58
Service benefits	12	8	9	3	20	3	55
Retirement benefits	3	3	6	4	3	9	28
Promotion	5			2	4		11
Termination	1	2	3	2	3		11
Regularisation		1			5		6
Suspension	1			2			3
Appointment, service benefits					2		2
Miscellaneous		1	1				2
Service benefits, suspension	1				1		2
Service benefits, termination					2		2
Contempt petition				1			1
Examination standard					1		1
Promotion, service benefits					1		1
Service benefits, promotion			1				1

Service benefits, retirement benefits		1					1
Termination, service benefits			1				1
Transfer, service benefits					1		1
<b>Total</b>	<b>35</b>	<b>21</b>	<b>31</b>	<b>25</b>	<b>60</b>	<b>15</b>	<b>187</b>

*Table A3 – Types of grievances broken down by year*

### Appointments

Appointment related grievances were all filed by teacher applicants to government and aided school who had not been granted the posts they had sought. A number of the appointment related grievances seem to have arisen from confusion over the criteria stated in the advertisements or notices issued for the appointment. In one such case, for example, the petitioners contended that certain criteria that were not mentioned in the notice of appointment were taken into consideration by the Village Education Committee while making the actual appointment<sup>7</sup>. The two petitioners challenged the appointment of certain other teachers (who were also made respondents in the case) arguing that the petitioners fulfilled the criteria for appointment set out in the notice and, based on the notice, were to be given preference in appointments over the teachers who ended up being appointed. The petitioners were women belonging to the Scheduled Tribes and OBC categories, while the teachers who were eventually appointed were two men who also belonged to the SC/ST category, despite the notice stating that female applicants belonging to the reserved categories would be given first preference. The Village Education Committee appointed the male teachers on the grounds that one of the petitioners lived 26 kilometres away from the school and would, therefore, be unable to discharge her duties properly and regularly if appointed and the other petitioner was conversant only with Bengali and would therefore not be fit for appointment in a school where Hindi was the first language. The High Court, taking into consideration the reasons mentioned above, upheld the appointment decision of the Village Education Committee, despite the Village Education Committee exercising some discretion in not following the exact letter of the rules.

In contrast to the case mentioned above, in a 2009 judgment, a single judge of the High Court stated that the petitioner should be appointed as she met the specific conditions laid down in the appointment notice.<sup>8</sup> In this particular case, the petitioner was a teacher who approached the High Court for quashing the order terminating her appointment. The order of termination was issued to her because she did not meet the requirements for the minimum percentage of marks specified in a rule notified after her appointment. In this case<sup>9</sup>, the High Court had held that “*on the basis of the qualifications which the petitioner had possessed corresponding to the requirements stipulated in the original advertisement, the Respondent shall accept her service in the same post, if the Petitioner is found otherwise entitled.*” In rendering this decision, the High Court emphasized strict compliance with the notice in question and prohibited retrospective application of any requirement that may be notified after the appointment. However, it is possible to distinguish this judgement from the one discussed immediately above as this was a case of

<sup>7</sup> Pratima Sen & Anr vs. The State of Jharkhand, 2013(1)J.L.J.R.302

<sup>8</sup> Mrs. Anjali Roy vs. The State of Jharkhand and Ors, MANU/JH/0690/2009

<sup>9</sup> *Ibid.*

retrospective application of a rule, while the previous judgement related to an educational authority exercising some discretion over applying a rule.

In another group of cases that were clubbed by the High Court, the names of the petitioners were found in the list that was printed after they had appeared for a written examination pertaining to their appointment.<sup>10</sup> However, the petitioners were never appointed and therefore approached the High Court challenging their non-appointment. The reason given by the State for not appointing the petitioners was that they had not obtained the requisite training mandated for primary school teachers. The teachers, on the other hand, contended that the rules for training under the NCTE rules were notified only after the notice was issued and, hence, did not apply to them. However the High Court agreed with the contention of the State which stated that a different set of rules that mandated training were already in place before the notice for appointment was issued. Accordingly, the petition was dismissed by the High Court.

### Service Benefits

A vast number of service benefit grievances arose out of disputes relating to non-payment of salary, late payment of salary or non-payment of salary owing to an order of termination. Many of these cases involved teachers from aided schools, in which the High Court held that in relation to certain service benefits such as dearness allowance and salary, teachers of aided schools should be treated on par with teachers at government schools. For example, in one case, the High Court held that, *“in our opinion, the teachers of aided schools must be paid the same pay scale and dearness allowance as teachers in government schools for the entire period claimed by the petitioners...”*<sup>11</sup> In yet another case where the petitioners challenged the withholding of their leave encashment amount by the State, the High Court applied the principle above. In addition, the High Court also held that encashment of leave is a *“part of the salary and covered in the wider expression of scales of pay and allowances...”*<sup>12</sup> In several other cases where the salary of the teachers were withheld for irrelevant and insignificant reasons, the High Court promptly directed the State or, in the case of aided schools, the Managing Committee of the school, to pay the salaries within a specified period of time.

There was another class of cases that related to an increase in the pay scale grade of teachers. As per the Bihar Primary School Teachers’ Rules 1991 that are applicable in Jharkhand, there was a mandate for untrained teachers to be trained by the government upon their appointment.<sup>13</sup> However, the government failed to impart such training and, at the same time, refused to grant the teachers benefits, including an increase in their grade pay and pay scales, on the grounds that they had not been trained as required under the 1991 Rules. The teachers, who in some cases were appointed in the early 1990s, had still not received any increase in their pay scale until as late as 2013, despite having been in service for over 18 years. The contention of the government in these cases was that their pay scale was to be determined based on the date of their training rather than the date of their actual appointment. However, the High Court held that their pay scale should be based on the date of their actual appointment as the delay in imparting this training was a result of a delay on the part of the government rather than a fault of the teachers in question. These decisions of the High Court were all in light of the decision of the Supreme Court (discussed below) in a series of cases that were filed by a different group of petitioner teachers and involved similar issues.

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<sup>10</sup> Kiran Manjhi vs .State of Jharkhand & Ors. 2012(3)J.L.J.R.191

<sup>11</sup> James Jatadhar Lugun vs.The State of Jharkhand and Ors. 2014(2)AJR361

<sup>12</sup> WP 506/2013, decided on 03.01.2014.

<sup>13</sup> Ahsanul Haque and Ors. vs. State of Jharkhand & Ors. MANU/JH/1024/2013

### Retirement Benefits

Apart from the above, a number of cases that were filed in the High Court related to retirement benefits. Many of the retirement benefit grievances arose out of non payment of pension, while there were some petitions filed by spouses of deceased teachers claiming pension. In some cases the High Court directed the respondent State government to consider the appointment of the spouse of the deceased teacher on compassionate grounds.

### **B. Outcomes**

A large number of the cases (40.11% or 75 of 187<sup>14</sup>) were decided in favour of the teacher, while the State prevailed only in 29.94% (or 56 of 187) of the cases. A significant number of the cases (22.46% or 42 of 187) were also remanded back to the state respondent to make a decision within a specified period of time. The tables below set out the case outcomes, in aggregate and broken down by year and grievance type. In addition, we have also disaggregated those cases where the state was the petitioner and teachers were the respondents.

Decision Taken	Total	Percent
Allowed	76	40.64%
Dismissed	55	29.41%
Remand to respondent	42	22.46%
In part	13	6.95%
Precedent	1	0.53%
<b>Total</b>	<b>187</b>	

*Table A4: Case outcomes in aggregate*

Decision Taken	2009	2010	2011	2012	2013	2014	Total
Allowed	11	6	16	5	28	10	<b>76</b>
Dismissed	10	7	9	12	14	3	<b>55</b>
Remand to respondent	11	4	4	7	14	2	<b>42</b>
In part	3	4	2	1	3		<b>13</b>
Precedent					1		<b>1</b>

<sup>14</sup> Figures are slightly different from table A4 to take into account cases where the state was the petitioner. Tables 4, 5 and 7 include all cases (including those where the state was the petitioner). Tables 6 and 8 disaggregate those cases where the state was petitioner.

<b>Total</b>	<b>35</b>	<b>21</b>	<b>31</b>	<b>25</b>	<b>60</b>	<b>15</b>	<b>187</b>
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*Table A5 – Case outcomes broken down by year*

<b>Decision Taken</b>	<b>2009</b>	<b>2012</b>	<b>2013</b>	<b>Total</b>
Allowed	1		1	2
Dismissed		1		1
<b>Total</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>3</b>

*Table A6 – Disaggregate for decisions where State is the Petitioner*

Based on the above tables, it can be seen that teachers prevailed in 75 (76-2+1) cases and the state prevailed in 56 (55+2-1) cases.

<b>Type of Grievance</b>	<b>Decision Taken</b>					<b>Total</b>
	<b>Allowed</b>	<b>Dismissed</b>	<b>In part</b>	<b>Precedent</b>	<b>Remand to respondent</b>	
Appointment	14	27	1		16	58
Service benefits	24	12	2		17	55
Retirement benefits	18	3	4		3	28
Promotion	5	3	2		1	11
Termination	5	5			1	11
Regularisation	2	2		1	1	6
Suspension	2				1	3
Appointment, service benefits	2					2
Miscellaneous		2				2
Service benefits, Suspension	1		1			2
Service benefits, Termination	1	1				2
Contempt petition					1	1

Examination standard	1					1
Promotion, Service benefits	1					1
Service benefits, Promotion			1			1
Service benefits, Retirement benefits			1			1
Termination, Service benefits					1	1
Transfer, Service benefits			1			1
<b>Total</b>	<b>76</b>	<b>55</b>	<b>13</b>	<b>1</b>	<b>42</b>	<b>187</b>

*Table A7 – Case outcomes broken down by type of grievance*

Case Type	Allowed		Allowed Total	Dismissed	Dismissed Total	Total
	2009	2013		2012		
Appointment	1	1	2	1	1	3
<b>Total</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>3</b>

*Table A8 – Disaggregating for state as petitioner, broken down by year and case type*

### ***C. Time taken for Conclusion of Cases***

Our analysis of the High Court decisions as well as our conversations with teachers and lawyers representing teachers in Jharkhand suggested that the time taken for conclusion of cases was rather long, which may be one of the reasons for the low number of cases disposed each year, compared to other states. One of the teachers that we spoke to informed us that a case that had been filed in January 2014 had, as of August 2014, still not been taken up for admission. In terms of the High Court cases we analysed, data on the time taken for conclusion of case was available for only 59 of the 187 cases. This was because, while the date of the judgement was easily available, the date on which the case was filed was not specified, thereby making it impossible to calculate the time frame within which the dispute was decided. Out of these 59 cases examined, 52.54% (or 31 cases) of the cases took a period of over 60 months i.e., 5 years to be concluded. The tables below set out the time taken for conclusion of cases, in aggregate, and broken down by type of grievance. Subject to the limitations in the data, there does not appear to be any correlation between the type of grievance and the time it took to be disposed by the High Court.

Time taken for Decision	No. of Cases	Percentage
0-6 months	2	3.39%

7-12 months	4	6.78%
13-18 months	5	8.47%
19-24 months	5	8.47%
25-30 months	2	3.39%
31-36 months	1	1.69%
37-42 months	3	5.08%
43-48 months	4	6.78%
49-54 months	2	3.39%
55-60 months	0	0
Above 60 months	31	52.54%
<b>Total</b>	<b>59</b>	

*Table A9 – Time taken for conclusion of cases*

Case Type	Time Taken for Decision (in months)											Total
	0-6	7-12	13-18	19-24	25-30	31-36	37-42	43-48	49-54	55-60	60 +	
Service benefits		1	2	1				1	1		10	16
Appointment	2	2	1	2	1	1	1	1			4	15
Termination		1		1							6	8
Retirement benefits			1		1		1	1			2	6
Promotion											3	3
Miscellaneous			1	1								2
Regularisation											2	2
Service benefits, termination											2	2

Suspension								1			1	2
Contempt							1					1
Promotion, service benefits											1	1
Termination, service benefits									1			1
<b>Grand Total</b>	<b>2</b>	<b>4</b>	<b>5</b>	<b>5</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>4</b>	<b>2</b>		<b>31</b>	<b>59</b>

*Table A10 – Time taken for conclusion of cases broken down by type of grievance*

### **III. Mapping out the Grievance Redressal Process**

We understand from our conversations with teachers and lawyers representing teachers in the High Court and the JET that the first authority that government school teachers in Jharkhand are required to approach with a grievance is the District Superintendent of Education (the “DSE”) or the District Education Officer (the “DEO”). Teachers in aided schools are required to approach the School Management Committee of the school in question, which is a body established under the Jharkhand Academic Council Rules, 2006. After approaching the committee with a representation of their grievance, teachers from aided schools may also approach the DSE or the DEO as aided schools are also required to adhere to some guidelines and rules set out by the government. From our conversations and interviews, we learnt that teachers are quite apprehensive about approaching the High Court and, in practice, try to exhaust all possible remedies before doing so. Accordingly, while not statutorily required, teachers also tend to approach the Secretary of Education or other government officials in the education department.

#### **A. The Jharkhand Education Tribunal**

After the above remedies are exhausted the only remedy available to government school teachers is to file a writ petition before the High Court. However, teachers in aided schools must first approach the Jharkhand Education Tribunal, which was established under the Jharkhand Education Tribunal Act, 2005 (the “JET Act”).<sup>15</sup> Under the JET Act, the JET may be approached for, among other things, the redressal of any grievance by an employee of an “Educational Institution” which is defined as “an educational institution managed and administered by private management and located within the State of Jharkhand.” Privately managed educational institutions that receive grants-in-aid from the government also fall within the jurisdiction of the JET. Section 8 of the JET Act states that the JET has jurisdiction over all matters concerning the recruitment or appointment, the service conditions of employees, grievances of employees against the management, grievance of parents and guardians of students studying in such educational institutions, and any other matters relating to Educational Institutions that may be referred to the JET by the State Government. The JET Act, therefore, covers all service related grievances that the teachers of an aided school may have. Our access to decisions of the JET was ad-hoc as the decisions were not organised and reported. Hence, we relied upon analysing decisions that were

<sup>15</sup> While the High Court is the court of original jurisdiction for teachers from government schools, pursuant to the JET Act, teachers in private unaided and aided schools are first required to approach the JET. Decisions of the JET may be appealed to the High Court.

randomly made available to us by the staff at the JET. Below we have described a sample of such decisions of the JET.

The JET has, within the limits of its jurisdiction, decided a vast variety of cases relating to teacher grievances. Teachers of aided schools have approached the JET for several kinds of service related grievances including appointment, transfer, dismissal, promotion, suspension, termination and regularisation of service. One such case from the sample we reviewed involved the issue of the transfer of the headmaster of an aided school.<sup>16</sup> A new management committee for the school in question was being formed and, while this was in process, the headmaster of the school was sought to be transferred, through an order passed by the old management committee. The headmaster therefore challenged the order of his transfer. The respondents' defense was that the headmaster had adhered to certain decisions that were still being taken by the old committee and therefore the order was valid. The JET however, held that once the new Committee was formed, the old one becomes defunct and therefore the impugned order was illegal.

Our analysis of the cases also revealed that the JET places substantial importance in deciding cases based on principles of natural justice and in granting relief to teachers on compassionate grounds. In two of the cases we reviewed, the JET stated that it was important that while deciding the disputes, both the management committee and the DEO adhere to principles of natural justice and that teachers are given a reasonable opportunity of being heard. In a case where the notice of dismissal from service was challenged on the grounds that the teacher was not given the opportunity to present her case before her service was terminated by the principal, the JET quashed the order of termination and directed that the teacher be reinstated with 50% back wages and continuation of service.<sup>17</sup> In another case, the decision of the JET was based on sympathetic grounds, despite proven fraud on the part of teacher.<sup>18</sup> It was the stand of the respondent that the petitioner teacher, who was promoted to the post of headmistress, had given a forged mark sheet of her B.A. exam and was, therefore, not entitled to benefits such as pension upon termination of her service. The DEO found that the certificate provided by her was in fact forged and dismissed her from service. The JET held that principles of justice along with that of mercy require that her order of termination be treated as a simpliciter termination and pension according to the rules should be given to her on account of the 30 years of service rendered by her to the school.

#### **IV. Litigation in the Supreme Court**

During the period covered by our study, the Supreme Court disposed two cases relating to teacher appointments and one case relating to termination that were appealed from the Jharkhand High Court. One of the cases relating to appointment arose out of the Bihar Primary School Teachers' Rules 1991 and the appointment of untrained teachers.<sup>19</sup> The petitioner relied on the Supreme Court's decision in one of its landmark cases relating to the irregularities caused by appointments of untrained teachers, which was the case of *Nand Kishore Ojha & Ors. v. Anjani Kumar Singh*.<sup>20</sup>

The petitioner in the case at hand had challenged a policy of the State of Jharkhand where an age relaxation of five years was given to trained teachers in an effort to curb the said irregularity. The petitioner herein challenged this period of 5 years as being arbitrary and said that it was not in compliance with the earlier guidelines of the Supreme Court and that this places the teachers in Jharkhand at a

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<sup>16</sup> Case No. 85/2009, judgement dated 24.12.2009.

<sup>17</sup> Case No. 67/2009 (JET), Order dated 13.06.2014.

<sup>18</sup> Case No. 58/2009 (JET), Order dated 10.04.2010.

<sup>19</sup> *Nesar Ahmed v. State of Jharkhand & Ors.* [2014(2)SCALE656]

<sup>20</sup> 2010CriLJ3818, appeal from Patna High Court

disadvantage compared to those in Bihar. However, the Supreme Court held that these appointments of untrained teachers had already been challenged in 2003 when the petition was dismissed by the High Court. Accordingly, the petitioner could not approach the High Court after a period of ten years as appointments of trained teachers had started to be made.

In another case relating to the appointment of physical training teachers,<sup>21</sup> the Supreme Court had held that the government, upon changing the rules related to appointments, was entitled to make fresh selections based on the amended rules and it could withdraw the notification which it had previously notified for recruitment and issue a fresh notification under the amended rules. This, therefore, was a matter for the State to decide and it did not give private parties any right against the State that they may seek to be enforced by the Court.

In the third case relating to termination,<sup>22</sup> the District Superintendent of Education found the appointment of the respondent teacher to be illegal and her service was terminated for this reason. However, the JET ruled that the appointment was not illegal and the High Court upheld that decision. The Supreme Court subsequently, agreeing with the order of the JET and the High Court directed the school to pay the salary and benefits that were rightfully the teacher's due within three months of the said order.

**Major Litigation in the Supreme Court:** *There are a group of cases, which though decided outside the time period of the present study, are an important aspect of teacher related grievances in Jharkhand. These arise out of disputes before Jharkhand was bifurcated from Bihar. Under the Bihar Primary School Teachers' Rules 1991, trained teachers had to be appointed. However, through recruitment in 1994 and in preceding years, several untrained teachers were also recruited and it was the duty of the State Government to provide them with training. This training was provided to them only post 2001. When, 12 years after their initial appointments, these teachers were to be moved to a higher pay grade, the Government refused to do so stating that for these purposes, as also for promotion, their year of appointment will not be 1994 but only the year when they received the training. The Supreme Court however, after several rounds of litigation decided that since it was a delay on the part of the State, the date of appointment would be considered from 1994. The teachers who were petitioners in that particular case have been promoted and received the consequential benefits. However, those other teachers appointed in 1994 and even those appointed before this date have still received no relief. The Government has been deliberating giving all similarly placed teachers similar reliefs in the near future which would also help in avoiding further litigation arising from this decision. This case is an example of the state government not implementing the policy decisions arising out of High Court or Supreme Court decisions, thereby encouraging further litigation on an issue that has already been decided.*

## V. Conclusion

The procedure and jurisdiction of courts, as far as teacher grievances in Jharkhand are concerned, are fairly clearly laid down by way of rules and judicial pronouncements. Furthermore, both the High Court and the JET appear to have decided cases based on the principles of natural justice, and therefore seem to decide a greater number of cases, by a small margin, in favour of teachers. It also appears, from our conversations with education department officials, school teachers and lawyers practicing before the JET, that some of the litigation in the High Court and the Supreme Court have arisen due to unclear policies and careless implementation of these policies by the Government of Bihar before the formation of the State of Jharkhand. We understood from our conversations with various stakeholders that the Government and the High Court were trying to rectify those errors and provide favourable relief, wherever possible. However, the low annual rate of disposal of cases generally, remains the biggest

<sup>21</sup> State of Jharkhand & Ors v. Ashok Kumar Dangi & Ors, (2011)13 SCC 383.

<sup>22</sup> State of Jharkhand & Ors v. Siya Sharan Prasad & Anr MANU/SCOR/48026/2013.

problem faced by aggrieved teachers in Jharkhand. Thus, while teachers in Jharkhand seem to be more successful than some of their counterparts in other states in obtaining favourable judgments, this is offset by extensive delays in disposal of cases.

## CHAPTER 4

### KARNATAKA

#### I. Overview

Based on the most recent data collected by NUEPA, Karnataka had 189,427 primary school teachers employed across 46,030 government primary schools and 23,264 secondary school teachers employed across 17,347 secondary schools.<sup>23</sup>

In Karnataka, we found 6075 relevant cases that related to disputes involving school teachers that were disposed between 2009 and 2014,<sup>24</sup> making Karnataka the state with the largest number of grievances among those covered in this study by a significant margin. What is equally significant is the very large number of clubbed petitions that were disposed, which perhaps explains the ability of the Karnataka High Court to take on and dispose several times the number of cases disposed by High Courts in other states. Most of these cases concerned disputes on service benefits and their calculation. Appointment disputes (filed by teacher applicants to government schools and by teachers who had been appointed to unaided schools that subsequently changed their status) came second. Few cases dealt with transfer or regularisation disputes. Further, most of the cases originated in the High Court itself and were treated under the original writ jurisdiction. There were very few appeals, mostly from the Karnataka Administrative Tribunal (KAT), which is a tribunal constituted to hear service related grievances of government employees. Teachers, assistant teachers and contract teachers were the petitioners in majority of the petitions. In some cases, the State Government initiated appeals from a single bench of the High Court or from a KAT decision. In either case, a significant number of cases were remanded to the concerned Government department to consider as per some established rule or court precedent.

The following table displays the number of cases on teacher disputes decided by the Karnataka High Court since 2009.

Year	No. of Cases	Percentage
2009	587	9.7%
2010	863	14.2%
2011	289	4.8%
2012	1274	21.0%
2013	2636	43.4%
2014	426	7.0%
<b>Total</b>	<b>6075</b>	

*Table B1 – Year-wise distribution of cases*

<sup>23</sup> DISE Flash Statistics for Primary and Secondary Schools, available at <http://www.dise.in/flash.htm>. Data as of September 2013.

<sup>24</sup> Data for 2014 is until June.

Below we set out the findings from our review of High Court cases, in terms of the types of grievances, the outcomes of decisions and the time taken for their conclusion. While much of this discussion is statistical, we have also tried to provide a qualitative description of the types of grievances that are disposed by the High Court.

In addition, Karnataka is one of the three States where we have also tried to map out the entire grievance redressal process for teachers, including the process before a case reaches the High Court. Therefore, we have included separate sections on two other dispute resolution fora available for teachers of government and aided schools in Karnataka – the Shikshana Adalats and the KAT.

## **II. Analysis of High Court Cases**

### **A. Types of Grievances**

More than half the disputes (65.2% or 3962 of 6075 cases) in the High Court concerned service benefits. The next major category of dispute was appointments (22.9% or 1391 of 6075 cases). The High Court also decided a few disputes on transfer (3% or 183 cases) and regularisation (3.1% or 188 cases) and insurance (0.3% or 19 cases). These cases were small in number when compared to cases on service benefits and appointments. This may be because the original forum for deciding disputes on transfer, regularisation and insurance claims are other tribunals and not the High Court. The table below sets out the number and percentage for the different types of grievances in aggregate for the State.

<b>Type of Grievance</b>	<b>Total</b>	<b>Percentage</b>
Service Benefits	3962	65.2%
Appointment	1391	22.9%
Uncategorized(25)	195	3.2%
Regularisation	188	3.1%
Transfer	183	3.0%
Contempt	60	1.0%
Termination	54	0.9%
Insurance	19	0.3%
Miscellaneous	16	0.3%
Promotion	3	0.01%
Registration	3	0.01%

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<sup>25</sup> Refers to cases where it was clear that the parties involved teachers, but the nature of the dispute was unclear from the facts.

Retirement	1	0.01%
<b>Total</b>	<b>6075</b>	

*Table B2 – Number and percentage of types of grievances in aggregate*

Although cases on appointment and service benefits dominate the categories of grievances, these cases were usually decided in batches where several cases were grouped, heard and decided together. This grouping practice is common in the Karnataka High Court in education matters where several teachers/employees/applicants are aggrieved by a single order or decision of the State Government. A look at the year-wise disposal of cases shows that there are drastic variations in the number of cases per year. The following table shows the typology of cases broken down by year:

Case Type	Year						Total
	2009	2010	2011	2012	2013	2014	
Service Benefits	577	618	282	1061	1007	417	3962
Appointment	-	33	1	63	1289	5	1391
Uncategorized	3	192	-	-	-	-	195
Regularisation	-	1	-	108	79	-	188
Transfer	-	-	-	19	164	-	183
Contempt	-	-	-	1	59	-	60
Termination	1	2	4	15	32	-	54
Insurance	2	6	1	4	4	2	19
Miscellaneous	1	11	1	-	2	1	16
Promotion	-	-	-	2	-	1	3
Registration	3	-	-	-	-	-	3
Retirement	-	-	-	1	-	-	1
<b>TOTAL</b>	<b>587</b>	<b>863</b>	<b>289</b>	<b>1274</b>	<b>2636</b>	<b>426</b>	<b>6075</b>

*Table B3 – Types of grievances broken down by year*

#### Service Benefits

One of the major areas of dispute was with regard to calculation of service benefits. A large proportion of these disputes involved teachers from aided schools. In most cases, the question was whether aided institutions were liable to provide service benefits to employees

calculated from the date of their appointment or from the date on which the institution in question started to receive grant-in-aid. Most of these disputes concerned cases where the petitioner teachers were appointed to educational institutions at a time when these institutions had not yet begun to receive grant-in-aid. The appointment of these teachers was formally approved only years later after the institution started receiving grant-in-aid. However, calculation of their period of service for benefits of pension, gratuity, pay scale etc was done only from the date of aid and not from the initial date of appointment. In a judgment decided in 2006 in *VTS Jeyabal and others v. State of Karnataka and Others*,<sup>26</sup> the High Court held that employees of aided institutions were entitled to service benefits for the entire period from the date of their appointment including the time when the institution was not yet admitted to receive aid. Several writ petitions in the time frame of this study were disposed with directions to the Government to consider applications as per *Jeyabal*. The Division Bench of the Karnataka High Court and the Supreme Court confirmed the decision in *Jeyabal* on appeal.<sup>27</sup>

This and several other connected decisions placed the burden on the Government to implement the grant of service benefits to teachers in aided schools from the date of their initial appointment. In one such case, the Government estimated the cost of implementation of these judgements to be around Rs. 7,000 crores to the exchequer.<sup>28</sup> Several contempt petitions were filed since the Government had failed to implement the orders on service benefits. In these petitions, the Government generally cited litigation by appeals as the reason for non-implementation. However the High Court directed the Government to implement the orders in a time bound manner. Following this, the Karnataka State Legislature enacted the Karnataka Private Aided Educational Institutions Employees (Regulation of Pay, Pension and Other Benefits) Act, 2014. This Act essentially circumvents the court orders and provides that the service during the non-grant-in-aid period “shall not be reckoned for purpose of pay, leave or seniority.”<sup>29</sup> The Statement of Objects and Reasons for the Act detailed the court orders on the retrospective provision of service benefits, but observed that there is “no justification” for granting such service benefits and further that such provision “would involve very huge financial implications to the state exchequer.”<sup>30</sup> Therefore, the State Legislature has so far successfully circumvented all court orders regarding the provision of service benefits.

### Appointments

Appointment cases occupied the second dominant position in the types of grievances. Disputes under appointment cases include those related to continuation of appointment in a certain post, clarification on eligibility qualifications and also appointments following grant-in-aid related changes. Several appointment cases came up to the High Court on appeals from KAT applications. Unlike in other States, where appointment related disputes typically involved teacher applicants, in Karnataka a number of appointment related grievances were filed by teachers who had already been appointed.

<sup>26</sup> VTS Jeyabal v. State of Karnataka & Ors, WP. 19431/2005 decided on 13.10.2006.

<sup>27</sup> State of Karnataka & Ors, v. VTS Jeyabal, WA. 450/2007 decided on 3.11.2009; State of Karnataka v. Nagegowda & Ors, SLP(c) No. 22176-22186/2010 dismissed on 21.08.2013

<sup>28</sup> See The Hindu, “Government Concedes Aided School Teachers’ Demand,” 18 December 2013, available at <http://www.thehindu.com/todays-paper/tp-national/tp-karnataka/government-concedes-aided-school-teachers-demand/article5472431.ece>

<sup>29</sup> See Section 3(1), Karnataka Private Aided Educational Institutions Employees (Regulation of Pay, Pension and Other Benefits) Act, 2014.

<sup>30</sup> See Statement of Objects and Reasons, Karnataka Private Aided Educational Institutions Employees (Regulation of Pay, Pension and Other Benefits) Act, 2014.

One of the major cases decided by the High Court concerned teachers working in residential schools established and managed by various government departments such as the Social Welfare Department, Tribal Welfare Department, Backward Classes Department etc.<sup>31</sup> In 2000, the management of these schools was consolidated in a Society (Karnataka Residential Educational Institutions Society) which framed certain bye laws for the appointment of teachers and functioning of these schools. Accordingly, several teachers were subsequently appointed on a contract basis. In 2004, the management was shifted to the concerned Zilla Panchayats that followed similar rules and appointed teachers on a contract basis. In 2011, the Zilla Panchayat management was withdrawn and management reverted to the Society that framed new recruitment Rules. These Rules awarded weightage to teachers employed from 2000-2004. Teachers employed post-2004 (under Zilla Panchayat management) were denied the weightage to seek recruitment under the new Rules. The High Court, on writ appeal, held that since there was no substantial change in the appointment of teachers pre-2004 and post-2004, denial of weightage only on the basis of a change in management was discriminatory and violated Articles 14 and 16 of the Constitution of India. This judgment was followed in the majority of other cases concerning appointments of teachers from the 2004-05 academic year.<sup>32</sup>

Another case of interest was a Public Interest Litigation filed by an Advocate that the Government had appointed teachers who were untrained in the subjects that they were assigned to teach. The High Court disposed of the petition upon an undertaking by the Government that the recruitment rules regarding appointment of teachers for higher primary schools were being revised and the concern regarding suitable training will be given due regard in these Rules.<sup>33</sup>

Several appointment cases also concerned confusion as to the continuation of appointment in a post after the school had been granted the status of an aided institution. These were usually determined on a case by case basis, depending on the change in the posts of the petitioner teacher, the qualification of the teacher and the number of years of service.

#### Other Cases

Other categories of cases include disputes concerning transfer, regularisation, insurance etc. Many transfer cases originated in KAT and were later challenged in the High Court. Several transfer cases challenged Government transfer orders made on the grounds that the petitioner teachers were excess teachers in a certain school. In a challenge to these orders, teachers usually claimed that they were not excess teachers. These questions of fact were normally first determined by the KAT. Transfer cases also challenged governmental failure to effect applications for transfer. For instance, in one case, the procedure of counselling and computerization of transfer applications was challenged on the ground that cases with specific genuine reasons would be ignored.<sup>34</sup> Fixation of 1% of transfers for special category cases such as “joining the spouse” was challenged as too rigid, insufficient and arbitrary. The Court observed that at least 5% may be provided to cases falling under the special category on a priority basis.<sup>35</sup>

<sup>31</sup> See *Karnataka Educational Society v. Sidda Raju*, WA 5127/2012 decided on 28.02.2013.

<sup>32</sup> See for eg. *Kiran Kumar A.H. v. State of Karnataka and Others*, WP 17231-17251/2012 decided on 15.03.2013; *Saytabhama Y.B. v. State of Karnataka and Others*, WA. 8599-8726/2012; *G.N. Muralidhar v. State of Karnataka*, WP. 12001-12249/2012 decided on 13-3-2013; *Siddappa v. State of Karnataka*, WP 31346/2012, decided on 21.03.2013; *Bheerappa v. State of Karnataka*, WP. 10673-10683/2013, decided on 15-3-2013.

<sup>33</sup> See *B.S. Budhilal v. State of Karnataka* W.P. 21615/2012, decided on 13.12.2013.

<sup>34</sup> See *C.B. Lalitha v. State of Karnataka*, WP. 49502/2012 decided on 22.07.2013.

<sup>35</sup> *Ibid.*

Most cases on regularisation of service of teachers were similar to the cases mentioned under the appointment category. These concerned the absorption of contract teachers and regularising their service after the grant of aid to the school. Similarly, cases on termination also concerned teachers whose services were terminated after the school obtained grant-in-aid. In several such petitions where termination after aided status was challenged, the Government even denied the employment of such teachers in the school and claimed that they were utter strangers. Therefore the proceedings in such cases saw the initial burden placed on the teachers who were under temporary appointments to prove that they actually worked in these schools.

Some contempt petitions were also filed before the High Court. Many of these petitions were related to non-implementation of orders as regards the grant of service benefits from the initial date of appointment. The Government cited the pendency of appeals before the High Court and Supreme Court as the reason for non-compliance with the orders in the writ petitions.

### ***B. Outcomes***

On an aggregate scale, the number of petitions/appeals that were allowed were greater than the number dismissed. The data shows that the teachers prevailed outright in 30.95% (or 1880 of 6075<sup>36</sup>) of the cases, while the state prevailed outright in 15.52% (or 943 of 6075). A significant number of the petitions were remanded to the State Government (45.42% or 2759<sup>37</sup>) to decide according to a prior decision or rule. Remand of the cases back to the government authorities was the most common order passed by the High Court, even where it made some observations on the entitlements of the parties. In some of these cases, the Court directed the teachers to make a representation to the Government since they had failed to do so. However, there were also other remand orders wherein the Court made observations on the merits of the case and clarified the position of law. For instance, in several service benefit matters, the Court remanded the petitions to the Government to decide whether each petitioner teacher satisfied the conditions under *Jeyabal* case for service benefits. Therefore the Government was bound to grant benefits to all the petitioners who satisfied those conditions. Therefore most of the service benefit cases were either allowed or remanded to the Government's consideration.

As regards transfer cases, a majority of them were dismissed. Many of these cases concerned challenge to transfer orders where the teachers were considered to be excess teachers. In many of these petitions, the High Court refused to interfere with the KAT order that had come to a finding on fact as to whether the teacher was an excess teacher or not and whether the transfer was necessary. In most of the contempt cases, the Government gave an undertaking to comply with the order within a certain time. The Court usually disposed these petitions based on the undertaking without taking any contempt action. Almost all insurance cases were allowed in part, enhancing the compensation but not to the extent prayed for by the deceased teacher's relatives. The following tables show case outcomes (a) in aggregate, and (b) broken down by (i) case type and (ii) year. In addition, we have also disaggregated those cases in which the State Government was the appellant to arrive at the number of cases in which teachers prevailed.

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<sup>36</sup> Numbers are slightly different from those in table B4 to take into account cases where the state was the petitioner or appellant.

<sup>37</sup> Includes (a) cases that were remanded to respondents (2750) and (b) cases that were remanded to appellants (9).

<b>Decision Taken</b>	<b>No. of Cases</b>	<b>Percentages</b>
Remand to Respondents	2750	45.27%
Allowed	1471	24.21%
Dismissed	1352	22.26%
Disposed of	433	7.13%
In Part	53	0.87%
Remand to Appellants	9	0.15%
Miscellaneous	4	0.07%
Settled	2	0.03%
Withdrawn	1	0.02%
<b>Total</b>	<b>6075</b>	

*Table B4 – Case outcomes in aggregate*

<b>Decision Taken</b>	<b>Year</b>					<b>Total</b>
	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	
Remand to Respondents		793				793
Dismissed		23	273	5	153	454
Allowed	1		1	1	42	45
Disposed of					26	26
Remand to Appellants				9		9
<b>Total</b>	<b>1</b>	<b>816</b>	<b>274</b>	<b>15</b>	<b>221</b>	<b>1327</b>

*Table B5 – Disaggregate for outcomes where state is the petitioner and teachers are the respondents.*

<b>Decision Taken</b>	<b>Year</b>						<b>Total</b>
	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	
Remand to Respondents	3	804	4	424	1179	336	2750
Allowed	575	18	8	656	200	14	1471
Dismissed	6	34	276	145	817	74	1352
Disposed of					433		433

In Part	1	3	1	39	7	2	53
Remand to Appellants				9			9
Miscellaneous		4					4
Settled	2						2
Withdrawn				1			1
<b>Total</b>	<b>587</b>	<b>863</b>	<b>289</b>	<b>1274</b>	<b>2636</b>	<b>426</b>	<b>6075</b>

*Table B6 - Case outcomes broken down by year*

Case Type	Decision Taken									Total
	Allowed	Dismissed	Disposed of	In part	Misc	Remand to Appellants	Remand to Respondents	Settled	Withdrawn	
Service Benefits	1404	858	32	26		9	1630	2	1	3962
Appointment	48	289	393	2			659			1391
Uncategorized		3					192			195
Regularisation		4		11			173			188
Transfer	10	157					16			183
Contempt		1	8				51			60
Termination	6	26		1			21			54
Insurance	3	4		12						19
Miscellaneous		7		1	4		4			16
Promotion		2					1			3
Registration							3			3
Retirement		1								1
<b>Total</b>	<b>1471</b>	<b>1352</b>	<b>433</b>	<b>53</b>	<b>4</b>	<b>9</b>	<b>2750</b>	<b>1</b>	<b>1</b>	<b>6075</b>

*Table B7 – Case outcomes broken down by different types of grievances.*

### ***C. Time Taken for Conclusion of Cases***

The data on the time taken for proceedings cannot be generalized due to several factors. Depending on the availability of data, either the filing date or date of impugned notification or date of appointment etc., were taken as the starting dates of dispute. Since many of the matters were grouped matters, it was not always possible to pin point the start of a dispute for each petition. The tables below show that the time taken for conclusion of cases is varied. Appointment and service benefit cases typically took between 19-24 months to conclude. This may be the effect of grouping cases and deciding them together.

Duration for Case to Conclude	No. of Cases	Percentages
0-6 months	590	11.92%
7-12 months	366	7.40%
13-18 months	421	8.51%

19-24 months	1170	23.64%
25-30 months	859	17.36%
31-36 months	12	0.24%
37-42 months	174	3.52%
43 – 48 months	594	12.00%
49-54 months	609	12.31%
55-60 months	12	0.24%
Above 60 months	142	2.87%
<b>Total</b>	<b>4949</b>	

*Table B8 – Time periods for conclusion of cases. Data has been plotted in six month intervals.*

Case Type	Time period range (in months)											Total
	0-6	7-12	13-18	19-24	25-30	31-36	37-42	43-48	49-54	55-60	60+	
Service Benefits	374	133	407	794	658	7	14	592	603		28	3610
Appointment	153	226	2	376	7	1	4		3	1	84	857
Uncategorized					192							192
Transfer	12	2	1				153			9		177
Regularisation	29	1						1			5	36
Termination	8		3		1	1	2		3		13	31
Insurance			2		1	1	1	1		2	9	17
Miscellaneous	1	4	6			2					2	15
Contempt	8											8
Registration	3											3
Promotion	1										1	2
Retirement	1											1
<b>Total</b>	<b>590</b>	<b>366</b>	<b>421</b>	<b>1170</b>	<b>859</b>	<b>12</b>	<b>174</b>	<b>594</b>	<b>609</b>	<b>12</b>	<b>142</b>	<b>4949</b>

*Table B9 – Time period ranges for conclusion of cases broken down by case type.*

### III. Mapping Out the Grievance Redressal Process

Education disputes are processed through various legal fora in Karnataka depending on the nature of the case and the parties involved. Four main authorities address disputes relating to teachers, among other things: Shikshana Adalat, Civil Court, KAT and High Court of Karnataka. Below is qualitative description on two of these fora: Shikshana Adalats and the KAT.<sup>38</sup> The data on Shikshana Adalats is sparse and limited to the number of applications received and disposed of, leaving very little scope for any quantitative or qualitative study. Although the KAT maintains an online database of its judgments, the database is not well organized and it is not searchable specifically for cases where teachers are parties. Therefore, our analysis of Shikshana Adalats and the KAT are limited to some illustrative snapshots of how disputes are processed in these two fora.

#### A. *Shikshana Adalats*

Shikshana Adalats are one-day drives where the Office of the Commissioner, Public Instructions acts as a grievance redressal body by accepting applications/representations/complaints from teachers working in all types of schools. The concept of these Adalats was introduced in the year 2005. However, there are no written rules of procedure for the functioning of these Adalats.

In our interview with the Commissioner's Office, we were informed that the intention was to hold an Adalat in every Block on a fortnightly basis, preferably on every second Saturday. However, this is often not done in practice. Instead, each Commissioner, based on different considerations, usually determines the scheduling of the Adalat. The date of holding an Adalat is normally predetermined and is published in regional and national newspapers.

The Commissioner is present during every Shikshana Adalat session. Generally, a Nodal Officer appointed in each Block is also present. Applications need not have a specific format. We were informed that even oral representations were addressed. The issues that usually came up concerned salary or time bound increments. Depending on the nature of the problem and the concerned authority, the Commissioner referred the matter to either Block level or District level authorities to address the issue. As regards aided institutions, the common problem was disputes between the management and the teacher as regards salary. In some of these cases, the Commissioner appointed salary disbursement officers to address the issue. In the Adalat held in Chitradurga, some teachers expressed grievances that included non-availability of Kannada books, in response to which the Commissioner undertook to make them freely available. The Commissioner also made announcements that 10,000 Assistant Teachers would be appointed in the State. Therefore the Adalat is also used as forum through which the Commissioner can install general drives in addition to addressing individual teacher grievances.

The time limit for disposal of each representation is 15 days. The Commissioner's Office found that most of the unresolved cases found their way into KAT. Since November 2013, the Office has received 431 applications in 12 districts. The table below, obtained from the Office of the Commissioner, shows the number of applications received and disposed of in each district:

Sl No	District	Date of Adalat	Number of Applications	Number of Disposed	Remaining
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<sup>38</sup> The Civil Courts deal with grievances of teachers from private unaided schools and are, therefore, outside the scope of this study.

			Received	Applications	
1.	Davanagere	6-11-2013	197	197	0
2.	Chitradurga	8-11-2013	26	25	1
3.	Mysore	22-11-2013	44	30	14
4.	Mandya	23-11-2013	32	26	6
5.	Hassan	19-12-2013	15	15	0
6.	Madhugiri	15-5-2014	5	5	0
7.	Tumkur	17-5-2014	10	9	1
8.	Kolar	20-5-2014	30	19	11
9.	Chikkaballapur	22-5-2014	6	6	0
10.	Chamarajanagar	10-6-2014	27	19	8
11.	Chikmagalur	12-6-2014	35	29	6
12.	Bangalore (Rural)	27-5-2014	4	4	0
	<b>Total</b>		<b>431</b>	<b>384</b>	<b>47</b>

### ***B. Karnataka Administrative Tribunal***

The Karnataka Administrative Tribunal (KAT) was set up under a Notification of the Government of India as per the Administrative Tribunals Act, 1985.<sup>39</sup> It was established to relieve the burden on the High Court due to the perceived rise in the number of service matters. Presently, KAT comprises an Acting Chairman, a Judicial Member and two Administrative Members. Although KAT was intended to replace the High Court regarding service matters, thereby excluding High Court jurisdiction, by virtue of the decision in *L. Chandrakumar v. Union of India*,<sup>40</sup> an appeal against a KAT decision is maintainable in the High Court.

Since the database on KAT judgments is not searchable specifically for disputes involving teachers, our research population consisted of cases during the six months immediately following the enforcement of the RTE Act, i.e. from 1<sup>st</sup> April, 2009 to 30<sup>th</sup> September, 2009. Among these, we identified certain disputes involving teachers to throw some light on KAT proceedings and decision making in teacher cases.

Common among education matters featuring in the KAT include those relating to pay scale, seniority, promotion, transfer etc. It is interesting to see that although matters on appointment and service benefits also fall within the KAT's jurisdiction, these matters are usually filed in the High Court. While High Court cases generally concern the legality of a Government

<sup>39</sup> Notification of Government of India bearing No. A 11019/20/86-A dated 3-10-1986

<sup>40</sup> AIR 1997 SC 1125

Order or action that impacts a large number of teachers, KAT addresses questions where an individual teacher is aggrieved by a specific action. Further, KAT proceedings and decisions usually concern themselves with factual questions and administrative Rules and focus on them in greater detail than the High Court.

Appointment cases mainly involved confusion over the qualifications to the notified post. Many of the applicants claimed to possess qualifications equivalent to the prescribed qualifications. For instance, some applicants, claiming to have completed an internship course, claimed that it was the equivalent to a TCH course.<sup>41</sup> The KAT had previously accepted this contention in a decision in 2004 and 2005.<sup>42</sup> The same was followed in similar cases in 2009. However, in all cases where the applicants claimed to be qualified based on equivalence of courses or degrees, the KAT clarified that the measure of equivalence was not the function of the tribunal. Instead, the KAT seemed to look for a declaration or indication of equivalence in the announcement calling for applications to the post.<sup>43</sup> Therefore, the KAT referred these matters back to the governmental department to determine equivalence.

Many disputes on termination, discharge and penalty seemed to stem from submission of fake or misleading certificates or documents during appointment: A Physical Education teacher was discharged for furnishing false census certificate;<sup>44</sup> a teacher seeking to shift from an aided to a government school under a low income reserved quota was denied appointment for furnishing a false income certificate;<sup>45</sup> teachers seeking regularisation by virtue of a High Court order were denied on the grounds that the Writ Petition orders were doctored.<sup>46</sup> Therefore, these disputes arose due to a subsequent finding that their qualification was not proved.

Most of the applicants challenging their termination/penalty did so on the grounds that they were denied an opportunity to be heard through an inquiry. In cases where the competent authority found that the certificates or documents were fake, the KAT usually did not strictly enforce the requirement of an inquiry since the applicant was deemed to be unqualified for the post. However, in cases where termination/penalty resulted due to misconduct, the KAT required the principles of natural justice to be strictly followed. For instance, in a case where increments were withheld from certain teachers because they were suspected of being involved in misuse of mid day meals supply, KAT held that there can be no such penalty without notice to the teachers and without establishing misconduct.<sup>47</sup> Similarly, in a case where non-performance and lack of qualifications were claimed to be the reasons for terminating the services of a teacher, the KAT called for school records and other proof to establish these reasons and cancelled the termination in the absence of such records.<sup>48</sup>

The KAT also seems to use principles of justice and equity in some cases to avoid an adverse impact on some appointments. For instance, in one case a teacher was appointed to the post of Urdu teacher and had completed 15 years of work. However, it was later shown that another applicant to the post had more merit, but was somehow overseen. The teacher applied to

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<sup>41</sup> See *Jaganath v. State of Karnataka & Ors*, Application No. 1452/2002 dated 17.09.2009; See also *Mujeeb Rahman Ramzan Syed v. State of Karnataka & Ors*, Application Nos. 13779-13784/2002 dated 17.09.2009.

<sup>42</sup> Application No.1970/2004 dated 26-08-2004; Application Nos.1463- 3740/2005; 14113/2005 dated 05.09.2005.

<sup>43</sup> See *Veeravayya and Ors v. State of Karnataka & Ors*, Application No. 1085-1094/2002 dated 17.09.2009; See also *Premadas v. State of Karnataka & Ors*, Application No. 1568/1999 dated 19.06.2009.

<sup>44</sup> See *Raghunatha v. State of Karnataka & Ors*, Application No. 4637/1997 dated 11.06.2009.

<sup>45</sup> See *C. Mary v. State of Karnataka & Ors*, Application No. 3671/1999 dated 08.04.2009.

<sup>46</sup> See *Lakshminarayana & Ors. v. State of Karnataka & Ors*, Application No. 7826/2001 dated 08.07.2009.

<sup>47</sup> See *Mahantesh Ballolli v. State of Karnataka & Ors*, Application No. 457/2000 dated 24-7-2009.

<sup>48</sup> See *Narayanaswamy v. State of Karnataka & Ors*, Application No. 10915/2002 dated 28-8-2009.

the KAT praying for non-termination of her services in light of selecting the other applicant for the post. The KAT allowed her application “keeping in mind the facts and circumstances of the case and social justice”.<sup>49</sup>

As regards pay scale, the KAT seemed to be guided by the higher courts. Some applicants who were appointed as part time teachers sought to be included in the full time pay scale as they claimed to be performing services full time.<sup>50</sup> Here, the High Court had previously directed the governmental authority to consider their application and admit them to full time pay scale if they had a full time workload. While a remand to the authority is usually considered a victory for the teacher, this is a case where the consideration resulted in a finding by the authority that they were not working as full time teachers and hence did not meet the full time pay scale requisites. In another case where contract teachers were later appointed in regular service, the applicant teachers prayed that their service as contract teachers must also be calculated while fixing their pay scale.<sup>51</sup> However, the KAT rejected this claim. This is an interesting contrast with the judgments of the High Court as regards service benefits in aided schools. Those judgments clearly held that benefits must be calculated from the date of appointment and not from the date of grant of aid.

Cases on promotion seemed to be dealt with in great detail to track the seniority. Thus, in most cases where the applicant was denied promotion, the KAT revisited the seniority list to compare the qualification and merit of the applicant with the others on the list.

#### **IV. Conclusion**

In terms of the types of grievances, it appears that teachers in Karnataka had grievances similar to those of their counterparts in other states, with grievances relating to service benefits and appointments topping the list. Similarly, while both the High Court and the KAT appear slightly more sympathetic to the concerns of teachers than certain other States, particularly in emphasizing principles of natural justice, the outcomes on the whole were not particularly different from other States. What stands out about Karnataka is that it had the largest sample size among the States studies by a very large margin and, interestingly, also a relatively speedy disposal rate for cases. The speedy disposal rate appears to be at least in part because of the practice of clubbing together similarly situated petitioners, which is a practice that has not been adopted as widely in other States. More work would need to be done in order to understand whether the reasons for the very large sample size are an indication that teachers in Karnataka are particularly litigious or have better access to the court systems or is simply an indication of Karnataka’s more efficient disposal rate.

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<sup>49</sup> See Sabina Banu v. State of Karnataka & Ors, Application No. 5290/2001 dated 25-8-2009.

<sup>50</sup> See Ranganathagowda v. State of Karnataka & Ors, Application No. 2386 and 2387/2000 dated 16-9-2009.

<sup>51</sup> See Renuka D. Kunderai v. State of Karnataka & Ors, Application No. 3785/2001 dated 14-7-2009.

## CHAPTER 5

### MADHYA PRADESH

#### I. Overview

Based on the most recently available data collected by NUEPA, Madhya Pradesh had about 291,176 primary school teachers employed across 114,444 government primary schools and about 86,154 secondary school teachers employed across 13,990 secondary schools.<sup>52</sup>

In Madhya Pradesh, we found 160 relevant cases involving teacher grievances in government and aided schools during the period from 2009 to 2014<sup>53</sup> that were disposed by the Madhya Pradesh High Court. The small volume of cases is surprising given the number of teachers in the state and puts Madhya Pradesh third from the bottom in terms of volume of cases, only behind Mizoram and Odisha. The number of cases is further skewed by the fact that there were two decisions that disposed a relatively large number of clubbed petitions – a 2011 decision that disposed 61 petitions relating to retirement benefits and a 2013 decision that disposed 29 appointment related grievances. As a consequence, a disproportionately large number of grievances involved retirement benefits. Most of the cases originated in the High Court as they were writ petitions though there were a small number that were appeals from the Central Administrative Services Tribunal and a couple of appeals from the civil court. The petitioners in most cases were teachers and, the respondents were various divisions of the State's education department. There were also a handful of cases that involved contract teachers, two of which were appealed to the Supreme Court. The table below sets out the number of cases involving teacher grievances that was decided by the Madhya Pradesh High Court for each year covered in this study.

Year	No. of Cases	Percentage
2009	6	3.75%
2010	12	7.50%
2011	69	43.13%
2012	15	9.38%
2013	51	31.88%
2014	7	4.38%
<b>Total</b>	<b>160</b>	

*Table C1 – Year-wise distribution of cases*

Below we present our key findings from our analysis of High Court decisions based on the types of grievances, the outcomes of the cases and the time taken for conclusion of these cases. In addition to the statistical analysis, we have described the key types of grievances qualitatively to provide a flavour of the nature of the grievances and how they were resolved by the High Court. Finally, we have also described the judgements of the Indian Supreme Court in two teacher related grievances in Madhya Pradesh that were appealed to the Supreme Court.

<sup>52</sup> Data based on DISE Flash Statistics for Primary and Secondary Schools for 2013-2014, available at <http://www.dise.in/flash.htm>. Data as of September 2013.

<sup>53</sup> Data for 2014 only includes data until July 2014.

## II. Analysis of High Court Cases

### A. Types of Grievances

The largest category of grievances (45% or 72 of 160 cases) involved grievances over retirement benefits, which was not a category that featured as prominently in other States. The other significant categories of grievances related to appointments (31.25% or 50 of 160 cases) and grievances over service benefits (12.50% or 20 of 160 cases). There were also a few termination, promotion, suspension and transfer, but given the very small number of these grievances in aggregate, it is difficult to draw any patterns or inferences. The tables below provide the breakdown of the different types of cases in aggregate and broken down by year.

Type of Grievance	No. of Cases	Percentage
Retirement benefits	72	45%
Appointment	50	31.25%
Service benefits	20	12.50%
Termination	7	4.38%
Promotion	3	1.88%
Suspension	3	1.88%
Transfer	2	1.25
Termination, Service Benefits	1	0.63%
Compensation	1	0.63%
Insurance	1	0.63%
<b>Total</b>	<b>160</b>	

Table C 2 – Number and percentage of cases for each grievance type in aggregate for the State

Type of Grievance	Year wise						Total
	2009	2010	2011	2012	2013	2014	
Retirement benefits	3	3	62		3	1	72
Appointment	1	1		5	41	2	50
Service benefits	1	4	2	5	4	4	20
Termination		1	3	3			7
Promotion		2		1			3
Suspension		1	1		1		3
Transfer			1	1			2
Compensation					1		1
Insurance					1		1
Termination, Service Benefits	1						1
<b>Total</b>	<b>6</b>	<b>12</b>	<b>69</b>	<b>15</b>	<b>51</b>	<b>7</b>	<b>160</b>

Table C3 – Types of grievances broken down by year

### Retirement Benefits

Almost all the grievances over retirement benefits related to the age of retirement and many involved prayers by the petitioners to retire at a later age. In 2011, the High Court dismissed about 61 petitions in one decision all of which stated that the age of retirement for teachers in the state was 65 rather than 62.<sup>54</sup> The petitioners' contention was based on an amendment in 2011 to the M.P. Shashkiya Sewak (Adhiwarshik-Aaya) Adhiniyam, 1967, which the petitioners claimed raised the age of retirement for teachers from 62 to 65. All of these claims were dismissed as the High Court found that the rules the petitioners were referring to applied not to school teachers, but to certain college teachers in Madhya Pradesh. The High Court, thus, held the age of retirement for school teachers to be 62 and not 65. In another case, the petitioner approached the High Court when her attempt to withdraw her application for voluntary retirement was rejected by the school education department. The High Court dismissed her petition on the grounds that withdrawal of a retirement application could not be claimed as a matter of right.<sup>55</sup> Yet another category of retirement benefit grievances involved petitions by relatives of deceased teachers for pension benefits. In these situations, the court was inclined to be sympathetic to these petitions and typically upheld their claims for pension benefits.<sup>56</sup>

### Appointments

Grievances related to appointments ranged from cases of appointments for contract teachers to challenges to the state's reservation policy and whether a candidate from a particular caste was eligible for appointment in the reserved category. These grievances were all filed by teacher applicants, except in the case of the one clubbed decision discussed below which was filed by teachers who wanted to apply for a different educational post. In general, the High Court did not make a decision on the merits in most appointment related grievances, but instead remanded the matters for the State Government to consider and arrive at a decision. For example, one set of clubbed cases that were heard and disposed by the court involved petitions filed by teachers who wanted to appear for the examination for the recruitment of area educational officers.<sup>57</sup> These teachers contended that because promotions were based on time and seniority and were quite rare, they should be allowed to apply for the posts of area educational officers. The High Court did not take a decision on this case, but remanded to the State Government to review the teachers' applications on their merits and come to a prompt decision.

### Service Benefits

A number of the grievances involving service benefits related to challenges by teachers to their pay scales, which the High Court generally decided on a case by case basis. For example, in one case a petitioner who had been the headmaster in-charge claimed that he should be entitled to the pay scale of headmaster. The High Court allowed this petition. In another case, that was an appeal from the Central Administrative Services Tribunal, the petitioner challenged the pay scale he had been given in light of his being subjected to a departmental enquiry several years previously<sup>58</sup>. The petitioner's contention was that he should be granted the pay scale based on seniority as he had been exonerated following the departmental enquiry and had not subsequently had any negative appraisals. The court allowed the petition.

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<sup>54</sup>Sikandra Sabana v. State of MP & Ors. 2012(II)MPJR128 (W.P. 14386/ of 2011 and 60 other petitions decided on 01.12.2011)

<sup>55</sup>Ruksana Begum Siddiqui (Smt.) Vs.State of Madhya Pradesh and Ors. ILR[2009]MP3072

<sup>56</sup>Kamla (Smt.) Vs.State of M.P. and Ors. ILR[2010]MP593

<sup>57</sup>Mahendra Kumar Sen Vs.The State of Madhya Pradesh MANU/MP/1452/2013

<sup>58</sup>Kamlapati Dwivedi Vs.: Union of India and others ILR[2013]MP62

## B. Outcomes

Over half the cases analysed (56.25% or 90 of 160 cases<sup>59</sup>) resulted in the petitions of teachers being dismissed. A fair number (25% or 40 of 160) were remanded to the State Government for reconsideration, while only 15% (or 24 of 160) were allowed in favour of the teachers. It appeared that retirement benefits cases were particularly likely to be dismissed (67 of 72), though this is skewed by the fact that one decision disposed 61 petitions in 2011.

Decision Taken	No. of Cases	Percentage
Dismissed	91	56.88%
Remand to Respondent	40	25.00%
Allowed	23	14.38%
In Part	3	1.88%
Disposed of	2	1.25%
Remand to Trial Court	1	0.63%
<b>Total</b>	<b>160</b>	

Table C4 – Case outcomes in aggregate

Decision Taken	No. of Cases
Allowed	1
Dismissed	2
<b>Total</b>	<b>3</b>

Table C5 – Disaggregate for outcomes where state is the petitioner and teachers are the respondents.

Based on the two tables above, teachers prevailed in 24 cases and the state prevailed in 90 cases.

Decision Taken	Year						Total
	2009	2010	2011	2012	2013	2014	
Dismissed	2	4	67	4	11	3	91
Remand to Respondent				4	33	3	40
Allowed	4	7	2	6	4		23
In Part		1			2		3
Disposed of					1	1	2
Remand to Trial Court				1			1
<b>Total</b>	<b>6</b>	<b>12</b>	<b>69</b>		<b>51</b>	<b>7</b>	<b>160</b>

Table C6 - Case outcomes broken down by year

<sup>59</sup> These figures are slightly different from those in table C4 because it takes into account cases where the state was petitioner.

Case Type	Decision Taken						Total
	Allowed	Dismissed	Disposed of	In Part	Remand to Respondent	Remand to Trial Court	
Appointment	4	13			33		50
Insurance	1						1
Promotion	2				1		3
Retirement benefits	4	67			1		72
Service benefits	10	3	2	2	4		21
Suspension		2		1			3
Termination	2	4			1	1	8
Transfer		2					2
<b>Total</b>	<b>23</b>	<b>91</b>	<b>2</b>	<b>3</b>	<b>40</b>	<b>1</b>	<b>160</b>

Table C7 – Case outcomes broken down different types of grievances

Case Type	Dismissed			Allowed	Total Allowed	Total Dismissed	Total
	2010	2012	2013	2009			
Retirement Benefits	1						1
Service Benefits			1	1			2
<b>Total</b>					<b>1</b>	<b>2</b>	<b>3</b>

Table C8 – Disaggregating outcomes based on grievance type and year where the state is petitioner.

### C. Time Taken for Conclusion of Cases

It was not always possible to obtain the start date for a dispute from a review of the judgement and, accordingly, we could only get a reliable idea of the time taken for a dispute to conclude for 49 of the 160 cases analysed. This is a smaller proportion of the overall case volume than for other States and is partly due to the fact that a number of decisions did not include either the date of the petition or the date of the impugned order. In particular, there was no reliable way of determining the dispute start date for the two large clubbed cases (61 petitions involving retirement benefits and 29 involving appointments) as these decisions clubbed petitions that were filed on different dates (in some cases different years). Subject to the limitations in the data, the Madhya Pradesh High Court appeared to be very slow in disposing of cases, with 36.73% of them taking over 5 years to conclude. The other large category were cases disposed within 6 months (20.14%), though it should be noted that this only constitutes 10 cases given the small number of cases. The tables below set out the time period ranges for conclusion of cases in aggregate and broken down by case type. Subject to the limitations in the data, it appears that appointment related grievances were more likely to be disposed quickly compared to grievances on termination and service benefits. Grievances related to retirement benefits fell in the middle of the spectrum, taking between one and four years to conclude.

Duration	Total	Percentages
0-6 months	10	20.41%
7-12 months	3	6.12%
13-18 months	3	6.12%
19-24 months	3	6.12%
25-30 months	2	4.08%
31-36 months	2	4.08%
37-42 months	5	10.20%
43-48 months	2	4.08%
49-54 months		0
55-60 months	1	2.04%
Above 60 months	18	36.73%
<b>Grand Total</b>	<b>49</b>	

Table C9 – Time periods for conclusion of cases. Data has been plotted in six month intervals.

Type of Grievance	Time period range (in months)											Total
	0-6	7-12	13-18	19-24	25-30	31-36	37-42	43-48	49-54	55-60	60 +	
Appointment	7	1	1	1	1		1	1			4	17
Service Benefits		1		1			2			1	7	12
Retirement benefits			2	1		2	1	1				7
Termination											6	6
Suspension	1	1			1							3
Transfer	2											2
Insurance											1	1
Promotion							1					1
<b>Total</b>	<b>10</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>2</b>	<b>2</b>	<b>5</b>	<b>2</b>		<b>1</b>	<b>18</b>	<b>49</b>

Table C10 – Time period ranges for conclusion of cases broken down by grievance type.

### III. Cases in the Supreme Court

Two cases were appealed to the Supreme Court from the Madhya Pradesh High Court during the period covered by this study both of which involved contract teachers. The first case involved an appeal filed by a group of Grade II and Grade III school teachers working in Panchayat Schools as Samvida Shala Shikshak (contract teachers) whose appointments had been cancelled by the Madhya Pradesh High Court [*Girjesh Shrivastava and Ors v. State of M.P. and Ors* (22.10.2010)].<sup>60</sup> The High Court had ordered their appointments to be cancelled on the grounds that their appointments were illegal as members of the selection committee allowed their close relatives to appear in the selection process. Further, no proper advertisement had been made so as to invite applications from ex-servicemen, which

<sup>60</sup> (2011)1SCC(LS)192

was inconsistent with the service rules that mandated 10% reservation for ex-servicemen. The review petitions filed by the successful candidates were also dismissed subsequently by the High Court which stated that given the grave irregularity in the selection process, the quashing of the entire selection process was just and proper. In the appeal, the Supreme Court quashed the decision of the High Court stating that the order for cancellation of the appointments would render most of the appellants unemployed and would severely affect the economic security of many families. This is an example of the Supreme Court looking beyond the rules and irregularities in the selection process to consider the economic consequences of its decision on the affected parties and make a decision largely on compassionate grounds.

In 2013, a group of contract teachers filed a Special Leave Petition in the Supreme Court challenging the judgment of the High Court of Madhya Pradesh [*Gopal Chawala v. State of Madhya Pradesh* (30.10.2013)].<sup>61</sup> The High Court had upheld the action taken by the Chief Executive Officer (Janpad Panchayat) withdrawing an earlier order that granted certain benefits to the petitioners (Shiksha Karmi/Guruji) which were normally available only to a higher cadre (Adhyapak cadre) of teachers. The Supreme Court dismissed the petition on the grounds that the Shiksha Karmi/Guruji were appointed pursuant to an education programme and not pursuant to any statutory rules and were, therefore, not entitled to pay parity with the Adhyapak cadre or even for the minimum scale of pay. However, in keeping with its tendency to take the economic status of the petitioners into consideration, the Supreme Court (as had the High Court) asked the State Government to examine whether the amount paid to these ad-hoc teachers could be increased.

#### **IV. Conclusion**

As discussed above, the small number of cases that our database search revealed for Madhya Pradesh was surprising given the other size parameters of the State. Further, we did not come across judgements on policy matters such as an interpretation of the eligibility criteria from the NCTE guidelines, which was a recurring theme in other states. The reason for the lack of such cases is beyond the scope of the study, but we can suggest a few hypotheses that would need to be tested further. One possibility is that the rate of disposal of cases by the Madhya Pradesh High Court might be lower than in other States. Thus, petitions may have been filed on issues such as the appointment eligibility criteria in light of the NCTE guidelines, but may not have yet been disposed by the High Court. It would also be worth looking into whether there are alternative dispute resolution fora to hear teacher related grievances that have reduced the burden on the High Court or whether teachers in Madhya Pradesh do not have adequate resources to access the High Court in order to have their grievances addressed.

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<sup>61</sup> 2014(3)SCT56(SC)

## CHAPTER 6

### MIZORAM

#### I. Overview

Based on the most recently available data collected from NUEPA, Mizoram had about 12,816 primary school teachers employed across 2,273 government primary schools and 5,731 secondary school teachers employed across 696 secondary schools.<sup>62</sup>

In Mizoram, we found only 5 relevant cases involving teacher grievances in government and aided schools during the period from 2009 to 2014<sup>63</sup> that were disposed by the High Court of Mizoram. Four of these cases originated in the High Court, and one originated in the Central Administrative Services Tribunal. The petitioners in all but one case were teachers, and the petitioner in one matter was a teacher applicant. The respondents in all cases were various divisions of the state's education department, and, in one case, the Central Government. The table below sets out the number of cases involving teacher grievances that was decided by the High Court of Mizoram for each year covered in this study.

Year	No. of Cases
2009	4
2012	1
<b>Total</b>	<b>5</b>

*Table D1 – Year-wise distribution of cases*

Below we present our key findings from our analysis of decisions of the Mizoram High Court based on the types of grievances, the outcomes of the cases and the time taken for conclusion of these cases. While much of this analysis is statistical we have also described the key types of grievances qualitatively to provide a flavour of the nature of the grievances and how they were resolved by the High Court. None of the teachers' grievances went on appeal before the Supreme Court.

#### II. Analysis of High Court Cases

##### A. Types of Grievances

Out of the 5 relevant cases that we studied from this period, one case each pertained to appointment, service benefits and transfer, and two cases concerned regularisation. The table below provides the breakdown of the different types of cases in aggregate and broken down by year.

<sup>62</sup> DISE Flash Statistics for Primary and Secondary Schools for 2013-14, available at <http://www.dise.in/flash.htm> Data as of 30 September 2013.

<sup>63</sup> 2014 data includes cases until July 2014.

<b>Type of Grievance</b>	<b>No. of Cases</b>
Appointment	1
Regularisation	2
Service Benefits	1
Transfer	1
<b>Total</b>	<b>5</b>

*Table D2 – Number of cases for each case type*

<b>Type of Grievance</b>	<b>2009</b>	<b>2012</b>	<b>Total</b>
Appointment	1		1
Regularisation	2		2
Service Benefits	1		1
Transfer		1	1
<b>Total</b>	<b>4</b>	<b>1</b>	<b>5</b>

*Table D3 – Types of grievances broken down by year*

#### Appointments

In the case related to appointment,<sup>64</sup> the petition was allowed and the petitioners were permitted to submit their applications for consideration for appointment as teachers as the Central scheme under which they were selected was still subsisting in the state.

#### Appointment Regularisation

In one of the cases pertaining to regularisation,<sup>65</sup> the High Court held that the petitioner's appointment would be deemed to be regularised at the end of the probation period, if no notice was given on the issue. In the other regularisation matter,<sup>66</sup> the High Court held that, especially as the petitioner had not appeared in the recruitment against regular posts, she had not acquired any right to be regularised.

#### Service Benefits

In the case pertaining to service benefits,<sup>67</sup> the High Court found that the petitioner was entitled to arrears in salary as he had been on leave and had not been terminated from service.

#### Transfer

In the case relating to transfer of a teacher,<sup>68</sup> the High Court did not find any merit in the petitioner's argument resisting the transfer on the grounds that the transfer was happening in the middle of her children's academic year, and their studies would get disrupted.

<sup>64</sup> Lalawmpuia and Ors. Vs. The State of Mizoram and Ors. 2010(2)GLT482

<sup>65</sup> T. Lalvulliana Vs. State of Mizoram and Ors. 2009(3)GLT762

<sup>66</sup> Lalhmingthangi Sailo Vs. State of Mizoram and Ors. 2009(3)GLT202

<sup>67</sup> Sh. K. Lalmalsawma Vs. State of Mizoram and Ors. 2009(3)GLT729

<sup>68</sup> Kiran Shakya (MRS.) Vs. Union of India and Ors. 2013(2)GLT878

### B. Outcomes

The High Court allowed two petitions, and dismissed three. Given the very small number of cases, it is difficult to make any informed deductions as to the tendency of the Court.

Decision Taken	No. of Cases
Dismissed	3
Allowed	2
<b>Total</b>	<b>5</b>

Table D4 – Case outcomes in aggregate

Decision Taken	Year		Total
	2009	2012	
Allowed	2		2
Dismissed	2	1	3
<b>Total</b>	<b>4</b>	<b>1</b>	<b>5</b>

Table D5 - Case outcomes broken down by year

Case Type	Decision Type		Total
	Allowed	Dismissed	
Appointment		1	1
Regularisation	1	1	2
Service Benefits	1		1
Transfer		1	1
<b>Total</b>	<b>2</b>	<b>3</b>	<b>5</b>

Table D6 – Case outcomes broken down by case type

### C. Time Taken for Conclusion of Cases

We determined the start date of a dispute based on the date on which the petition was filed or the date of the order being challenged, where we were able to find such information. We were able to find the date of the impugned order or decision being challenged in all five cases in our sample. Four out of the five cases were concluded within 2 years, and one case took approximately 20 years to conclude. Each category of cases took a different length of time to conclude. The charts below provide the time within which cases were concluded on an aggregate basis and broken down by case type.

Duration of decision	No of Cases
9	1
10	1
14	1
24	1

249	1
<b>Total</b>	<b>5</b>

*Table D7 – Time periods for conclusion of cases. Data has been plotted in six month intervals.*

Case Type	Duration of Dispute resolution (months)					Total
	9	10	14	24	249	
Appointment			1			1
Regularisation				1	1	2
Service Benefits	1					1
Transfer		1				1
<b>Total</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>5</b>

*Table D8 – Time period ranges for conclusion of cases broken down by case type.*

### III. Conclusion

The very small volume of cases for Mizoram limited our capacity for analysis of the cases that came up before the Mizoram High Court, and opens up the questions of whether there is simply no cause for teachers' grievances to arise, or whether there is a problem of access to or awareness of grievance redressal mechanisms by teachers. Given the statistically irrelevant case volume we had for Mizoram, we have not included Mizoram as part of the inter-state comparative analysis of the final chapter.

## CHAPTER 7

### ODISHA

#### I. Overview

Based on the most recently available data collected by NUEPA, Odisha had about 215,219 primary school teachers employed across 58,412 government primary schools and about 63,008 secondary school teachers employed across 9423 secondary schools.<sup>69</sup>

In Odisha, we found 75 relevant cases involving the grievances of teachers in government and aided schools that were disposed by the Odisha High Court between 2009 and 2014,<sup>70</sup> giving Odisha one of the smallest number of cases among the States covered in this study apart from Mizoram. All the relevant cases originated from the High Court of Odisha as most of the cases were writ petitions over which the High Court has original jurisdiction. Some cases also involved appeals from prior High Court orders passed by single judges. The petitioners were typically teachers or teacher applicants and in a few cases contract teachers and the respondents were various branches of the State Government. The table below sets out the number of cases involving teacher grievances that was decided by the Odisha High Court for each year covered in this study.

Year	No. of Cases	Percentage
2009	7	9.33%
2010	21	28.00%
2011	8	10.67%
2012	35	46.67%
2013	3	4.00%
2014	1	1.33%
<b>Total</b>	<b>75</b>	

*Table EI– Year-wise distribution of cases*

Below we present our key findings from our analysis of High Court decisions based on the types of grievances, the outcomes of the cases and the time taken for conclusion of these cases. While much of this analysis is statistical, we have also described the key types of grievances qualitatively to provide a flavour of the nature of the grievances and how they were resolved by the High Court. It is important to note that the small volume of cases for Odisha means it is difficult to deduce any trends or patterns from the data. Finally, we have also described one case relating to teacher grievances in Odisha that was appealed to the Supreme Court.

<sup>69</sup> DISE Flash Statistics for Primary and Secondary Schools for 2013-2014, available at <http://www.dise.in/flash.htm>. Data as of September 30, 2013.

<sup>70</sup> 2014 data is until June.

## II. Analysis of High Court Cases

### A. Types of Grievances

Grievances relating to termination of service constituted the largest category of cases and accounted for nearly half (48% or 36 out of 75 cases) of all the cases disposed by the High Court during the time period covered by our study. This is in contrast to all the other states where termination related grievances constituted a far smaller proportion of the overall cases. The other large category of grievances related to appointments (29.33% or 22 out of 75 cases), typically involving teacher applicants being aggrieved over issues related to their appointments or other applicants being appointed in their stead. The other categories of grievances related to transfers and retirement benefits as well as one case on service benefits and another on promotion. The tables below provide the number and percentage for the different types of grievances, in aggregate for the State and broken down by year.

Type of Grievance	Total	Percentage
Termination	36	48.00%
Appointment	22	29.33%
Transfer	8	10.67%
Retirement Benefits	7	9.33%
Service Benefits	1	1.33%
Promotion	1	1.33%
<b>Total</b>	<b>75</b>	

Table E2– Number and percentage of each type of grievance in aggregate for the State

Type of Grievance	Year wise						Total
	2009	2010	2011	2012	2013	2014	
Termination	1	2	3	29	1		36
Appointment	2	14	3	1	1	1	22
Transfer		2	1	5			8
Retirement Benefits	4	1	1		1		7
Service Benefits		1					1
Promotion		1					1
<b>Total</b>	<b>7</b>	<b>21</b>	<b>8</b>	<b>35</b>	<b>3</b>	<b>1</b>	<b>75</b>

Table E3 – Types of grievance broken down by year

### Termination

Most of the termination related grievances involved wrongful termination of teachers from their posts. In particular, these cases involved situations where the petitioner teachers were promoted or transferred to another post and subsequently terminated or made to revert to their original posts. A group of 29 clubbed cases that were disposed by the Odisha High Court in 2012 involved challenges to the termination orders issued to a number of assistant teachers by the state.<sup>71</sup> The state government contended that these teachers had been wrongly appointed as they did not possess the required qualifications for appointment. The state's contention was that a Diploma in Special Education, the qualification possessed by the petitioners, was not the equivalent of a Teacher's Certificate at the time the petitioners were appointed. Following a detailed review of the rules, the High Court quashed the termination orders on the grounds that the petitioners had been appointed by the respondents on the basis that the Diploma in Special Education was equivalent to the Teacher's Certificate and the state could not subsequently claim that the two were not equivalent. Save for a few situations where petitions were dismissed on grounds of laches, the High Court was largely sympathetic to the concerns of teachers who challenged termination orders given to them and typically allowed these petitions.

### Appointments

Cases related to appointments formed the second largest category of grievances. One decision of the High Court in 2010<sup>72</sup> that disposed 13 petitions, involved a challenge by teacher applicants to a resolution passed by the State government on the eligibility criteria for teacher appointments in primary and upper primary schools in light of the enactment of the RTE. The resolution stated that 60% of vacancies would need to be filled by candidates with backgrounds in mathematics and science and, further, in situations where trained teachers with a science or mathematics background were not available, the state could consider untrained teachers with a science or mathematics background instead. The High Court held the state's resolution to be arbitrary and in direct contradiction to the Odisha Education (Establishment, Recognition and Management of Private Upper Primary School) Rules, 1991, which did require that only trained teachers could be appointed to these posts. The High Court further ordered the resolution to be quashed and for the state government to begin the recruitment process afresh. In another case that was disposed in 2012, the High Court said that appointments in government schools must be done in accordance with the Odisha Education Rules for the Siksha Sahakya posts and that these rules could not be applied retrospectively.<sup>73</sup> Accordingly, the petitioners who were teacher applicants who met the criteria for selection at the time of the advertisement for the positions in 2006, could not be denied appointment on the grounds that the guidelines were subsequently amended in 2011.

The only situations where appointment cases were not decided in favour of teachers or were remanded to respondents involved situations where the court lacked jurisdiction over the petition. For example, in one of the cases, the teacher was not provided with any relief as the limitation period for filing of the suit was long over (4 years). Similarly, in a case involving appointment of contract teachers which was disposed in 2013, the High Court observed that if the proper procedures for appointment had been followed, the dispute would need to be resolved by the Odisha Administrative Tribunal as it relates to a service dispute of a government employee.<sup>74</sup>

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<sup>71</sup> Biswambhar Behera Vs. State & Ors 114(2012)CLT241

<sup>72</sup> Ajit Kumar Pandey and Ors. Vs. State of Orissa and Ors. 2010(2)OLR464

<sup>73</sup> Sri Susantha Kumar Sethi & Ors v. State of Orissa Ors 116(2013)CLT321

<sup>74</sup> Anupama Panda Vs.: State of Orissa and Ors. 2014(141)FLR62

### Retirement benefits

Most of the grievances relating to retirement benefits involved teachers in aided schools. In a case disposed off in 2009 by the High Court,<sup>75</sup> the High Court said that a teacher is entitled to dearness pay and temporary increase according to Rule 8(2) of the Odisha Aided Educational Employees Retirement Benefit Rules. In the same year, the Court ruled that the teachers from aided institutions were governed under the 1981 Rules and entitled to pension benefits.<sup>76</sup>

### **B. Outcomes**

Based on the outcomes of cases alone, teachers in Odisha appear to have been more successful in having their grievances redressed than teachers in any other States. Teachers prevailed in 64% (or 48 of 75 cases<sup>77</sup>) and only 10.6% (or 8 of 75) were dismissed outright. About a quarter of the cases (25.33%) were remanded to the state government to consider the aggrieved teacher's case and come to a decision within a specified period of time. In particular, the High Court remanded a number of appointment related grievances back to the government authorities while it was more likely to allow petitions related to termination. In fact, it is interesting to note that only two termination related grievances were dismissed, suggesting that the High Court was very unwilling to uphold so drastic a step as termination of one's appointment. The tables below show the frequency of outcomes (a) in aggregate, and (b) broken down by (i) case type and (ii) year. In addition, we have also disaggregated the one case which involved an appeal by the state respondent, in order to arrive at the number of cases in which teachers prevailed.

Decision taken	No. of Cases	Percentage
Allowed	48	64%
Remand to Respondents	19	25.33%
Dismissed	8	10.67%
Review Petition allowed	1	1.33%
<b>Total</b>	<b>75</b>	

*Table E4 – Case outcomes in aggregate*

Decision Taken	No. of Cases
Dismissed	1

*Table E5 – Disaggregating for outcomes where state is the petitioner and teachers are respondents*

<sup>75</sup>Laxmipriya Mishra Vs.State of Orissa and Ors 2009(2)ILR-CUT249.

<sup>76</sup> Philip Kiro and John Kujur Vs.State of Orissa and Ors. 2009(Supp. 2)OLR452

<sup>77</sup> The figures are slightly different from table E4 as they take into account the one case in which the state was the petitioner.

Decision Taken	Year						Total
	2009	2010	2011	2012	2013	2014	
Allowed	3	5	3	35		1	47
Remand to respondents	1	16	1		1		19
Dismissed	3		3		2		8
Review Petition allowed			1				1
<b>Total</b>	<b>7</b>	<b>21</b>	<b>8</b>	<b>35</b>	<b>3</b>	<b>1</b>	<b>75</b>

Table E6: Case outcomes broken down by year

Case Type	Decision Taken				Total
	Allowed	Remand to Respondents	Dismissed	Review Petition Allowed	
Termination	33		2	1	36
Appointment	3	14	5		22
Transfer	5	2	1		8
Retirement Benefits	5	2			7
Service Benefits	1				1
Promotion		1			1
<b>Total</b>	<b>47</b>	<b>19</b>	<b>8</b>	<b>1</b>	<b>75</b>

Table E7: Case outcomes broken down by case type

Case Type	Dismissed	Dismissed Total	Total
	2009		
Appointment	1	1	1
<b>Total</b>	<b>1</b>	<b>1</b>	<b>1</b>

Table E8 – Disaggregating outcomes based on case type and year where the state is petitioner.

### C. Time Taken for Conclusion of Cases

Unlike some other states, we were able to discern the start date for a dispute in almost all (69 of 75) of the High Court cases analysed in Odisha. The start date for a dispute was either the date on which the petition was filed or, where known, the date of the order being challenged. Close to half of the cases (42.03%) took between 2 and 2 ½ years to conclude. Another large category were cases that took between 7 and 12 months (21.74%) and cases that took between 0 and 6 months to conclude (10.14%). Only a handful of cases (5.8%) took over 5 years. While it is difficult to draw conclusions given the small sample size, this suggests that the Odisha High Court was fairly efficient in disposing of cases in a timely manner. The tables below set out the time period ranges for conclusion of cases in aggregate for the State and broken down by case type.

Duration for the cases to conclude	No. of cases	Percentage
0-6 months	7	10.14%
7-12 months	15	21.74%
13-18 months	1	1.45%
19-24 months	3	4.35%
25-30 months	29	42.03%
31-36 months		0.00%
37-42 months	1	1.45%
43-48 months	3	4.35%
49-54 months	5	7.25%
55-60 months	1	1.45%
Above 60 months	4	5.80%
<b>Total</b>	<b>69</b>	

Table E9: Time periods for conclusion of cases. Data has been plotted in six month intervals.

Case Type	Months											Total
	0-6	7-12	13-18	19-24	25-30	31-36	37-42	43-48	49-54	55-60	60+	
Appointment		14	1	1				1	1		1	19

Promotion								1				1
Retirement Benefits		1						1	3			5
Service Benefits											1	1
Termination				2	29				1	1	2	35
Transfer	7						1					8
<b>Total</b>	<b>7</b>	<b>15</b>	<b>1</b>	<b>3</b>	<b>29</b>		<b>1</b>	<b>3</b>	<b>5</b>	<b>1</b>	<b>4</b>	<b>69</b>

Table E10 – Time period ranges for conclusion of cases broken down by case type.

Subject to the limitations in the dataset given the small sample size, it appears that appointment related grievances were disposed of much more quickly than grievances related to termination or retirement benefits.

#### ***Tribunals in Odisha***

*One possible reason for the small number of teacher related grievances in the Odisha High Court could be the existence of two tribunals that have jurisdiction to hear teachers grievances. The **Odisha State Education Tribunal** situated in Bhubhaneshwar was constituted through the Orissa Education Act of 1969. This tribunal was an administrative body that was given the responsibility to resolve dispute between teachers, school management and the government in private and aided schools. However, this tribunal lacked major enforcement powers due to which it was largely redundant. According to the State Education Department, about 5,000 writ petitions and 1,793 contempt of court proceedings piled up in the Odisha High Court as a result of non-execution of the tribunal's orders. Subsequently, in the case of Dilip Kumar v. State of Orissa, the High Court took cognizance of these issues and entrusted this power in the tribunal through the Civil Procedure Code, such that the tribunal had similar enforcement powers to a civil court. (Source: "Education Tribunal Gets New Teeth", The New Indian Express, August 10, 2010, available at <http://www.newindianexpress.com/states/odisha/article202277.ece?service=print>)*

*The **Odisha Administrative Tribunal** was set up in 1986 for quick redressal of grievances of State Government employees regarding their service matters. Teachers employed in government schools are, for most kinds of grievances, required to approach the Odisha Administrative Tribunal in the first instance and may only appeal the decision of the tribunal to the High Court. Odisha appears to be one state which has seen a gradual decrease in the number of teacher grievances that reached the High Court and the existence of these tribunals is likely to be at least part of the explanation for this trend.*

### **III. Case in the Supreme Court**

One appeal from the Odisha High Court that reached the Supreme Court involved a teacher at an aided Sanskrit educational institution.<sup>78</sup> Due to various policy changes by the State Government on Sanskrit teaching at higher secondary educational institutions and universities, the appellant was

<sup>78</sup> Debendranath Nanda vs Chandra Shekhar Kumar, AIR2013SC501.

transferred from his original post to a Governmental Sanskrit institution. The state government subsequently cancelled his transfer order and he returned to his original post. The appellant approached the Odisha Administrative Tribunal challenging both the cancellation order as well as the non-payment of his salary for the period during which he was transferred. The tribunal dismissed the appellant's application following which the appellant appealed to the High Court, which remanded the matter for the respondent institutions. The appellant appealed to the Supreme Court when no action was taken despite the High Court's order. The Supreme Court directed the State Government to assign a suitable posting to the appellant and pay corresponding monetary benefits that he was entitled to within a period of three months. This case is an example of a very specific individual grievance relating to service benefits reaching the Apex Court and the Apex Court rendering a judgment that was sensitive to the appellant's concerns. While the Supreme Court's decision is helpful, it does raise the question of whether a petitioner should need to appeal to the Supreme Court on issues as straightforward as the non-payment of his salary.

#### **IV. Conclusion**

As mentioned above, the small volume of cases for Odisha makes it hard to draw firm conclusions on the nature of teacher grievances in the state. Subject to the limitations in the data, however, it appears that the Odisha High Court has by and large been sensitive to the concerns of teachers and has tended to deliver judgments based on natural justice rather than a strict interpretation of the rules. Further, while there could be other causes, it appears that the existence of the Odisha State Education Tribunal and the Odisha Administrative Tribunal have led to a gradual decrease in the number of teacher related grievances that reach the High Court. While beyond the scope of this study, it would be interesting to review the workings of these two tribunals to understand how they work and the kinds of decisions they render.

## CHAPTER 8

### PUNJAB AND HARYANA

#### I. Overview

Based on the most recently available data from NUEPA, Punjab had 135,145 primary school teachers employed across 21,343 government primary schools and a total of 69,123 secondary school teachers employed across 8895 secondary schools. Haryana had 93,176 primary school teachers employed across 14,974 government primary schools and a total of 70,125 secondary school teachers employed across 7370 secondary schools.<sup>79</sup>

In Punjab and Haryana,<sup>80</sup> we found 279 relevant cases involving teacher related grievances in government and aided schools that were disposed of by the High Court of Punjab and Haryana between 2009 and 2014<sup>81</sup>, which set Punjab and Haryana in the middle of the range in terms of volume of cases. What is quite interesting is that the number of cases varied quite starkly from year to year with a peak of 135 (or 48.39% of the total cases) in 2012. This is largely due to 69 petitions related to teacher appointments being disposed in one decision in 2012. The petitioners in most of the cases were teachers and teacher applicants and, in a handful of cases, education volunteers. The respondents were various departments of the state education department as well as other teachers, most often those who had been appointed in place of the aggrieved petitioners. The grievances, in a significant majority of the cases, involved teachers from government schools, though there were a handful of cases involving teachers from aided schools. All the cases originated in the High Court as writ petitions. The table below sets of the number of teacher-related grievances for each year covered by the study.

Year	No. of Cases	Percentage
2009	5	1.79%
2010	65	23.30%
2011	12	4.30%
2012	135	48.39%
2013	54	19.35%
2014	8	2.87%
<b>Total</b>	<b>279</b>	

*Table F1 – Year-wise distribution of cases*

Below we present our key findings from our analysis of High Court decisions based on the types of grievances, the outcomes of the cases and the time taken for conclusion of these cases. While much of this analysis is statistical we have also described the key types of grievances qualitatively to provide a flavour of the nature of the grievances and how they were resolved by the High Court. Finally, we have also described the judgements of the Indian Supreme Court in three teacher related grievances in Punjab and Haryana that were appealed to the Supreme Court.

<sup>79</sup> DISE Flash Statistics for Primary and Secondary Schools for 2013 – 2014, available at <http://www.dise.in/flash.htm>. Data as of September 30, 2013.

<sup>80</sup> The High Court of Punjab and Haryana hears cases of teachers from both Punjab and Haryana and, hence, our analysis of these two States has been combined.

<sup>81</sup> 2014 data includes cases up to July 2014.

## II. Analysis of High Court Cases

### A. Types of Grievances

Over half the cases analysed (60.93% or 170 of 279 cases) involved grievances related to appointments. The other types of grievances that arose with some degree of frequency though significantly less than appointments involved grievances related to transfers (12.19% or 34 of 279 cases) and grievances related to termination (11.11% or 31 of 279 cases). Interestingly, petitions challenging service benefits, which constituted a significant category in most other States, did not figure prominently in Punjab and Haryana. The table below provides the breakdown of the different types of cases in aggregate for the States and broken down by year.

Type of Grievance	No. of Cases	Percentage
Appointment	170	60.93%
Transfer	34	12.19%
Termination	31	11.11%
Service benefits	11	3.94%
Contempt	9	3.23%
Retirement benefits	9	3.23%
Promotion	5	1.79%
Miscellaneous(82)	4	1.43%
Examination Standard	3	1.08%
Precedent	2	0.72%
Regularisation	1	0.36%
<b>Total</b>	<b>279</b>	

Table F2 – Number and percentage of different types of grievances in aggregate for the States

Case Type	2009	2010	2011	2012	2013	2014	Total
Appointment		20	6	116	24	4	170
Transfer		31			3		34
Termination	2	1	4	4	19	1	31
Service benefits	2	3		3	2	1	11
Contempt				7	2		9
Retirement Benefits	1	7			1		9
Promotion			2	2		1	5
Miscellaneous		3			1		4
Examination				2	1		3
Precedent					1	1	2
Regularisation				1			1
<b>Total</b>	<b>5</b>	<b>65</b>	<b>12</b>	<b>135</b>	<b>54</b>	<b>8</b>	<b>279</b>

Table F3 – Types of grievances broken down by year

<sup>82</sup> Includes criminal complaints, cases related to contract fraud and grievances on maternity leave.

### Appointments

The appointment related grievances all involved petitions filed by teacher applicants. A large number of the appointment related grievances involved challenges to the application of the States' reservation policy and allocation of vacancies for special categories of appointees. While a number of these cases involved petitioners who were from scheduled castes, scheduled tribes and other backward castes, there were also grievances filed by teacher applicants with disabilities and teacher applicants who were relatives of freedom fighters. These grievances typically involved questions over the eligibility criteria and the process for filling vacancies with the various types of candidates qualifying for reserved category appointments. In almost all of the 15 – 20 cases in this type, the High Court was reluctant to go into the merits and remanded the matter to the respondents to consider the petitioner's case and come to a decision within a specified period of time.

Yet another category of appointment grievances related to the selection process and in these cases, the High Court appeared more willing to delve into the merits of the case. In 2012, the High Court disposed of 69 petitions filed by teacher applicants challenging the selection process for physical training instructors pursuant to an advertisement issued by the Haryana Staff Selection commission in 2006.<sup>83</sup> The selection involved a long drawn out process, with the results of the initial examination being declared void as a result of malpractice. The results of the selection process were ultimately published in 2010, at which time it was revealed that the selection criteria were different from that published in the initial advertisement for the posts. The High Court allowed these petitions and quashed the selections made by the Haryana Staff Commission on the grounds that while, in the absence of specific rules, the commission had the discretion to lay down the criteria for selection, these criteria could not be changed once the selection process had started. Further, the High Court also noted with concern that it had learnt that all selection decisions were made by the Chairman of the commission alone rather than by the members of the commission as a whole.

A final category of appointment related grievances involved the eligibility criteria and challenges by teacher applicants who were not selected even though they claimed to have the qualifications required. For example, a group of teacher applicants challenged the selection process under which they were not considered for appointment because they possessed higher qualifications than the minimum criteria in the advertisement for the positions.<sup>84</sup> The High Court allowed these petitions on the grounds that candidates with higher qualifications had to be considered for the appointments on par with other candidates who possessed the minimum qualifications and not doing so violated the right to equality under Article 14 of the Constitution.

### Transfers

While there were a small number of grievances relating to transfers in most States, Punjab and Haryana appear to be the only States where there were a significant number of transfer cases. This is in large part due to a judgement that disposed 31 petitions relating to transfer orders in an uncontroversial decision.<sup>85</sup> The petitioners had requested to be transferred to other districts and their transfer orders had been cancelled by the state after an order prohibiting inter-district transfers had been issued. The petitioners had requested the cancellation of their

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<sup>83</sup> Sanjeev Kumar and Others Vs State of Haryana and Others 2013(2)SCT78(P&H)

<sup>84</sup> Manjit Singh and Ors. Vs. State of Punjab and Ors. (2011)161PLR656

<sup>85</sup> Harpreet Kaur and Ors. Vs.: State of Punjab and Ors. MANU/PH/0291/2010

transfer orders to be revoked on the grounds that the rules subsequently permitted inter-district transfers under specific circumstances. The High Court allowed these petitions with no opposition from the state and held that inter-district transfers were permitted as long as they complied with the rules.

### Termination

Termination cases were another type of grievance that featured prominently in Punjab and Haryana even though they figured only in a small minority of the cases in other States. Termination related grievances were filed in equal measure by both teachers from aided and government schools. The High Court found several of these cases to be without merit and indeed a handful of them were withdrawn after being filed. The few cases that were allowed involved situations where teachers were terminated without following proper procedures including informing the teacher of the reasons for termination and giving him/her an opportunity to be heard.

### ***B. Outcome of Cases***

Based solely on outcomes of cases, teachers in Punjab and Haryana appear to have been fairly successful in having their grievances resolved in their favour compared to their counterparts in other States. Teachers prevailed outright in 46.95% (131 of 279 cases<sup>86</sup>) of the cases and the state prevailed only 14.69% of the cases. Further, a significant number of petitions (28.67% or 80 of 279 cases) were remanded back to the respondent authorities to consider the petitioner's case and arrive at a decision within a specified period of time. The High Court's use of "remand to respondents" also suggests that the Court was, in many instances, unwilling to opine on the intricacies of the eligibility criteria or selection process and preferred to simply remand the matter to the state education authorities to take a view. The tables below set out the outcomes of decisions (a) in aggregate for the state and (b) broken down by (i) year and (ii) case type. We have also disaggregated the data for situations where the state is the petitioner and teachers are respondents both in aggregate for the States and based on year and case type.

Decision Taken	No. of Cases	Percentage
Allowed	130	46.59%
Remand to respondent	80	28.67%
Dismissed	42	15.05%
Miscellaneous <sup>87</sup>	9	3.23%
Withdrawn	7	2.51%
Disposed of	5	1.79%
Jurisdictional <sup>88</sup>	4	1.43%
In part	2	0.72%
<b>Total</b>	<b>279</b>	

*Table F4 – Case outcomes in aggregate*

<sup>86</sup> Figures are slightly different from table F 4 to account for cases where the state is the petitioner.

<sup>87</sup> Includes cases where the decision said it would be decided on precedent (without actually stating the decision), and cases where the petition was disposed of without relief to either party.

<sup>88</sup> Cases where the court said it had no jurisdiction.

Decision Taken	2010	2013	Total
Allowed	1		1
Dismissed		2	2
<b>Total</b>	<b>1</b>	<b>2</b>	<b>3</b>

Table F5 – Disaggregate for outcomes where state is the petitioner and teachers are the respondents.

The State of Punjab and the State of Haryana were petitioners in only 3 of the 279 cases reviewed. Taking into account situations where the state was the petitioner, teachers prevailed in 131 cases and the States prevailed in 41 cases.

Decision Taken	2009	2010	2011	2012	2013	2014	Total
Allowed	3	45	1	74	7		130
Remand to Respondent	2	14	5	40	16	3	80
Dismissed		6	4	16	13	3	42
Miscellaneous				1	7	1	9
Withdrawn			1	2	4		7
Disposed of			1	1	2	1	5
Jurisdictional				1	3		4
In part					2		2
<b>Total</b>	<b>5</b>	<b>65</b>	<b>12</b>	<b>135</b>	<b>54</b>	<b>8</b>	<b>279</b>

Table F6 - Frequency of case outcomes for each year

Case Type	Decision Taken								Total
	Allowed	Dismissed	Disposed of	In part	Jurisdictional	Miscellaneous	Remand to Respondent	Withdrawn	
Appointment	87	14	2	1	1	1	62	2	170
Transfer	31	3							34
Termination	5	10			2	7	3	4	31
Service benefits	3	4					4		11
Contempt		6	1		1			1	9
Retirement Benefits				1			8		9
Promotion		2				1	2		5
Miscellaneous	2	2							4
Examination Standard	2	1							3
Precedent			2						2
Regularisation							1		1
<b>Total</b>	<b>130</b>	<b>42</b>	<b>5</b>	<b>2</b>	<b>4</b>	<b>9</b>	<b>80</b>	<b>7</b>	<b>279</b>

Table F7 – Case outcomes broken down for different types of cases

Case Type	Allowed	Allowed Total	Dismissed	Dismissed Total	Total
	2010		2013		
Appointment	1	1	2	2	3
<b>Total</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>3</b>

Table F8 – Disaggregating outcomes based on case type and year where the state is petitioner.

### C. Time Taken for Conclusion of Cases

Data on the time taken for conclusion of cases was available in 202 of the 279 judgements. The majority of cases (54.46% or 110 of 202 cases) took between 2 and 2 ½ years to conclude, placing Punjab and Haryana in the middle of spectrum in terms of judicial delays. It is also interesting to note that most cases were either resolved very quickly (22.28% of the cases were resolved within 6 months) or took between 2 and 2 ½ years to resolve. Another relatively large category were decisions that took over five years (10.4%), while there were very few cases that took between 2 ½ and 5 years to conclude. The tables below set out the time period ranges within which cases were decided on an aggregate basis and broken down by case type. The data does not suggest any particular correlation between the type of grievance and the time taken for its conclusion.

Duration to make Decision	No. of Cases	Percentage
0-6 months	45	22.28%
7-12 months	10	4.95%
13-18 months	6	2.97%
19-24 months	2	0.99%
25-30 months	110	54.46%
31-36 months	3	1.49%
37-42 months	3	1.49%
43-48 months	1	0.50%
49-54 months	1	0.50%
55-60 months		0
Above 60 months	21	10.40%
<b>Total</b>	<b>202</b>	

Table F9 – Time periods for conclusion of cases. Data has been plotted in six month intervals.

Case Type	Time for Decision (in months)											Total
	0-6	7-12	13-18	19-24	25-30	31-36	37-42	43-48	49-54	55-60	60 +	
Appointment	29	6	4	1	73	1	2				10	126
Contempt	1	1				1						3
Examination Standard	2											2
Miscellaneous	2				1						1	4
Promotion	1										1	2
Regularisation											1	1
Retirement Benefits			1	1								2
Service benefits	2										4	6
Termination	7	3	1		5	1	1	1	1		4	24
Transfer	1				31							32
<b>Total</b>	<b>45</b>	<b>10</b>	<b>6</b>	<b>2</b>	<b>110</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>1</b>		<b>21</b>	<b>202</b>

Table F10 – Time period ranges for conclusion of cases broken down by case type.

### III. Cases in the Supreme Court

One of the cases disposed of by the Supreme Court was an appeal by the State of Haryana [*State of Haryana & Ors. v. Hem Lata Gupta & Ors.*]<sup>89</sup>,] from an order of the Division Bench of the Punjab and Haryana High Court regarding advance salary increments. The respondents were teachers who had joined service in 1966 and had filed a writ petition in the High Court in 1997 asking for salary increments to be paid in accordance with a government order from 1960. The High Court remanded the matter back to the Department of Secondary Education, which rejected the teachers' prayer on the grounds that their pay scale was based on a revised policy issued in 1966. The teachers again filed a writ petition which was allowed by a Division Bench of the High Court in 2001. The Division Bench held that despite revisions to the salary policy in 1967, this did not supersede the 1960 policy and, as such, the teachers were entitled to their advance increments. The Supreme Court allowed the appeal and overturned the judgement of the Division Bench on the basis that

*“the teachers employed under the Government of Haryana could claim benefit of the higher pay scales, advance increments etc. in terms of the policy decisions taken by the Government of undivided Punjab and instructions issued by it only till the revision of their pay scales, which were made effective from 1.12.1967 and not thereafter.”*

The Supreme Court, however, made clear that its decision should not be considered as denying the respondents any benefits to which they were entitled under subsequent orders and policies, including the ones issued in 1977.

In 2012, the Supreme Court heard another appeal by the State of Haryana challenging an order of the Division Bench of the High Court on the rules for determining seniority (*State of Haryana & Ors. v. Vijay Singh & Ors.*)<sup>90</sup>. The respondents were initially appointed as ad-hoc teachers for a temporary period of 6 months. Subsequently, their appointments were regularised after three years. The question that the High Court decided was whether the period of their ad-hoc appointment should be counted in determining the respondents' seniority for purposes of promotion and service benefits. The High Court ruled that under the relevant rules, the term of the ad-hoc appointment should not be counted towards determining seniority as the appointments had not been legally regularised. The Supreme Court went through a detailed discussion of the basis for determining seniority under the various service rules applicable to teachers in the State of Haryana. The Supreme

<sup>89</sup> AIR2010SC629

<sup>90</sup> (2012) 8 SCC 633

Court concluded that as the appointments of the respondents had all been made on an ad-hoc basis, for a fixed period of time and by an authority other than the competent authority to make a regular appointment, the period of the ad-hoc service could not count for purposes of determining seniority.

Yet another judgement of the Supreme Court related to special leave petitions filed against the State of Haryana in connection with the appointment of “guest” teachers [*Naresh Kumar & Ors. v. State of Haryana & Ors.*<sup>91</sup>]. This case raised concerns over “guest” teachers who had been appointed as contract teachers in various government schools in Haryana being allowed to continue in their posts and the State of Haryana not making any concerted effort to recruit teachers on a permanent basis for these posts. The Supreme Court affirmed the order of the Division Bench of the High Court that no new appointments of guest teachers may be made after April 1, 2012 and that the State of Haryana should recruit teachers through the regular process without further delay. However, the Supreme Court also stated that the guest teachers would be allowed to continue until the appointment of permanent teachers to ensure that students were not made to suffer as a result of delays in appointing regular teachers.

#### **IV. Conclusion**

Relative to the volume of cases, Punjab and Haryana had a particularly large proportion of grievances related to appointments. These grievances did not centre around any particular theme, but covered a variety of issues, including the selection process, the eligibility criteria for appointments and reservations. Another issue related to appointments involves the use of ad-hoc or guest teachers in schools in lieu of appointing permanent and trained teachers. While the High Court of Punjab and Haryana did not issue many decisions in relation to ad-hoc teachers during the period covered by our study, the two Supreme Court decisions we reviewed indicate that this has historically been an issue that the States of Punjab and Haryana are now trying to rectify. The decisions of the High Court of Punjab and Haryana on appointment related matters suggest that while the court was willing to look closely into the selection process and quash selections that were not conducted in accordance with the relevant rules, it was less willing to dwell into the intricacies of the eligibility criteria for appointments, which it left to the discretion of the respective State Governments.

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<sup>91</sup> MANU/SCOR/35065/2012

## CHAPTER 9

### RAJASTHAN

#### I. Overview

Based on the most recently available data collected by NUEPA, Rajasthan had about 326,202 primary school teachers employed across 83,564 government primary schools and about 131,782 secondary school teachers employed across 27,294 secondary schools.<sup>92</sup>

In Rajasthan, we found 1,285 relevant cases involving teacher grievances in government and aided schools during the period from 2009 to 2014<sup>93</sup> that were disposed by the Rajasthan High Court. Many of these petitions were clubbed together and disposed in judgements that deal with more than one petition. 1,045 of the total 1,285 cases were disposed as clubbed cases, with the number of petitions grouped together ranging widely from 10 or 13 to one decision which disposed of 788 petitions (the reason for the significant increase in the volume of cases in 2012) and is discussed in detail below. Most of these cases originated in the High Court as they were writ petitions or appeals from prior High Court orders passed by single judges. A small minority of the cases that reached the High Court involved appeals from the Rajasthan Civil Services Appellate Tribunal, in the case of government school teachers, and the Rajasthan Non-governmental Education Tribunal, in the case of teachers from private schools that receive grant-in-aid from the government. The petitioners in most cases involved teachers, teacher applicants and contract teachers and the respondents were various divisions of the State's education department. In some cases, the respondents were also other teachers in the school in question who were alleged to have received benefits denied to the petitioner (for example, teachers who were appointed instead of the petitioners). There were also a few situations where petitions were filed by the school management committees of aided schools against teachers of aided schools and the state government. Such cases typically related to disputes over the service benefits to which teachers in aided schools were entitled. Finally, a significant minority of the cases involved appeals by the State Government against the orders passed by single judges of the High Court. The table below sets out the number of cases involving teacher grievances that was decided by the Rajasthan High Court for each year covered in this study.

Year	No. of Cases	Percentage
2009	10	0.78%
2010	184	14.32%
2011	76	5.91%
2012	834	64.90%
2013	173	13.46%
2014	8	0.62%
<b>Total</b>	<b>1285</b>	

*Table G1 – Year-wise distribution of cases*

Below we present our key findings from our analysis of High Court decisions based on the types of grievances, the outcomes of the cases and the time taken for conclusion of these cases. While much of this analysis is statistical we have also described the key types of grievances qualitatively to provide a flavour of the nature of the grievances and how they were resolved by the High Court.

<sup>92</sup> DISE Flash Statistics for Primary and Secondary Schools for 2013-2014, available at <http://www.dise.in/flash.htm> Data as of September 30, 2013.

<sup>93</sup> Data for 2014 only includes data until July 2014.

Finally, we have also described the judgement of the Supreme Court in one teacher related grievance in Rajasthan that was appealed to the Supreme Court.

## II. Analysis of High Court Cases

### A. Types of Grievances

A significant majority of the cases (69.96% or 899 out of 1285 cases) involved teachers applicants being aggrieved over issues related to their appointments over another candidate being appointed in their stead. Another large category of cases related to regularisation of appointments of contract teachers (12.14% or 156 cases) followed by cases related to service benefits (10.58% or 135 cases). Grievances related to transfers, examination standards for teacher eligibility tests, retirement benefits, termination and promotion were the other kinds of issues that the High Court disposed, though these were less frequent than appointments, service benefits and regularisation. The tables below provide the breakdown of the different types of grievances, in aggregate for the State and broken down by year.

Type of Grievance	Total	Percentage
Appointment	899	69.96%
Regularisation	156	12.14%
Service benefits	136	10.58%
Examination Standards	45	3.50%
Transfer	22	1.71%
Retirement benefits	11	0.86%
Termination	10	0.78%
Promotion	5	0.39%
Miscellaneous	1	0.08%
<b>Total</b>	<b>1285</b>	

Table G2 – Number and percentage for each grievance type in aggregate for the State

Type of Grievance	Year						Total
	2009	2010	2011	2012	2013	2014	
Appointment	4	15	16	828	36		899
Regularisation		153	1	2	-	-	156
Service benefits	1				135		136
Examination Standards			44			1	45
Transfer	2	12	7	1	-		22
Retirement benefits	3	2	4			2	11
Termination		1	2	2	1	4	10
Promotion		1	2	1		1	5
Miscellaneous					1		1
<b>Total</b>	<b>10</b>	<b>184</b>	<b>76</b>	<b>834</b>	<b>173</b>	<b>8</b>	<b>1285</b>

Table G3 – Types of cases broken down by year

### Appointments

A number of appointment cases appear to stem from confusion over the rules on eligibility and selection criteria for teachers following enactment of the RTE Act and related RTE rules notified by the state government. In 2012, the Rajasthan High Court, in one decision, disposed 788 petitions<sup>94</sup> that were all filed by teacher applicants following the RTE Act which laid down the minimum qualifications for teachers as prescribed by the National Council for Teacher Education (NCTE)<sup>95</sup>. In this group of cases, the petitioners did not question the qualifications prescribed by the NCTE but rather asked that the State Government relax the cut off date after which these minimum qualifications would apply. The petitioners were teacher applicants to government elementary schools who did not have these qualifications and contended that they would have been eligible for appointment had the state not delayed the selection process. The court dismissed these petitions stating that the state government cannot relax the cut off date as this would be contrary to the RTE Act and to the minimum qualifications required of teachers under the rules prescribed by the NCTE.

Another variety of appointment related grievances involved challenges to the State's reservation policy or its implementation. For example, in one group of cases, teacher applicants who did not get appointed to government schools challenged the State Government's order that relaxed the selection criteria for certain reserved category candidates.<sup>96</sup> The Court allowed these petitions stating that the State Government cannot formulate new policies with regard to reserved candidates that would amount to a relaxation of the standards set up by the NCTE. The NCTE rules allowed for a 5% relaxation of pass marks required of candidates from reserved categories and the state could not permit any additional relaxation over this standard.

A smaller number of appointment cases related to eligibility criteria for appointments that were unrelated to the RTE Act and based on state rules regarding the service and appointment of teachers. For example, there were cases where the petitioners were not selected because they were over-age pursuant to the Rajasthan Panchayati Raj Prabhodak Service Rules, 2008.<sup>97</sup> There were also a number of cases that involved an interpretation of the eligibility requirements for teacher positions and, in particular, whether certain degrees or qualifications satisfied the eligibility criteria under the rules. One such case was appealed to the Supreme Court and is discussed in detail in the next section.

### Appointment Regularisation

We treated grievances relating to regularisation of existing appointments as a separate category of cases which typically involved petitions and appeals filed by contract teachers who had already been appointed but whose posts had not been regularised. In a majority of these cases, the court dismissed the petitions on the basis that the decision of whether to hire contract or permanent teachers was a policy decision of the state with which the court could not interfere.<sup>98</sup> However, the court allowed these petitions in a few cases where a government order existed for regularising certain contract teacher positions. In all, 158 cases were brought by contract teachers during the period covered by this study, almost all of which involved regularisation of their appointments.

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<sup>94</sup> Rajesh Kumar Meena and Ors. Vs. State of Rajasthan and Ors. 787 others, 2013(1)CDR558

<sup>95</sup> Section 23(1) of the RTE Act allows the Central Government to prescribe minimum qualifications for teachers. The Central Government issued Notification 5.04.2010 authorising the NCTE to prescribe these qualifications.

<sup>96</sup> Vikas Kumar Agrawal and etc. etc. Vs. State of Rajasthan & Ors. 2012 (3) ILR (Raj) 459

<sup>97</sup> Smt. Kamla Kumari Vs. State of Rajasthan and Ors. 2010 (3) ILR (Raj) 693

<sup>98</sup> Prahalad Kumar Sharma Vs. State of Rajasthan and Ors. 2011 (2) ILR (Raj) 265

### Service Benefits

Most of the grievances relating to service benefits involved teachers in aided schools and revolved around questions of whether teachers in aided schools were entitled to certain service benefits such as gratuity and pension benefits that were available to teachers in government schools. For example, in one group of cases, teachers holding non-sanctioned posts (i.e., posts not supported by government grants) in aided schools challenged the rules that provided them with different benefits from those available to teachers holding sanctioned posts as violating the right to equality under Article 14 of the Constitution.<sup>99</sup> The court dismissed these claims on the grounds that mere differentiation in treatment did not amount to discrimination that violated Article 14. The court further pointed out that there was no right to grant-in-aid per se which depended on the financial resources available to the state and that the state could, as a policy decision, decide to differentiate between sanctioned and non-sanctioned posts.

Another theme that ran through some of these service benefit decisions involved ambiguity over the status of some “aided schools.” For example, in one situation, the school, an aided institution, claimed that it could no longer pay salaries of teachers on par with government teachers because it had stopped receiving aid from the government.<sup>100</sup> The reason the school had stopped receiving grant-in-aid was due to a failure to submit the relevant documentation and accounts as required of aided institutions in accordance with the Rajasthan Non-governmental Educational Institutions Act, 1989 (the “Act”). The High Court did a detailed analysis of the various rules and conditions applicable to aided institutions and concluded that an aided institution does not lose its status as an aided institution if it stops receiving grant-in-aid from the government as a result of non-compliance with the government’s guidelines.<sup>101</sup> As such, teachers holding sanctioned posts in such an aided school would continue to be entitled to the same benefits available to teachers in government schools, even if the school had stopped receiving aid from the government.<sup>102</sup> The High Court further held that if the school believed that the state government had wrongfully withheld aid, its remedy was to appeal this decision rather than to reduce the salaries of teachers.

A very small minority of service benefit cases involved teachers from government schools with very specific grievances, such as non-payment of their salary during disciplinary proceedings, or not being paid increments to their salary. The court dealt with such cases on a case-by-case basis, mostly remanding them to the respondents to consider the petitioner’s case further.

### ***B. Outcomes***

In almost all of the cases analysed (94.5% or 1181 of 1285 cases), the State Government prevailed over the teacher petitioners. Teachers prevailed only in 3.97% (or 85 of 1285 cases) of the cases, while in the remaining 1.01% (or 19 or so cases), the decisions were either partial victories for the teachers or the matters were remanded to the state

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<sup>99</sup>Rajendra Prasad Sharma Vs. State of Rajasthan, 2014(2)RLW1520

The specific challenge was to Rule 2(g) of the Rajasthan Non-government Educational Institutions (Recognition, Grant-in Aid, Service Conditions etc) Rules, 1993 which defined “employee” as “an employee working in a recognized non-government aided institution and who is working against aided and sanctioned post.”

<sup>100</sup> Bal Niketan and Shri Dungargarh Vs. The State of Raj. & Others MANU/RH/0105/2013

<sup>101</sup> The applicable laws and rules are the Act and the Rajasthan Non-government Educational Institutions Rules, 1993.

<sup>102</sup> Section 29 of the Act provides that scale of pay and salaries for employees of aided institutions should not be any less than those prescribed for staff in a similar position in a government institution.

government to consider the aggrieved teacher's case and come to a decision within a specified period of time. This data is skewed by the fact that the court dismissed 788 very similar claims by teacher applicants who had questioned the eligibility criteria under the RTE Act. Leaving aside these 788 petitions, teachers prevailed in 17.1% (or 85 of 497 cases) of the cases. Nevertheless, this data still suggests that the Rajasthan High Court considered a very large number of the petitions and appeals brought by teachers to be without merit. The tables below show the frequency of outcomes (a) in aggregate, and (b) broken down by (i) case type and (ii) year. In addition, we have also separately shown the outcomes for those cases in which the State Government was the petitioner and the teachers were respondents. In all, there were 34 cases in which the State Government was the petitioner or appellant, all of which were dismissed.

Decision Taken	No. of Cases	Percentages
Dismissed	1215	94.55%
Allowed	51	3.97%
Remand to respondent	13	1.01%
In part	6	0.47%
<b>Total</b>	<b>1285</b>	

*Table G 4 – Case outcomes in aggregate*

Decision Taken	Year			Total
	2010	2012	2013	
Dismissed	1	1	32	34
<b>Total</b>	<b>1</b>	<b>1</b>	<b>32</b>	<b>34</b>

*Table G5 – Disaggregate for outcomes where state is the petitioner and teachers are the respondents.*

Based on the two tables above, teachers prevailed in 85 cases (51 + 34) and the state prevailed in 1181 cases (1215 – 34).

Decision Taken	Year						Total
	2009	2010	2011	2012	2013	2014	
Dismissed	3	172	67	798	169	6	1215
Allowed	5	4	7	29	4	2	51
Remand to respondent	2	8	1	2			13
In part			1	5			6
<b>Total</b>	<b>10</b>	<b>184</b>	<b>76</b>	<b>834</b>	<b>173</b>	<b>8</b>	<b>1285</b>

*Table G6 - Case outcomes broken down by year*

Case Type	Decision Taken				Total
	Allowed	Dismissed	In part	Remand to respondent	
Appointment	34	854	5	6	899
Regularisation	1	154	1		156
Service benefits	1	134		1	136
Examination Standards	2	43			45
Transfer	2	17		3	22
Retirement benefits	5	5		1	11

Termination	2	6		2	10
Promotion	3	2			5
Miscellaneous	1				1
<b>Total</b>	<b>51</b>	<b>1215</b>	<b>6</b>	<b>13</b>	<b>1285</b>

*Table G7 – Case outcomes broken down different types of cases*

Case Type	Dismissed			Dismissed Total	Total
	2010	2012	2013		
Appointment		1	32	33	33
Transfer	1			1	1
<b>Total</b>	<b>1</b>	<b>1</b>	<b>32</b>	<b>34</b>	<b>34</b>

*Table G8 – Disaggregating outcomes based on case type and year where the State is petitioner.*

### *C. Time Taken for Conclusion of Cases*

It was not always possible to obtain the start date for a dispute from a review of the judgement and, accordingly, we could only get a reliable idea of the time taken for a dispute to conclude for 1062 of the 1285 cases analysed. Where the data was available, we have used indicators to arrive at an estimate of the start of the dispute – in a majority of cases this was either the date on which the petition was filed or the date of the order being challenged.<sup>103</sup> The time taken for disputes to conclude varied widely from 1 month to close to 237 months (or over 19 years). A large majority of cases (7.12% or 899 of 1062) took between seven to twelve months to conclude. The charts below provide the time ranges (in 6-month time periods) within which cases were concluded on an aggregate basis and broken down by case type. Subject to the limitations in this dataset, our analysis of the data suggests that grievances related to appointments and examination standards were resolved far more quickly than grievances related to service benefits.

Duration for Case to Conclude	No. of Cases	Percentages
0-6 months	72	6.78%
7-12 months	819	77.12%
13-18 months	1	0.09%
19-24 months	8	0.75%
25-30 months	15	1.41%
31-36 months	128	12.05%
37-42 months	-	0
43 – 48 months	-	0
49-54 months	1	0.09%
55-60 months	1	0.09%
Above 60 months	17	1.60%
<b>Total</b>	<b>1062</b>	

*Table G9 – Time periods for conclusion of cases. Data has been plotted in six month intervals.*

<sup>103</sup> Many decisions do not indicate the data on which the petition was filed or the date of the order being challenged.

Case Type	Time period range (in months)											Total
	0-6	7-12	13-18	19-24	25-30	31-36	37-42	43-48	49-54	55-60	60+	
Appointment	13	816	1	5	15						2	852
Examination Standards	43											43
Miscellaneous		1										1
Promotion	1	1								1	1	4
Regularisation											1	1
Retirement benefits				2		1			1		4	8
Service benefits	2					127					5	134
Termination	2										3	5
Transfer	11	1		1							1	14
Total	72	819	1	8	15	128			1	1	17	1061

Table G10 – Time period ranges for conclusion of cases broken down by case type.

### ***Tribunals in Rajasthan***

A small number of the High Court judgements we reviewed involved appeals from two tribunals in Rajasthan:

***Rajasthan Non-Government Educational Tribunal*** was set up pursuant to the Rajasthan Non-Government Educational Institutions Act, 1989 and has the same powers as a civil court in terms of procedural matters and enforcement of judgements. The mandate of the tribunal is to settle disputes between management of a recognized private educational institution (aided or unaided) and its employees. The tribunal also has jurisdiction to hear appeals by employees of orders passed by the Directorate of Education or the school management committee.

***The Rajasthan Civil Services Appellate Tribunal*** was set up in 1976 under the Rajasthan Civil Services (Service Matters Appellate Tribunal) Act, 1976 for the adjudication of disputes and complaints with respect to service matters and matters incidental thereto of government employees. The intention of setting up the tribunal to deal exclusively with cases relating to service matters was to reduce the burden of the courts, in particular the High Court. The tribunal primarily addresses grievances such as pension, pay fixation and promotion.

The effectiveness of these two tribunals in reducing the burden on the High Court is unclear and beyond the scope of this study, particularly as there were only a handful of the cases in our review that originated from these tribunals. However, it may be worth exploring further whether these tribunals could provide a more efficient and accessible forum for teachers to have their grievances redressed.

### **III. Teacher Appointment Case in the Supreme Court**

In January 2012, the Supreme Court passed a judgement on a civil appeal (*Chandrakala Trivedi v. State of Rajasthan & Ors*)<sup>104</sup> in which a teacher applicant appealed against the decisions of the Single Judge and a Division Bench of the Rajasthan High Court. The controversy involved in this

<sup>104</sup> MANU/SC/0040/2012

case related to the eligibility criteria for the applicant's appointment as a teacher in a government primary and upper primary school. After the applicant was provisionally selected, she was told that her appointment was cancelled as she had only passed the school secondary examination and not the higher secondary/senior secondary examination which was the basic requirement for the post. The applicant contended that she had higher qualifications than the requirement as she had completed her B.Ed and M.A. degrees directly after her secondary examination. Her claim was dismissed by both the Single Judge and the Division Bench of the Rajasthan High Court which stated that a higher qualification could not be a substitute for the required qualification. However, the Supreme Court overturned these judgements stating that this was too literal a reading of the requirements. The Supreme Court pointed out that the qualification required was "Senior Secondary or Intermediate or its Equivalent" and that the term equivalent had to be interpreted reasonably: "By using the expression, 'equivalent' one means that there are some degrees of flexibility or adjustment which do not lower the stated requirement." The Supreme Court also took into consideration the fact that the applicant had already been provisionally selected and would, therefore, have legitimate expectations that she would in fact be appointed.

#### **IV. Conclusion**

Most teacher related grievances in Rajasthan appear to begin and conclude in the High Court and, based on our searches, the above judgement was the only teacher related grievance from Rajasthan that reached the Supreme Court between 2009 and 2014. However, this case is suggestive of the different approaches that the Rajasthan High Court and the Supreme Court take in matters of interpreting rules. It appears that the Rajasthan High Court adopted a much more rigid and literal reading of the rules compared to the Supreme Court which viewed the issue more through the lens of what the rules were actually trying to achieve. While we should be wary of generalising based on this one case, this rigid approach taken by the Rajasthan High Court could, perhaps, be one of the reasons that a very large number of grievances were decided against teachers.

## CHAPTER 10

### TAMIL NADU

#### I. Overview

Based on the most recently available data from NUEPA, Tamil Nadu had a total of approximately 218,305 primary school teachers employed across 37,000 government primary schools and a total of approximately 155,689 secondary school teachers employed across 11,901 secondary schools.<sup>105</sup>

In Tamil Nadu, we found 544 relevant cases relating to grievances of teachers in government and aided schools that were disposed of by the Madras High Court between 2009 and 2014.<sup>106</sup> The cases were relatively evenly distributed throughout the period covered by the study, except for a peak of 201 relevant cases in 2013, which is, in some part, due to a number of petitions in the backlog being disposed in groups. Almost all the cases were writ petitions filed directly in the High Court. A handful of cases were initially filed with the Tamil Nadu Administrative Tribunal, but as the Tribunal was abolished in 2004,<sup>107</sup> the High Court is now the first forum for resolution of disputes for teachers in government and aided schools. The petitioners in a large majority of the cases were teachers and, in the case of appointment related grievances, teacher applicants. A significant minority of the petitions were also filed by retired school teachers and the families of deceased teachers claiming retirement benefits or appointments on compassionate grounds. The respondents were various branches of the Tamil Nadu Education Department, particularly the Tamil Nadu Teachers Recruitment Board that featured as a frequent respondent in many of the cases. There were also a handful of appeals filed by the State Government and the Teachers Recruitment Board on examination standards. The table below sets out the number of relevant cases disposed in each year covered by the study.

Year	No. of Cases	Percentages
2009	67	12.32%
2010	86	15.81%
2011	86	15.81%
2012	47	8.64%
2013	201	36.94%
2014	57	10.48%
<b>Total</b>	<b>544</b>	

*Table H1 – Year-wise distribution of cases*

Below we present our key findings from our analysis of High Court decisions based on the types of grievances, the outcomes of the cases and the time taken for conclusion of these cases. While much of this analysis is statistical we have also described the key types of grievances qualitatively to provide a flavour of the nature of the grievances and how they were resolved by the High Court. In

<sup>105</sup> DISE Flash Statistics for Primary and Secondary Schools for 2013 – 14, available at <http://www.dise.in/flash.htm> Data is as of September 30, 2013.

<sup>106</sup> Data for 2014 is as of June 14.

<sup>107</sup> The Tamil Nadu Administrative Tribunal was abolished and all pending cases transferred to the jurisdiction of the Madras High Court pursuant to a notification of the Government of India in the Ministry of Personnel, Public Grievances and Pensions No. G.S.R. 71(E), dated 17th February, 2006 issued under sub-section (2) of section 4.

addition, we have also described the judgements of the Indian Supreme Court in a few teacher related grievances in Tamil Nadu that were appealed to the Supreme Court.

Tamil Nadu is one of the three States in this study where we have attempted to look at other dispute resolution fora and map out the grievance redressal process for teachers before a dispute is escalated to the High Court. In a separate section, we have presented the results of these findings which are based on interviews and information gathered from members of teachers' associations, lawyers representing teachers, lawyers representing the Government of Tamil Nadu in teacher grievance matters and government officials in the Education Department who deal with teacher grievances and disputes.

## II. Analysis of High Court Cases

### A. Types of Grievances

The single largest category of grievances related to service benefits (42.10% or 229 of 544 cases), followed by appointments (22.24% or 121 of 544 cases) and examination standards (13.60% or 74 of 544 cases). Other significant types of grievances related to promotions, retirement benefits, transfers, regularisations and termination or suspensions. In Tamil Nadu, there were also a significant minority of cases where teachers had raised more than one grievance in their petitions – for example, service benefits were often tied to other grievances such as promotions, suspensions and appointments. The tables below set out the different types of grievances, in aggregate for the State, and broken down by year.

Type of Grievance	No. of Cases	Percentages
Service benefits	229	42.10%
Appointment	121	22.24%
Examination Standard	74	13.60%
Promotion	40	7.35%
Retirement benefits	26	4.78%
Transfer	12	2.21%
Regularisation	11	2.02%
Termination	10	1.84%
Miscellaneous <sup>108</sup>	7	1.3%
Suspension	5	0.92%
<u>Cases with Multiple Grievances</u>		
Appointment and Promotion	2	0.37%
Appointment and Service Benefits	1	0.18%
Service Benefits and Retirement Benefits	1	0.18%
Service Benefits and Suspension	1	0.18%
Service Benefits, Promotion	2	0.37%
Termination/Retirement benefits	1	0.18%
Transfer, termination	1	0.18%
<b>Total</b>	<b>544</b>	

Table H2 – Number and percentage for each grievance type in aggregate for the State

<sup>108</sup> Includes a criminal case and grievances related to disciplinary proceedings, entitlement to re-employment, maternity leave and a case on the Private School Act in connection with an aided school.

Case Type	Year						Total
	2009	2010	2011	2012	2013	2014	
Service benefits	23	38	22	1	142	3	229
Appointment	16	13	19	29	27	17	121
Examination Standard	1	19	2		20	32	74
Promotion	3	4	19	7	6	1	40
Retirement benefits	14		10	1	1		26
Transfer	1	3	2	5		1	12
Regularisation	3	3	2	1		2	11
Termination		1	6	1	2		10
Miscellaneous	2	3	1			1	7
Suspension		1	1	1	2		5
<u>Cases with Multiple Grievances</u>							
Appointment and Promotion	1		1				2
Appointment, Service Benefits				1			1
Service Benefits and Retirement Benefits		1					1
Service Benefits and Suspension			1				1
Service Benefits, Promotion	2						2
Termination, Retirement Benefits	1						1
Transfer, termination					1		1
<b>Total</b>	<b>67</b>	<b>86</b>	<b>86</b>	<b>47</b>	<b>201</b>	<b>57</b>	<b>544</b>

Table H3 - Types of cases broken down by year

### Service Benefits

In 2013, the Madras High Court disposed of 133 petitions from government school teachers in relation to salary scale.<sup>109</sup> The petitioners were all secondary grade teachers in government high schools and government secondary schools and were subject to the Tamil Nadu Educational Subordinate Service Rules. The petitioners claimed that as they had completed between 10 and 20 years of service, they were entitled to the same pay scale as primary school headmasters. The petitioners based their claim on a Tamil Nadu government order from 1998 and relied heavily on various decisions of the Tamil Nadu Administrative Tribunal and single judges of the High Court. The court dismissed these claims on the grounds that the precedents relied on by the petitioners were not binding and did not, in themselves, give the petitioners a right to the same pay scale as primary school headmasters.

Apart from this group of 133 petitions, cases relating to service benefits were relatively evenly spread out during the years covered by the study. Another type of service benefit grievance related to teachers challenging orders by the state to recover excess amounts already paid to them. This typically occurred in situations where the government attempted to recover excess amounts paid as a result of an error in fixing the pay scales of teachers. In most cases, the High Court allowed these petitions on the basis that the excess salary paid was not due to any fault of the petitioners, but stated that the state was at liberty to re-fix the salaries of the teachers in question going forward in accordance with the law. Related to these types of cases were situations where teachers challenged orders that cancelled their salary

<sup>109</sup> S. Arulappan Vs. The Government of Tamil Nadu, The Chief Educational Officer, The District Educational Officer and The Correspondent MANU/TN/2467/2013

increments or incentive payments. The Court did not delve into the merits of these challenges, but typically set aside these orders on the grounds that these orders were issued without giving the petitioners an opportunity to be heard or explaining the reasons of such cancellation to them.

There were also cases where teachers (or in some cases retired teachers) sought increments to their pay scale and grade on the basis of government orders conferring these benefits on other teachers. For example, the Tamil Nadu Government issued an order in 2009 granting 63 teachers who had filed cases before the Tamil Nadu Administrative Tribunal certain pay scale and selection grade increments in order to implement the tribunal's order.<sup>110</sup> This led to some teachers who had retired a decade ago filing a writ petition to claim a similar benefit on the grounds that they were similarly situated to the 63 teachers who were conferred these benefits.<sup>111</sup> The Court dismissed these claims on the grounds that merely because the Government had chosen to implement an order of a court or tribunal did not in itself give rise to a cause of action.

### Appointments

The High Court disposed between 10 and 30 appointment related grievances for each of the years covered by the study, all of which were filed by teacher applicants. A large number of the appointment cases related to disputes over the eligibility criteria for a particular post. For example, in 2009, teacher applicants challenged their ineligibility to be appointed as science teachers in government primary schools because they possessed degrees in B.Sc. Industrial Chemistry rather in B.Sc. Chemistry as required under the rules.<sup>112</sup> While the petitioners tried to obtain evidence that the two degrees were "equivalent", the Court dismissed these claims on the basis that it was not for a court to overrule the decision of an educational authority on the eligibility criteria.

In another group of decisions, teacher applicants challenged the Director of School Education's order to grant appointments to applicants with either a one-year or three-year degree in the relevant subject.<sup>113</sup> The petitioners contended that only applicants who had completed three-year degrees could be considered and that a degree of one-year duration could not be considered equivalent to a three-year degree. The Court engaged in a detailed discussion of the rules and eligibility criteria and concluded that while the term "graduate" (which was the requirement for the post) was not defined in the rules, the term graduate is generally understood to be a holder of a valid university degree which the University Grant Commission rules define as being a 3-year degree. Hence, the petitions were allowed and the Court quashed the Director of School Education's order to grant appointments to candidates with one-year degrees. This group of clubbed decisions which was decided in 2012 take a different approach from the earlier approach of the court in not interfering in the interpretation of the eligibility criteria.

Other issues that often came up during appointments related to the State's policy on reservation and whether certain categories of candidates were eligible for appointment and a few situations where teacher applicants who did not get appointed alleged that the ultimate appointees had committed irregularities such as forged certificates. These cases were usually decided on a case by case basis and often remanded to the State respondent to consider the

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<sup>110</sup> G.O.Ms. NO. 234, School Education Department, 10.09.2009.

<sup>111</sup> Mr. Palanisamy Vs. The State of Tamilnadu, MANU/TN/0005/2010

<sup>112</sup> S. Pandiarajan Vs. The Director of School Education and Ors. MANU/TN/1222/2009

<sup>113</sup> R. Thirunavukkarasau Vs. The State of Tamil Nadu 2012(5)CTC129

petitioner's case. In addition, there were a handful of petitions filed by teacher applicants from aided schools relating to appointments for sanctioned posts.

### Examination Standard

There were three groups of clubbed decisions relating to examination standards that were disposed of by the Madras High Court in 2010,<sup>114</sup> 2013<sup>115</sup> and 2014,<sup>116</sup> respectively, and account for a large majority of examination standard cases. In a number of cases, teacher applicants who had written the TET filed petitions against the Tamil Nadu Teacher Recruitment Board challenging the answers to some of the questions posed in the examination. In a few of these cases, the Court considered the merit of the petitioners' contentions and actually directed the Teacher Recruitment Board to revalue the answer papers to address the petitioner's contentions. In other cases, such petitions were dismissed due to laches if a fair amount of time had passed between the date of the examination and the petitioners filing the claim.

In 2014, a number of teachers challenged an order of the State Government that provided a 5% relaxation of marks in the TET examination for certain classes of reserved candidates.<sup>117</sup> These petitions arose in the context of the enactment of the RTE Act and the consequent issuance by the NCTE of the eligibility requirements for teacher applicants that set the pass mark cut off for the Teacher's Entrance Examination ("TET") at 60%. After the examination was conducted (which a large number of candidates failed), the government issued an order relaxing the pass marks required by reserved category candidates by 5%. While the petitioners did not question the government's ability to relax the standards for reserved category candidates by 5% (which was also permitted under the NCTE's guidelines), they challenged the retrospective nature of the order. The court, however, dismissed these claims on the grounds that the TET was only a qualifying rather than a competitive examination and, accordingly, changing the rules of the game at a later stage did not put any other candidates at a disadvantage.

### **B. Outcomes**

More than half of the total cases analysed (55.14% or 300 of 544 cases<sup>118</sup>) resulted in the grievance claims of teachers being dismissed outright. Teachers prevailed in only 35.29% (or 192 of 544 cases) of the cases, while in a fair number of cases (6.43% or 35 of 544 cases), the matter was remanded to the State Government respondent to consider the petitioner's representation and arrive at a decision within a specified period of time. In Tamil Nadu, there were also a few cases where no relief was granted, but the cases were disposed.

As in the case of other States, the data on outcomes is skewed by the clubbed cases, and in particular, by the decision that dismissed 133 service benefit petitions in 2013. Leaving aside these 133 cases, the split in outcomes is much more evenly divided, with teachers prevailing in 192 cases and the State in 167. The tables below show the case outcomes (a) in aggregate for the state and (b) and broken down by (i) case type and (ii) year. We have also disaggregated the data for cases where the State was the petitioner or appellant

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<sup>114</sup> The Member Secretary, Teachers Recruitment Board, The Director of School Education, (Higher Secondary) and The Chief Educational Officer and Ors. etc. etc. Vs.: M. Somasundaram and Ors. Etc. MANU/TN/0083/2010

<sup>115</sup> G. Gnanapathayini Vs. The Secretary, Teachers Recruitment Board etc. MANU/TN/2609/2013

<sup>116</sup> P. Jayabharathi Vs. State of Tamil Nadu and Ors etc. MANU/TN/0544/2014

<sup>117</sup> *Ibid.*

<sup>118</sup> This figure is different from that in Table H4 to take into account cases where the state was petitioner.

and teachers were the respondents to arrive at the number of cases in which teachers prevailed.

Decision Taken	No. of Cases	Percentage
Dismissed	322	59.19%
Allowed	170	31.25%
Remand to respondent	35	6.43%
Disposed of	13	2.4%
Dismissed in part, remand to respondents in part	2	0.37%
In part	2	0.37%
<b>Total</b>	<b>544</b>	

Table H4 – Case outcomes in aggregate

Decision Taken	2010	2011	2014	Total
Dismissed	19	2	1	22
<b>Total</b>	<b>19</b>	<b>2</b>	<b>1</b>	<b>22</b>

Table H5 – Disaggregate for outcomes where State is the petitioner and teachers are the respondents.

As the tables above show, after accounting for the 22 cases where the State was the petitioner or appellant, all of which were dismissed, the state prevailed in 300 cases (322 – 22) and teachers prevailed in 192 (170 +22).

Decision Taken	Year						Total
	2009	2010	2011	2012	2013	2014	
Dismissed	18	47	40	24	149	44	322
Allowed	45	26	34	20	38	7	170
Remand to respondent	3	2	10	1	13	6	35
Disposed of	1	11	1				13
Dismissed in part, remand to respondents in part				2			2
Disposed of	1	11	1				13
<b>Total</b>	<b>67</b>	<b>86</b>	<b>86</b>	<b>47</b>	<b>201</b>	<b>57</b>	<b>544</b>

Table H6 - Case outcomes broken down by year

Case Type	Allowed	Dismissed	Dismissed in part, remand to respondent in part	Disposed of	In part	Remand to respondent	Total
Service benefits	51	162		11	1	4	229
Appointment	64	45		1	1	10	121
Examination Standard	2	64				8	74
Promotion	10	27				3	40
Retirement benefits	16	6				4	26
Transfer	3	6	2			1	12
Regularisation	8	3					11
Termination	5	4				1	10
Miscellaneous	2	3		1		1	7
Suspension	3	2					5

<b>Cases with Multiple Grievances</b>							
Appointment and Promotion	1				1		2
Appointment, Service Benefits	1						1
Service Benefits and Retirement Benefits							1
Service Benefits and Suspension							1
Service Benefits, Promotion	2						2
Termination, Retirement benefits	1						1
Transfer, termination	1						1
<b>Total</b>	<b>171</b>	<b>322</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>35</b>	<b>544</b>

Table H7 – Case outcomes broken down for different types of cases

Case Type	Dismissed			Total Dismissed	Total
	2010	2011	2014		
Appointment		1	1	2	2
Examination Standard	19			19	19
Regularisation		1		1	1
<b>Total</b>	<b>19</b>	<b>2</b>	<b>1</b>	<b>22</b>	<b>22</b>

Table H8 – Disaggregating outcomes based on case type and year where the state is petitioner.

For most grievance types, the frequency with which teachers or the State prevailed was relatively evenly split relatively. The two exceptions are cases relating to service benefits and cases relating to examination standards, in which the State appears much more likely to prevail than the teachers. However, again controlling for the 133 service benefit cases that were dismissed in a single decision, there does not appear to be much correlation between the types of grievances and the likelihood of a teacher prevailing.

### C. Time Taken for Conclusion of Cases

Data on the time taken for conclusion of cases was only available for 287 of the 544 cases analysed. The date of filing of a petition and the date of the order being challenged were the two most common markers that we used to determine the start date for a dispute. It appears from this data that most cases were either decided in under 6 months (25.78% or 74 of 287 cases) or took over five years to be disposed.. In fact, the largest category of cases (33.10% or 95 of 287 cases) took over 5 years to be disposed, which lends support to the contentions of the individuals we interviewed (discussed further below) that there were inordinate delays in cases being heard. In terms of the relationship between the type of grievance and the time taken for disposal, it appears that promotion and retirement benefits cases were likely to take a particularly long time to be concluded. The tables below set out the time period ranges within which cases were decided on an aggregate basis and broken down by case type.

Duration taken for Decision	No. of Cases	Percentage
0-6 months	74	25.78%
7-12 months	23	8.01%
13-18 months	21	7.32%

19-24 months	16	5.57%
25-30 months	9	3.14%
31-36 months	8	2.79%
37-42 months	12	4.18%
43-48 months	16	5.57%
49-54 months	7	2.44%
55-60 months	6	2.09%
Above 60 months	95	33.10%
<b>Total</b>	<b>287</b>	

Table H9 – Time periods for conclusion of cases. Data has been plotted in six month intervals.

Case Type	Time taken for Decision (months)											Total
	0-6	7-12	13-18	19-24	25-30	31-36	37-42	43-48	49-54	55-60	60+	
Service benefits	27	8	3	6	2	2	3	1	2	2	26	82
Appointment	11	3	3	4	5	1	8	15	2	4	21	77
Examination Standard	23	1	13			1					1	39
Promotion	4	2		5		2					23	36
Retirement benefits	2					1			3		7	13
Termination	2	1			1	1					5	10
Transfer	3	3	2								2	10
Regularisation	1	1		1							4	7
Suspension		2			1						2	5
Miscellaneous	1	1									1	3
<b>Cases with Multiple Grievances</b>												
Appointment and Promotion							1					1
Service Benefits and retirement benefits											1	1
Service Benefits and suspension		1										1
Service Benefits and Promotion											1	1
Transfer, termination											1	1
<b>Total</b>	<b>74</b>	<b>23</b>	<b>21</b>	<b>16</b>	<b>9</b>	<b>8</b>	<b>12</b>	<b>16</b>	<b>7</b>	<b>6</b>	<b>95</b>	<b>287</b>

Table H10 – Time period ranges for conclusion of cases broken down by case type

### III. Mapping out the Grievance Redressal Process

Prior to 2004, the primary forum that heard grievances of teachers from government schools was the Tamil Nadu Administrative Services Tribunal. This tribunal was constituted by the Tamil Nadu government under Section 15 of the Administrative Tribunals Act, 1985, which was enacted to settle service disputes of government employees.<sup>119</sup> However, as discussed above, the tribunal was

<sup>119</sup> The Administrative Tribunals Act provided that all recruitments and matters concerning recruitments to any civil service of the State or to any civil post under the State Government were to be raised before state administrative tribunals.

abolished in 2004,<sup>120</sup> which now makes the High Court the first forum and the court of original jurisdiction under Article 226 of the Constitution for all grievances of teachers from both government and aided schools. It appears that this has caused some strain on the High Court's resources as our conversations with teacher union representatives and lawyers working on these matters suggested concerns over the amount of time lapsed between the filing of a writ petition and the first hearing. Another concern raised by lawyers was that a number of petitions on service related matters were filed in the High Court because education officials were often unwilling to take a decision in the absence of a court order. For example, there were a number of pension related grievances with minor technical defects that, according to some lawyers, could have been easily resolved by the district education officer, but instead ended up in the High Court. Yet another complaint from the teacher's association was that, following a court order, the State Government was often not willing to pass orders or confer benefits on similarly situated persons, which left other similarly situated teachers with no option but to file additional petitions in the High Court.

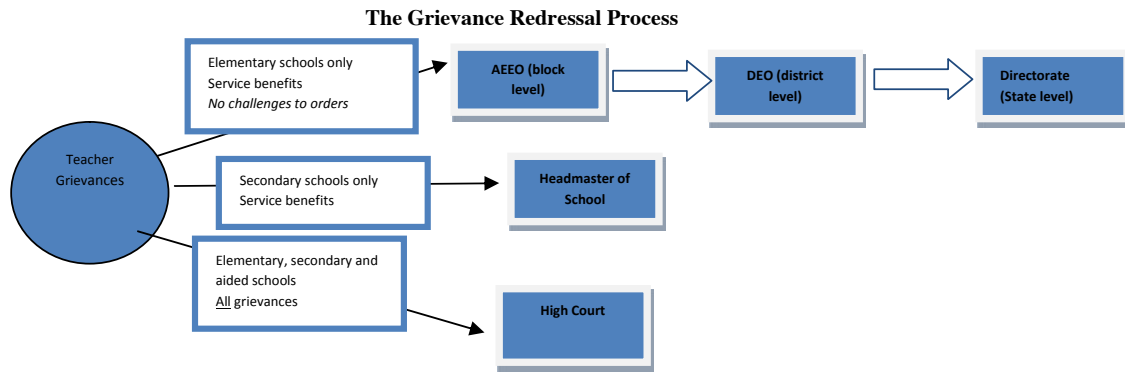
Despite the High Court being the first dispute resolution forum for most teachers with grievances, in practice, teachers generally tried to exhaust all other remedies before approaching the High Court. The first competent authority that a teacher with a grievance may approach is the education officer at the block level (Assistant Elementary Education Officer or AEEO), in the case of primary schools and aided schools up to the eighth grade, and the headmaster of the relevant school, in the case of secondary schools. In addition, teachers also tend to seek help from teachers' associations as Tamil Nadu appears to be a state where the teachers' association has been quite active in assisting with teacher grievances.

Over the past two years, the Tamil Nadu Government has also instituted a regular grievance redressal forum at the block and district levels to address certain common grievances of primary school and aided school teachers. These sessions are held by AEEOs on the first Saturday of each month, at which a grievance is either resolved by the AEEO and relevant orders passed, or the matter is passed on to the District Education Officer who considers grievances on a district-wide basis on the second Saturday of each month. Any grievances that cannot be resolved at the district level are passed on to the Directorate for further consideration. The initial motivation of the government in instituting these sessions was not so much to provide teachers with a forum to address their grievances, but rather to ensure that the working days of AEEOs were not otherwise disrupted by having to hear and resolve teacher grievances on a daily basis. However, our conversations with officials in the education department suggested that the number of teacher grievances had actually decreased in the last few years, which they attributed, at least in part, to these grievance redressal sessions.

While these grievance redressal sessions are a good starting point towards improving the efficiency of dealing with teacher-related grievances, they have several limitations. First, they are not applicable to teachers of secondary schools, whose only mechanism for redressal is to approach the headmaster of the school concerned, failing which they would have to file a petition in the High Court. Second, even in the case of primary school teachers, only a very limited number of grievances can be addressed at these fora. The officers at the block and district levels cannot resolve issues related to eligibility criteria for appointments or other issues that require an interpretation of the relevant rules. In addition, any challenges to existing government orders (for example, an order on promotion or pay scale) will have to be made in the High Court. Thus, these grievance redressal sessions end up being able to address only a small percentage of overall grievances that relate to very straightforward matters such as salary arrears or leave encashments, and do not replicate the role of a dispute resolution tribunal.

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<sup>120</sup>The abolition of the Tamil Nadu Administrative Services Tribunal was a policy decision by the Tamil Nadu government which decided that two fora (the High Court and the Supreme Court) for trying service related disputes was sufficient. At the time of its closure, the tribunal had over 30,000 cases of service matters pending before it, all which were transferred to the High Court.



#### IV. Cases in the Supreme Court

In 2009, the Supreme Court heard an appeal from the Madras High Court on the process used by a private aided school for selecting its headmaster [*P. Thuraipandian v. K. Subramaniam & Ors*].<sup>121</sup> The Supreme Court affirmed the judgements of the Single Judge and Division Benches of the Madras High Court that both the School Management Committee and the Joint Director of School Education did not consider the merits and abilities of the candidates from all perspectives. The Supreme Court stated that

*“The selection process adopted by the Management of the School was unconstitutional. A deliberative process amongst the members of the Selection Committee to choose the best candidate available for promotion was imperative to the post of Head Master was imperative in nature. The Selection Committee and for that matter the Management of the School must not only function in terms of the provisions of the statute, they were required to maintain fairness in the selection making process. Secret ballot would not be a fair procedure for selecting a candidate for the post of Head Master of a school in view of the fact that holder of the said post should not only possess the educational qualifications but also seniority and administrative ability.”*

Further, in responding to the ability of the High Court to interfere with the appointment decision of a statutory authority (in this case, the Joint Director of School Education), the Supreme Court stated that while the Joint Director had appellate authority, there was nothing in the statute to indicate the finality of his decision.

Yet another appeal from the Madras High Court that was heard by the Supreme Court involved an appointment related grievance for the post of a teacher at the Government Higher Secondary school for the Blind [*V. Gopal v. P. Ganaselvaudayakumari & Ors*].<sup>122</sup> In this case, the appellant was appointed to the post as the respondent’s (who possessed higher qualifications than the appellant) application was not received by the cut-off date. The Supreme Court overturned a curious decision of the Madras High Court which appeared to assume without sufficient evidence that the appellant had been responsible for the delayed application of the respondent. However, the Supreme Court also noticed several irregularities in the appointment of the appellant and, therefore, ordered the concerned authorities to start a fresh selection process for the post.

In another group of decisions in 2009 and later in 2014 [*K. Gunavathi v. V. Sangeeth Kumar & Ors*]<sup>123</sup> the Supreme Court issued various clarifying guidelines relating to the selection process employed by the Government of Tamil Nadu for the recruitment of computer science teachers to

<sup>121</sup> [2009] INSC 1379

<sup>122</sup> (2013)2SCC(LS)242

<sup>123</sup> 2014(141)FLR574

government higher secondary schools. The state had repeatedly through government orders modified or relaxed the eligibility criteria for computer science teachers (for example, by not requiring them to possess a B.Ed degree or allowing candidates who had secured between 35% - 50% in the examination to be appointed). These orders and relaxations were challenged by B.Ed qualified candidates in a number of cases in the Madras High Court and later in the Supreme Court. Terming this a long drawn-out tussle between underqualified and qualified computer science teachers in the State, the Supreme Court allowed the appeals of the B.Ed qualified candidates and directed the State to begin a new recruitment process for the vacant posts.

## **V. Conclusion**

All of these cases that were heard by the Supreme Court suggest a similar pattern of a lack of clarity on the eligibility criteria and a lack of transparency in the appointment process. These findings are reinforced by our analysis of the appointment related grievances heard by the High Court. These cases again suggested that the rules relating to teacher appointments in Tamil Nadu were numerous and often contradictory and also involved several instances of the State Government announcing changes to the eligibility criteria once the process was already underway. While the reasons for these ambiguities and confusion cannot be discerned from a review of the cases alone, it may be helpful to conduct a separate study of the various rules governing the appointment and services of teachers in order to suggest ways of streamlining the process and improving transparency.

## CHAPTER 11

### UTTAR PRADESH

#### I. Overview

Based on the most recently available data collected from NUEPA, Uttar Pradesh had about 536,247 primary school teachers employed across 160,752 government primary schools and 161,454 secondary school teachers employed across 22,877 secondary schools.<sup>124</sup>

In Uttar Pradesh, we found 1,146 relevant cases involving teacher grievances in government and aided schools during the period from 2009 to 2014<sup>125</sup> that were disposed by the High Court of Uttar Pradesh at Allahabad, with a bench at Lucknow. Most of these cases originated in the High Court as they were writ petitions or appeals from prior High Court orders passed by single judges. In most cases, the petitioners were teachers, teacher applicants, relatives of deceased teachers (seeking appointment on compassionate grounds) and contract teachers; the respondents were various divisions of the state's education department, and, in some cases, other teachers in the school in question who were alleged to have been promoted instead of the petitioner. The table below sets out the number of cases involving teacher grievances that was decided by the High Court of Uttar Pradesh for each year covered in this study.

Year	No. of Cases	Percentages
2009	76	6.64%
2010	97	8.30%
2011	230	20.09%
2012	305	26.64%
2013	427	37.29%
2014	11	0.96%
<b>Grand Total</b>	<b>1146</b>	

*Table II – Year-wise distribution of cases*

Below we present our key findings from our analysis of decisions of the Uttar Pradesh High Court based on the types of grievances, the outcomes of the cases and the time taken for conclusion of these cases. While much of this analysis is statistical we have also described the key types of grievances qualitatively to provide a flavour of the nature of the grievances and how they were resolved by the High Court. Finally, we have also described a judgement of the Indian Supreme Court in one teacher related grievance in Uttar Pradesh in the given period that was appealed to the Supreme Court.

#### II. Analysis of High Court Cases

##### A. Types of Grievances

Out of the 1,146 relevant cases that we studied from this period, 46.29% (or 530 of 1,146 cases) were related to issues of appointment of teacher applicants. 18.95% (or 217 of 1,146) of the cases were related to the regularisation of the appointment of contract teachers, followed by 14.85% (or 170 of 1,146) of the cases related to service benefits, and 7.42% (or

<sup>124</sup> DISE Flash Statistics for Primary and Secondary Schools for 2013-14, available at <http://www.dise.in/flash.htm>. Data as of 30 September 2013.

<sup>125</sup> 2014 data includes cases until July 2014.

85) of the cases related to promotions. Other grievances that we came across less frequently included those related to termination, suspension, transfers and retirement benefits. The tables below provide the breakdown of the different types of grievances in aggregate for the State and broken down by year.

Type of Grievance	Total	Percentage
Appointment	530	46.29%
Regularisation	217	18.95%
Service Benefits	170	14.85%
Promotion	85	7.42%
Termination	80	6.90%
Suspension	24	2.10%
Transfer	12	1.05%
Retirement Benefits	11	0.96%
Contempt	5	0.44%
Miscellaneous <sup>126</sup>	5	0.44%
Appointment and Service Benefits <sup>127</sup>	4	0.35%
Examination Standard	3	0.26%
<b>Total</b>	<b>1146</b>	

Table I2 – Number and percentages of each grievance type in aggregate for the State

Type of Grievance	2009	2010	2011	2012	2013	2014	Grand Total
Appointment	24	32	75	194	200	5	530
Regularisation	4	15	13	8	177		217
Service Benefits	11	27	87	24	20	1	170
Promotion	22	5	30	20	7	1	85
Termination	6	6	12	40	14	2	80
Suspension	5	5	1	7	6		24
Transfer	1		3	7	1		12
Retirement benefits	1	2	4	2	2		11
Contempt			5				5
Miscellaneous	2	1		1		1	5
Appointment and service benefits		1		2		1	4
Examination Standard		3					3
<b>Total</b>	<b>76</b>	<b>95</b>	<b>230</b>	<b>305</b>	<b>427</b>	<b>11</b>	<b>1146</b>

Table I3 – Types of grievances broken down by year

### Appointments

The appointment related grievances were all filed by teacher applicants. A number of the appointment cases disposed by the High Court related to the procedures required to be followed for teacher appointments, especially with respect to whether the appointments had been made by the appropriate authority. The Allahabad High Court nullified appointments in 159 connected matters in the case of *Dharmendra Kumar Singh v. State of Uttar Pradesh and*

<sup>126</sup> Miscellaneous includes grievances related to the entitlements of contract teachers.

<sup>127</sup> These cases involved grievances over both appointments and service benefits.

*Ors.*<sup>128</sup> as it found that the appointments had been made against substantive vacancies by the Committee of Management, which was not empowered to do so.

As is the case with other States, a number of appointment related grievances, especially in 2011, appear to stem from confusion over the rules on eligibility and selection criteria for teachers following the enactment of the RTE Act and related RTE Rules notified by the state government, and the subsequent notification dated August 23, 2010 of the guidelines for eligibility for appointment as teachers by the NCTE.. The Allahabad High Court had stipulated in November 2011, while disposing 18 connected matters in the case of *Ravi Prakash and Ors. V. State of Uttar Pradesh and Ors.*<sup>129</sup>, that any teacher recruitment drive initiated after August 23, 2010, would have to follow the eligibility criteria prescribed by the NCTE.. This decision, which was of a Single Judge, was subsequently appealed and decided in January 2013 in *Prabhakar Singh and Others v. State of Uttar Pradesh and Ors.*<sup>130</sup>, where the appeals were disposed as part of a decision that disposed a total of 56 connected matters. The Court refused to pass an order of mandamus directing the State to appoint candidates who had only obtained their Basic Teacher's Certificate after the NCTE guidelines were issued, purely on the basis that the State had already irregularly made such appointments.

#### Appointment Regularisation

Grievances related to regularisation of existing appointments mostly involved petitions and appeals filed by teachers who had been appointed on a contract basis, for the regularisation of their appointments. In a majority of cases, the teacher-petitioners have approached the High Court challenging orders of the relevant authority rejecting their request for regularisation of their appointment. The High Court generally did not interfere in situations where the initial appointment was made against a temporary post and on the terms that the appointment would continue until a candidate was appointed against a substantive vacancy. The High Court did, however, interfere to the extent of making pronouncements on the length of the temporary appointments, and the entitlement to arrears in salary for that period, without adjudicating on the status of regularisation of the teacher.

#### Service Benefits

The majority of cases involving service benefits were brought to the High Court by teacher-petitioners claiming arrears in salary from the State. Other questions that have been addressed by the Court within the ambit of service benefits include earned leave, and applicable pay scales (which generally arises once a school becomes an aided institution). The Court has been inclined to allow petitions relating to service benefits, especially those relating to claims of arrears in salary.

#### Promotions

The cases that were categorised as falling under the head of 'promotion' matters for a large part dealt with the question of determining seniority – disputes between the parties as to who was more senior and thus entitled to be promoted over the other, and teachers seeking declarations of their seniority. In a majority of cases, the dispute as to seniority arose and was brought to the Court against an order for promotion of a person other than the petitioner. The Court dealt with these matters on a case-by-case basis.

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<sup>128</sup> 2013 (3) ALJ 422

<sup>129</sup> 012 2 AWC 1869 All

<sup>130</sup> (2013) 1 UPLBEC 523

## B. Outcomes

There was no significant difference between the percentage of cases in which teachers prevailed (32.80% or 376 of 1146 cases) and percentage of cases in which the State prevailed (42.84% or 491 of 1146 cases).<sup>131</sup> This is in line with the tendency of the Court to review most kinds of matters on a case-by-case basis. Where the High Court may have refrained from interfering in regularisation matters where clear contracts existed (which was the case with most of them), it equally stepped in when teachers were not receiving the service benefits to which they were entitled. The tables below show case outcomes (a) in aggregate, and (b) broken down by (i) case type and (ii) year. In addition, we have also separately shown the outcomes for those cases in which the state government was the petitioner and the teachers were respondents. The sole matter that was remanded to the respondents where a state official was the petitioner [*Sri Narain Misra v. State of Uttar Pradesh and Others*,<sup>132</sup> was a matter where the state official had been placed on suspension by the State following a complaint by a teacher that the official had been responsible for the non-payment of her salary.

Decision Taken	No. of Cases	Percentage
Dismissed	494	43.06%
Allowed	373	32.58%
In part	175	15.28%
Miscellaneous <sup>133</sup>	64	5.59%
Remand to Respondents	36	3.14%
No decision indicated	3	0.26%
Adjourned	1	0.09%
<b>Total</b>	<b>1146</b>	

Table I4 – Case outcomes in aggregate

Decision Taken	Year				Total
	2010	2011	2012	2013	
Allowed	2	1		1	4
Dismissed	1	2	1	3	7
Remand to Respondents	1				1
<b>Total</b>	<b>4</b>	<b>3</b>	<b>1</b>	<b>4</b>	<b>12</b>

Table I5 – Disaggregated for outcomes where state is the petitioner and teachers are the respondents.

Based on the two tables above, teachers prevailed in 376 of the cases (373+7-4 ) and the state prevailed in 491 (494+ 4-7) of the cases.

Decision Taken	Year						Total
	2009	2010	2011	2012	2013	2014	
Dismissed	33	56	117	227	57	4	493

<sup>131</sup> Differences with table I4 are a result of disaggregating for cases where the state was petitioner.

<sup>132</sup> 2010 (79) ALR 32]

<sup>133</sup> Miscellaneous outcomes included posting to a later date for further arguments, transferring to a more appropriate forum, and directing the formulation of special schemes.

Allowed	31	28	88	54	166	5	373
In part	3	1	1	3	166	1	175
Miscellaneous	3		15	10	36		64
Remand to Respondents	6	8	9	11	2		36
No decision indicated		2				1	3
Adjourned		1					1
<b>Total</b>	<b>76</b>	<b>96</b>	<b>230</b>	<b>305</b>	<b>427</b>	<b>11</b>	<b>1146</b>

Table I6 - Case outcomes broken down by year

Case Type	Decision Taken							Total
	Adjo urned	Allo wed	Dism issed	In par t	Miscell aneous	No decision indicated	Rema nd to Respo ndents	
Appointment	1	181	299	1	43		5	530
Regularisation		22	23	167	3	1	1	217
Service Benefits		86	59	2	9	1	13	170
Promotion		29	33	2	8		13	85
Termination		26	52			1	1	80
Suspension		12	10	1			1	24
Transfer		6	5				1	12
Retirement Benefits		8	3					11
Contempt		1	4					5
Miscellaneous		2	1	1	1			5
Examination Standard			3					3
Appointment and Service benefits			2	1			1	4
<b>Total</b>	<b>1</b>	<b>373</b>	<b>493</b>	<b>175</b>	<b>64</b>	<b>3</b>	<b>36</b>	<b>1146</b>

Table I7 – Case outcomes broken down by case type

Case Type	Allowed				Dismissed					Remand to Respondents		Total
	2010	2011	201 3	To tal	2 0 1 0	20 11	201 2	2013	Total	2010	Total	
Appointment	1	1	1	3	1		1	1	3	1	1	6
Retirement Benefits						1			1			1
Service Benefits	1			1		1		2	3			4
Suspension												1
<b>Total</b>	<b>2</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>3</b>	<b>7</b>			<b>12</b>

Table I8 – Disaggregating for state as petitioner based on case type and year

### C. Time Taken for Conclusion of Cases

We determined the start date of a dispute based on the date on which the petition was filed or the date of the order being challenged, where we were able to find such information.

As a consequence of limitations in the available data and the fact that these dates were often not indicated in the decisions, we were only able to determine the start date for 404 out of 1,146 cases.

A very large number of cases (40.69% or 165 out of 404 cases) took over five years to be resolved suggesting that the Uttar Pradesh High Court had slower rate of disposal than most other states covered by this study. Aside from these very slow cases, the majority of the cases (52.86% or 213 out of 404 cases) were concluded within three years, of which 27.05% (or 109 out of 404 cases) were concluded within one year. The tables below provide the time period ranges (in 6-month intervals) within which cases were concluded on an aggregate basis and broken down by case type. Subject to the limitations in this dataset, our analysis of the data suggests that grievances related to service benefits were the quickest to be resolved, and cases on appointment generally took about 2 years to conclude. The data available to us does not indicate that any specific type of grievances took particularly long to be resolved.

Duration of decision	No of Cases	Percentages
0-6 months	83	20.60%
7-12 months	26	6.45%
13-18 months	42	10.42%
19-24 months	40	9.93%
25-30 months	10	2.48%
31-36 months	12	2.98%
37-42 months	8	1.99%
43-48 months	6	1.49%
49-54 months	4	0.99%
55-60 months	8	1.99%
Above 60 months	165	40.69%
<b>Total</b>	<b>404</b>	

Table 19 – Time periods for conclusion of cases. Data has been plotted in six month intervals.

Case Types	Time period range (in months)											Total
	0-6	7-12	13-18	19-24	25-30	31-36	37-42	43-48	49-54	55-60	60+	
Appointment and Service benefits		1									2	3
Appointment	15	6	32	35	1	5	3		3	2	46	148
Service Benefits	36	9	3	2	2	2	1	3		1	34	93
Promotion	10	3	3	1	4	1	1	2	1	1	30	57
Termination	1	1	2	2	1	1	1	1			27	38
Regularisation	4		1		1	1	1			2	12	22
Suspension	9	3				2				1	5	20
Transfer	6						1				1	8
Retirement Benefits	1	1	1								2	5
Miscellaneous	1	1									2	4

Appointment and Service benefits		1									2	3
Contempt					1						2	3
Examination Standard		1								1	1	3
<b>Total</b>	<b>83</b>	<b>26</b>	<b>42</b>	<b>40</b>	<b>10</b>	<b>12</b>	<b>8</b>	<b>6</b>	<b>4</b>	<b>8</b>	<b>16</b>	<b>404</b>

Table I10 – Time period ranges for conclusion of cases broken down by case type.

### III. Cases decided on appeal by the Supreme Court

The Supreme Court passed a judgment on 24.06.2011 in Special Leave Petition No. 12469/2010 in the case of *Guru Charan Singh v. State of U.P. and Ors*<sup>134</sup>, in which a teacher appealed the dismissal of his earlier appeal by a division bench of the High Court. The appeal in the High Court was filed against the judgment of the Single Judge upholding the order of the District Inspector of Schools terminating the Appellant's employment as an Assistant Teacher. The Supreme Court found that the Appellant had been appointed by the school management and the District Inspector of Schools for a limited period until a candidate was duly appointed to the post by the Uttar Pradesh Secondary Education Services Commission. Such a candidate was duly appointed by the Commission on 14.10.2006, until which date the Appellant had continued to draw his remuneration. For these reasons, the Supreme Court did not see any merit to the appellant's case and dismissed the appeal.

### IV. Conclusion

A large majority of the teacher related grievances in Uttar Pradesh in the given period (1142 out of 1145 cases) began in the High Court, with only one having gone on appeal so far to the Supreme Court. The distribution of outcomes does not open up any suggestions as to the Court's leanings, but a qualitative analysis of the decisions does reveal the Court's tendency to decide each case on its merits and to focus on the explicit terms of engagement of teachers in doing so.

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<sup>134</sup> (2011)13SCC37

## CHAPTER 12

### COMPARATIVE ANALYSIS ACROSS STATES– FINDINGS AND RECOMMENDATIONS

#### I. Overview

Our analysis of the grievance redressal systems in the nine States reveals that while there are some recurring themes and patterns, there are also significant differences in the way that grievances of teachers in government and aided schools are managed and resolved. In this Chapter, we compare our findings across eight<sup>135</sup> of the nine States covered by the study to get an aggregate picture of the grievance redressal process and also to draw out any patterns or contrasts between States. We have restricted our comparative analysis to the review of High Court decisions in each of the States as this was the area where our dataset was the most complete, making comparisons possible.

Part II of this Chapter sets out our comparative analysis on teacher-related litigation across the eight States. As in the case with the State Chapters, our comparative analysis will focus largely on three parameters: (a) types of Grievances, (b) case outcomes and (c) disposal periods. Part III goes on to present the findings from the inter-state comparison as well as from the preceding State chapters. Part IV concludes with some recommendations aimed at ensuring a more efficient and effective grievance redressal mechanism for teachers through the courts and for reducing the volume of teacher-related litigation that is escalated to the High Courts.

#### II. Comparative Analysis

The inter-state comparison that follows includes both statistical analysis as well as a qualitative description of some of the significant themes that arose during our review. In reviewing the statistical comparisons, it is important to keep in mind that there were significant variations in the number of High Court decisions reviewed for each of the States and, accordingly, any percentages provided need to be understood relative to the sample size for the particular state in question. Much of the analysis is limited to descriptive statistics as the reasons for some of our findings cannot be discerned from our review of the judgements alone and are beyond the scope of this study. However, we have attempted to provide plausible hypotheses to explain some of the findings and suggest these as areas for further exploration and research.

##### A. *Types of Grievances*

In analysing the types of grievances across States, we have focused both on the frequency with which different types of grievances occur in each State as well as on the total volume of different types of grievances. As explained further below, the two types of analyses give slightly different results given the huge variations in the volume of cases across States.

##### 1. *Frequency of Types of Grievances*

The following table lists out the three most predominant grievance types for each State.

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<sup>135</sup> Mizoram has been excluded from the inter-state comparison due to the exceedingly small (5) number of relevant cases that were heard and disposed of by the Mizoram High Court during the time period covered by the study.

State	Predominant Grievance Type		
<i>Jharkhand</i>	Appointments (31.01%)	Service Benefits (29.41%)	Retirement Benefits (14.97%)
<i>Karnataka</i>	Service Benefits (65%)	Appointments (22.9%)	Regularisation (3%)
<i>Madhya Pradesh</i>	Retirement Benefits (45%)	Appointments (31.25%)	Service Benefits (12.5%)
<i>Odisha</i>	Termination (48%)	Appointments (29.33%)	Transfers (10.67%)
<i>Punjab and Haryana</i>	Appointments (60.93%)	Transfer (12.19%)	Termination (11.11%)
<i>Rajasthan</i>	Appointments (69.96%)	Regularisation (12.14%)	Service Benefits (10.58%)
<i>Tamil Nadu</i>	Service Benefits (42.10%)	Appointments (22.24%)	Examination Standards (13.60%)
<i>Uttar Pradesh</i>	Appointments (46.29%)	Regularisation (18.95%)	Service Benefits (14.85%)

From the above, it is clear that grievances related to appointments and service benefits are the predominant reasons for which teachers approached the High Courts in the eight States studied. These two grievance types are followed by grievances related to regularisation, which was a predominant grievance type in three States, and those relating to termination, transfers and retirement benefits, which were each a predominant grievance type in two States.

## 2. Aggregate Analysis by Case Volumes

Given the variations in case volumes, one needs to look not only at the frequency of occurrence of these grievances in each State, but also at the absolute numbers of these different types of grievances which present a slightly different picture. In aggregate terms, we reviewed a total of 9751 cases that were decided by the High Courts of the eight States analysed in this chapter. Of these, 47.01% (or 4584 cases) of these related to service benefits, followed by appointment related disputes (33.2% or 3241 cases) and disputes related to regularisation (5.9% or 579 cases). Thus, while appointment related grievances were the most common across all States (they were a predominant grievance type in all eight states, while service benefits were a predominant grievance type in six of the eight States), grievances related to service benefits were the most numerous. The reason for this is because service benefits were the most predominant grievance type in Karnataka, the State with the largest volume of cases. The table below sets out the number of cases under each type grievance for each State.<sup>136</sup>

Case Type	State								Total
	Jh	Kar	MP	Od	P&H	Raj	TN	UP	
<i>SB</i>	55	3962	20	1	11	136	229	170	<b>4584</b>
<i>Appt</i>	58	1391	50	22	170	899	121	530	<b>3241</b>
<i>Reg</i>	6	188	0	0	1	156	11	217	<b>579</b>
<i>Trans</i>	0	183	2	8	34	22	12	12	<b>273</b>

<sup>136</sup> Key: SB = Service benefits, Appt = Appointment, Reg = Regularisation, Trans = Transfers, Term = Termination, Ret Ben = Retirement benefits, Promo = Promotions, Exam St = Examination Standards, Cont = Contempt, Susp = Suspension, Ins = Insurance, Misc = Miscellaneous (includes those cases where there was more than one issue being argued or where issues were uncategorized or miscellaneous, have been clubbed into a single case type called Miscellaneous).

<i>Term</i>	11	54	7	36	31	10	10	80	<b>239</b>
<i>Ret Ben</i>	28	1	72	7	9	11	26	11	<b>165</b>
<i>Promo</i>	11	3	3	1	5	5	40	85	<b>153</b>
<i>Exam St.</i>	1	0	0	0	3	45	74	3	<b>126</b>
<i>Cont</i>	1	60	0	0	9	0	0	5	<b>75</b>
<i>Susp</i>	3	0	3	0	0	0	5	24	<b>35</b>
<i>Ins</i>	0	19	1	0	0	0	0	0	<b>20</b>
<i>Misc.</i>	13	214	2	0	6	1	16	9	<b>261</b>
<b>Total</b>	<b>187</b>	<b>6075</b>	<b>160</b>	<b>75</b>	<b>279</b>	<b>1285</b>	<b>544</b>	<b>1146</b>	<b>9751</b>

## B. Case Outcomes

In comparing the outcomes of decisions across states, we have characterised the outcomes based on the following five categories:

- (1) *For Teachers*: These include both petitions and appeals filed by teachers that were allowed and appeals filed by the State respondents that were dismissed<sup>137</sup>.
- (2) *For State*: These cases include petitions or appeals filed by teachers that were dismissed and appeals filed by the state that were allowed.
- (3) *Remand to Respondents*: These include a wide variety of decisions in which the High Courts remanded the matter back to the State Government to consider and come to a decision. These decisions are seen as partial victory for teachers as they at least force the state respondent to consider and come to a decision on the teacher's grievance.
- (4) *In part*: These cases include situations where the teacher was awarded part of the relief sought.
- (5) *Other/Misc*: These include cases which were disposed of based on precedent (where the specific relief being granted was unclear or were simply disposed of. We have used the term "disposed of" to describe the outcome of cases in those situations where either (a) the court did not grant any specific relief to the petitioner or appellant, but also did not dismiss their claims or (b) the outcome of the case was not clear from the face of the judgement, which simply stated that the petition was "disposed of".

The table below displays case outcomes according to State, both in terms of volume of cases and the percentage.

State	Case Outcome					Total
	<i>For Teachers</i>	<i>For State</i>	<i>Remand to State</i>	<i>Partial Relief for Teacher</i>	<i>Other/Misc.</i>	
<b>Jharkhand</b>	75 (40.1%)	56 (29.95%)	42 (22.46%)	13 (6.95%)	1 (0.53%)	187
<b>Karnataka</b>	1880 (30.95%)	943 (15.92%)	2759 (45.42%)	53 (0.87%)	440 (7.24%)	6075
<b>Madhya Pradesh</b>	24 (15%)	90 (56.25%)	40 (25.00%)	3 (1.88%)	3 (1.88%)	160
<b>Orissa</b>	48 (64%)	7 (9.33%)	19 (25.33%)	0 (0%)	1 (1.33%)	75
<b>Punjab &amp; Haryana</b>	131 (46.95%)	41 (14.70%)	80 (28.67%)	2 (0.72%)	25 (8.96%)	279
<b>Rajasthan</b>	85 (6.61%)	1181 (91.91%)	13 (1.01%)	6 (0.47%)	0 0.0%	1285
<b>Tamil Nadu</b>	192	300	35	2	15	544

<sup>137</sup> For the sake of simplicity and to avoid repeating the analysis from prior chapters, cases from each state have been organized so that the tables display only the outcome. They have not been disaggregated on the basis of which party was the applicant/petitioner, as has been done in previous chapters that cover individual States.

	(35.29%)	(55.15%)	(6.43%)	(0.37%)	(2.76%)	
<b>Uttar Pradesh</b>	376 (32.81%)	491 (42.84%)	36 (3.14%)	175 (15.27%)	68 (5.93%)	1146
<b>Total</b>	2811	3109	3024	254	533	9751

The above table shows that, in aggregate terms, the outcomes were relatively evenly split in terms of whether the teachers or the state prevailed. While there appears to be a slight tendency to decide a greater number of cases in favour of the State (31.88%) rather than in favour of the teacher (28.83%), this distinction is diminished further when we consider that an additional 2.60% of the cases resulted in partial relief for the teachers. It is also important to note the overall prevalence of the “remand to respondents” category (31.02%), which again suggests that teachers are not particularly worse off as in a majority of the cases, the teachers either obtained the relief they had sought or had the court order the state government to look into the teacher’s grievance.

However, when looking at the results of individual states, the picture is slightly different. The High Court of Odisha has been the one most favourable to the litigant-teacher with 64% cases being decided against the State. Following Odisha is the High Court of Punjab and Haryana, where 46.95% of the matters were decided in favour of teachers and in 14.70% of the matters decided, the teacher was awarded partial relief, followed by the state of Jharkhand, where 40.11% of all cases were decided in the favour of the teacher and 6.95% cases resulted in the teacher being awarded partial relief. In contrast to this, is the State of Rajasthan, where only 6.61% of the entire volume of cases went in favour of teachers. Besides Rajasthan, Madhya Pradesh (15%) and Karnataka (30.95%) figure as the two other States where teacher-litigants had the lowest rate of success among the States studied.

While our study provides a statistical picture of the frequency of various case outcomes in the different states, we would caution against drawing any specific inferences from this data. In particular, as the types of grievances and the merits of each grievance vary significantly across states, one must be careful in coming to any conclusions on whether a High Court in a particular State tends to be more favourable towards teachers than another court.

### ***C. Time Taken for Conclusion of Grievances***

As already mentioned in prior chapters, data for the precise starting date of disputes was available only for a fraction of the entire caseload. Out of a total of 9751 cases that formed the body of the data collected, starting dates (i.e., either the date on which the suit was instituted or the order that was in question was passed) were available for 7081 cases (72.6%). Therefore, the conclusions presented below are based only on these cases, as opposed to the entire gamut of disputes under analysis.

Under this category, two kinds of assessments have been made across the 8 States. The first of these aims to figure out what is the most likely disposal time a teacher-orientated dispute is going to have in the High Courts of the eight States in this study. The second is aimed at ascertaining which State is likely to dispose of a case relating to a teacher in the shortest time period. For the first kind of assessment, the disposal times (taken in gaps of 6 months) for disputes in each state have been compared to the entire volume of cases. The table detailing this comparison is given below:

<b>Disposal Time (in months)</b>	<b>Volume</b>	<b>Percentage</b>
0 to 6	883	12.47%
7 to 12	1266	17.88%

13 to 18	500	7.06%
19 to 24	1247	17.61%
25 to 30	1036	14.63%
31 to 36	166	2.34%
37 to 42	206	2.91%
43 to 48	626	8.84%
49 to 54	629	8.88%
55 to 60	29	0.41%
Above 60	493	6.96%
Total	7081	100%

It can be seen that most cases involving teachers from government or aided schools took between 7 to 24 months to reach a conclusion. However, this is because a majority of cases decided in this time-bracket have come from the State of Karnataka, which had the largest volume of cases among the States studied. In Karnataka, data on time periods was available for 4949 of 7081 cases. If Karnataka is discounted for, then we see results that are quite different.

The table given below omits Karnataka, and shows that most teacher-related litigation took between 7 to 12 months to reach a conclusion (42.21%). The likelihood of a case taking more than five years to be resolved is the next most probable outcome, with 16.46% taking more than 60 months.

<b>W/o KA</b>	<b>Volume</b>	<b>Percentage</b>
<b>Disposal Time (In months)</b>		
0 to 6	293	13.74%
7 to 12	900	42.21%
13 to 18	79	3.71%
19 to 24	77	3.61%
25 to 30	177	8.30%
31 to 36	154	7.22%
37 to 42	32	1.50%
43 to 48	32	1.50%
49 to 54	20	0.94%
55 to 60	17	0.80%
Above 60	351	16.46%
Total	2132	100.00%

With the second type of inter-state evaluation, the objective is to determine which state is the quickest in disposing matters related to government and aided school-teachers. For this, instead of separating disposal times with intervals of six months, cases have been aggregated according to those that have been decided within a year, and those that have taken longer than a year. With this, the 12-month period becomes the standard by which swiftness of justice delivery may be measured. The table given below displays this information:

<b>State</b>	<b>Disposal Time (in months)</b>	<b>Total</b>	<b>Percentage disposed in 12</b>
--------------	--------------------------------------	--------------	--------------------------------------

				month period
	0 to 12	12 +		
Jharkhand	6	53	59	10.17%
Karnataka	956	3993	4949	19.32%
Madhya Pradesh	13	36	49	26.53%
Odisha	22	47	69	31.88%
Punjab & Haryana	55	147	202	27.23%
Rajasthan	891	171	1062	83.90%
Tamil Nadu	97	190	287	33.80%
Uttar Pradesh	109	295	404	26.98%
<b>Total</b>	2149	4932	7081	

As per the data shown above, it is evident that a teacher-related case instituted in the High Court of Rajasthan would be most likely to be decided within a year, given that 83.9% of its caseload was disposed within a 12-month period. The next quickest court is that of the State of Odisha, where almost a third of the matters (31.88%) were concluded within a year. The slowest court, in comparison, would be that of the State of Jharkhand, where 89.83% of all matters took more than a year to be completed. This is followed by Tamil Nadu (66.20%). And the slowest court, more generally, where the likelihood of a teacher-oriented case taking upwards of five years to be disposed, is also the State of Jharkhand, where more than half of the cases (52.54%) took more than five years to be decided. The second slowest in these terms was the State of Uttar Pradesh, with 40.84% of the cases taking more than five years.

The data also suggests that in many states certain types of grievances were disposed more quickly than others. In particular, grievances relating to appointments, regularisation and examination standards were disposed relatively quickly and, in most cases, within two years. On the other hand, grievances relating to service benefits and retirement benefits took significantly longer to be resolved. This was particularly the case with respect to Madhya Pradesh, Rajasthan and Tamil Nadu. One interesting feature about the appointments, regularisation and examination standards cases was that they usually involved multiple petitioners as well as larger questions of state policy or challenges to orders that were applicable to a number of teachers. By contrast, most of the service and retirement benefits cases, with the exception of service benefit grievances regarding pay scale and seniority, involved very fact specific grievances of individual petitioners. A combination of factors could be the possible reasons for this difference in disposal periods, including that more resources (including support from the teachers' association) are poured into cases where multiple petitioners are involved and that it is in the interests of the state respondent to have these policy related grievances resolved quickly.

### III. Findings:

Based on the above analysis and comparison across the eight States, our key findings can be characterized as follows:

#### A. Cases Volumes:

The number of judgements related to teacher grievances that were revealed from our database searches varied significantly from State to State – with only 5 judgements in the case of Mizoram, and 75 in the case of Odisha to over 6,000 for Karnataka. States that fell in the middle of spectrum included Madhya Pradesh (160), Jharkhand (187), Punjab and Haryana (279) and Tamil Nadu (544), while Rajasthan had 1285 and Uttar Pradesh 1146 judgements.

While a portion of these differences may be explained away by variations in size and population across States as well as by the fact that some States may have better systems for reporting judgements than others, these differences alone do not explain all the variations. While further research needs to be done in this area, we believe that some of the factors that may influence the volume of judgements include:

- The tendency of the High Courts in some States such as Karnataka to club together and dispose a large number of related petitions in one judgement, which results in a higher rate of disposal of cases; and
- The High Courts may be more accessible to teachers in some States than in others, depending on the resources and support (for example, from teacher unions) available for filing petitions and contesting cases in the High Courts.

## ***B. Types of Grievances:***

### *1. Predominant Grievance Types:*

The two most predominant types of grievances that caused teachers to approach the High Courts were grievances related to service benefits and grievances related to appointments. Out of the total 9751 cases that we reviewed across the High Courts of the eight States, 47.01% (or 4584 cases) of these related to service benefits, followed by appointment related disputes (33.2% or 3241 cases) and disputes related to regularisation (5.9% or 579 cases). Disputes related to service benefits covered a wide array of benefits, including non-payment or untimely payment of salary, leave encashment, reclaiming excess amounts and disputes related to calculation of seniority and pay scale. Appointment-related grievances included complaints over the selection procedures followed, disputes over the eligibility criteria and grievances related to the appointment or non-appointment of reserved category candidates.

The types of grievances that arose in the High Court decisions for each State can be summarised as follows:

- a) **Jharkhand:** Out of a total of 187 cases disposed by the Jharkhand High Court, a little less than a third (31.01%) dealt with appointment disputes, a roughly similar proportion (29.41%) with service benefits, followed by cases concerned with retirement benefits (14.97%). Besides these three categories, a handful of cases dealt with either multiple issues or issues such as termination, suspension, examination standard and promotion.
- b) **Karnataka:** Out of a total of 6075 cases, almost two-thirds (65%) of the cases decided by the Karnataka High Court dealt with the issue of service benefits, many of them relating to service benefits of teachers from aided schools. Appointment-related cases occupied 22.9% of the caseload followed by regularisation and transfer related grievances.
- c) **Madhya Pradesh:** Out of a total of 160 cases disposed by the Madhya Pradesh High Court, 45% related to retirement benefits, 31.25% concerned appointments and service benefits followed with 12.5%. Besides these, issues such as promotion, suspension, transfers, insurance also cropped up in very small numbers.
- d) **Odisha:** Out of 75 cases disposed by the Odisha High Court, almost half (48%) dealt with termination as the main issue. This was followed by appointment-related disputes (29.33%) and transfer cases (10.67%). Besides these, cases on

retirement, service benefits and promotions occupied smaller portions of the total volume.

- e) **Punjab and Haryana:** Out of a total of 279 cases, 60.93% were matters revolving around appointments, 12.19% dealt with transfers, followed by termination matters which constituted 11.11% of the cases. The rest related to issues such as service benefits, contempt, retirement benefits, promotions, but in very small proportions.
- f) **Rajasthan:** 69.96% of a total of 1285 cases decided by the Rajasthan High Court were related to appointments. Regularisation cases were the second largest category with 12.14%, followed by cases relating to service benefits (10.58%). Apart from these, the Court also heard a small number of matters where examination standards, transfers, terminations and promotions were questioned.
- g) **Tamil Nadu:** Out of a total of 544 cases decided by the Madras High Court, 42.10% dealt with service benefits, 22.24% dealt with appointments and 13.60% related to examination standards.. Other issues, which were contested in far fewer cases, included promotions, retirement benefits, transfers, regularisation etc.
- h) **Uttar Pradesh:** Appointments were the main issue of contention in 46.29% out of a total of 1146 cases heard in Uttar Pradesh between 2009 and 2014. This was followed by cases on regularisation (18.95%) and service benefits (14.85%). Besides these, there were also a scattering of disputes across issues such as terminations, promotions, transfer, retirement benefits etc.

## 2. Common Themes in Appointment and Service Benefits Grievances

### *Appointments:*

Appointment related grievances could by and large be divided into three sub-types. The first sub-type related to grievances over the eligibility criteria for appointments. Often this involved disputes over whether a certain qualification could be considered equivalent to the required qualification for a post. In other cases, as described in some of the State chapters, these disputes stemmed from confusion over the NCTE guidelines on teacher qualifications that were set up following enactment of the RTE and their implementation in different states.

A second sub-type relates to grievances over the selection process and the procedures followed. For example, teacher applicants raised questions as to whether the advertisement had properly described the relevant post and whether the criteria for selection stated in the advertisement were actually followed. Interestingly, there were instances in quite a few States (Tamil Nadu and Punjab come to mind) where the selection criteria were changed while the selection process was underway. The High Courts of all the States gave a lot of regard to whether due process and the principles of natural justice were followed during the selection process and were willing to quash the results of the selection if, for example, there was any evidence of impropriety or not following the rules during the selection process.

Cases related to reservation criteria were a third sub-type. These were often disputes over whether a candidate from a particular reserved category should be given preference over a candidate belonging to another reserved category. The High Courts generally decided these disputes on the basis of the rules regarding appointments for reserved category candidates. There were disputes involving candidates from a wide variety of backgrounds – SC/STs/OBCs, but also persons with disabilities, freedom

fighters and women. Another issue that often arose in the reservation cases related to whether reserved category candidates were entitled to a relaxation of the eligibility criteria and, if so, to what extent. The High Courts generally upheld the NCTE guidelines that allowed for up to 5% relaxation of marks for reserved category candidates and were, as was the situation in a case decided by the Rajasthan High Court discussed in Chapter 9, unwilling to allow for further relaxation as this was considered contrary to the NCTE guidelines.

#### *Service benefits:*

Disputes regarding service benefits encapsulated a wide variety of service related matters. These included non-payment or untimely payment of salary, leave encashment and disputes over pay scale and seniority. Most of these judgements are very fact specific decisions that generally tended to be decided by the High Courts on a case-by-case basis and on the merits. One type of case that was almost always decided in favour of teachers were those that involved challenges to government decisions to reclaim excess amounts paid to them (for example, where the pay scale was wrongly calculated the first time around). In these cases, the courts typically relied on principles of fairness and did not allow the government to reclaim excess amounts already paid to teachers (though the government was entitled to change the pay scale going forward).

There was also a sub-category of service benefit disputes that dealt with larger policy issues. Many of these cases, which often related to how seniority was to be calculated for determining pay scale, suggest that the service rules for teachers in many of the states were not entirely clear. Adding to this confusion was the fact that there were often different rules for different types of teachers as well as different types of schools (for example, for primary and secondary schools). As a consequence, there were a number of cases where teachers approached the courts to extend government orders on service benefits that related to one category or group of teachers to the group to which the petitioners belonged as well. In many of these cases, the High Courts did not allow these petitions on the basis that it was up to the discretion of the State Government to extend these benefits to other groups of teachers.

### *3. Teachers Appointed on an Ad-hoc Basis*

One theme that we came across in a number of the States related to teachers who had been appointed on an ad-hoc or contract basis. These teachers were referred to by different terms in different States (guest teachers in Punjab, contract teachers in Rajasthan, untrained or para teachers in Jharkhand) and there does not appear to be a uniform definition for such teachers across States or even within a particular State. While these grievances were not as numerous as those related to appointments or service benefits, we believe it would be worth looking into these grievances in greater detail as some of the judgements involving such ad-hoc or contract teachers had wider policy implications and some were also appealed to the Supreme Court.

The primary type of grievance involving contract or ad-hoc teachers related to such teachers approaching the High Courts to have their appointments regularised. In most instances, the High Courts (in Karnataka, Rajasthan and Uttar Pradesh) did not interfere with the state education department's decisions, particularly in situations where the contract teacher had been originally appointed for a temporary post. A common theme running through many of these judgements was the notion that, unlike regular teachers, teachers appointed on an ad-hoc basis were not governed by any set of rules regarding their appointments or benefits which was left largely to the executive decisions of the respective State Governments.

It is interesting to note that the Supreme Court was more willing to make specific pronouncements with regards to ad-hoc and contract teachers than the High Courts. For example, as discussed in Chapter 3, the Supreme Court held in unequivocal terms that untrained teachers in Jharkhand who had been appointed by the State with the promise that they would receive training could not be penalized in terms of their benefits on account of the State Government's delay in providing the training. Similarly, the Supreme Court was critical of the Government of Haryana for failing to appoint regular teachers and instead relying on "guest teachers". At the same time, the Supreme Court's ability to delve into the merits of the claims of contract teachers is limited as was apparent in the case that was appealed from the High Court of Madhya Pradesh. Here, the Supreme Court held that as the contract teachers had been appointed pursuant to an education programme and not pursuant to any statutory rules, they were not entitled to pay parity with other classes of teachers or even to the minimum pay scale.

#### 4. *Grievances of Teachers in Aided Schools:*

While not a dispute category in itself, the cases we reviewed included grievances of teachers from aided schools. In Karnataka, the majority of the cases analysed involved aided schools. Almost all of these were service benefit grievances and largely centred around three themes. One of the themes, which applied to several cases in Karnataka, related to how seniority was to be calculated for teachers in aided schools for purposes of determining benefits. In a landmark judgement that was upheld by the Supreme Court,<sup>138</sup> the Court held that seniority for a teacher at an aided school was to be calculated from the date of that teacher's appointment, even if the school became an aided school at a later date.

Another theme involved the differences between sanctioned and non-sanctioned posts in aided schools. In some States, teachers holding non-sanctioned posts challenged the differential benefits available to teachers in sanctioned and non-sanctioned posts as a violation of equality under Article 14 of the Constitution. The High Courts in most States dismissed these petitions on the basis that it was a policy decision of the State. A final theme related to the status of aided schools. For example, there were a number of cases that revolved around the question of whether an aided school that had stopped receiving grant-in-aid was still required to pay the same kinds of benefits. The High Courts in such cases held that if a school had stopped receiving aid due to a lapse on its part, it could not stop paying teachers the benefits to which they were entitled.

#### C. *Outcomes of Decisions:*

In terms of the outcomes of decisions, there was no suggestion that the High Courts generally tended to favour either the teachers or the State respondents. On an aggregate basis, 31.88% of the cases reviewed were decided in favour of the State, 28.83% were decided in favour of teachers and 31.02% were remanded to the State respondents with directions to consider the grievance and arrive at a decision.<sup>139</sup> While there were some States where either the State or teachers prevailed in a significant majority of cases, it is difficult to draw any inferences from this data as to whether certain High Courts were particularly likely to favour teachers.

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<sup>138</sup> *VTS Jeyabal and others v. State of Karnataka and Others*, WP1943/2005, decided on 13.10.2006

<sup>139</sup> The remaining 10% of cases had outcomes that included partial relief or were disposed of without an indication of the particular relief (or lack of relief) being granted.

#### ***D. Disposal Periods:***

There were huge variations in the time taken for conclusion of disputes across States. The State with the slowest disposal rate was Jharkhand where 52.54% of the cases for which this data was available took over 5 years to conclude, followed by Uttar Pradesh where 40.84% of the cases for which data was available took over 5 years. At the other end of the spectrum was Rajasthan where 83.9% of the cases for which this data was available were concluded within a year.<sup>140</sup> Further, most grievances related to policy issues around appointments or service benefits tended to be decided faster than grievances that were of a more individual nature, such as service benefit cases relating to a late salary payment or a grievance related to pension benefits. While the reasons for these variations are beyond the scope of this study, one possible reason could be that grievances involving larger policy issues tend to involve a large number of petitioners and possibly support from teachers unions and, as a consequence, greater resources, than petitions filed by petitions on individual grievances.

#### ***E. Alternative Grievance Redressal Fora:***

Based on our mapping out of the grievance redressal process in Jharkhand, Karnataka and Tamil Nadu, there appear to be two additional fora for the resolution of teacher grievances – grievance redressal sessions held by state education officers at the block and district levels and specialized tribunals that are constituted to hear either education related matters or grievances related to service matters for government employees. While further research is needed on these alternative fora, our initial findings suggest that if they function on a regular basis such fora have the potential to reduce the volume of teacher-related litigation in the High Courts and, at least with respect to less complex issues, provide teachers with a more accessible and efficient mechanism for redressal of their grievances.

### **IV. Recommendations:**

In conclusion, we set out below some recommendations that came out of our review of the High Court decisions in the nine States as well as our study of the entire grievance redressal process for teachers in three of the nine States. These recommendations are generally aimed at reducing the volume of teacher related litigation in the High Courts while ensuring that the legitimate concerns of teachers are addressed. It is important to note that the purpose of this study was not to draw causal inferences, but to gain an understanding of the grievance redressal landscape in the nine States studied. Thus, these recommendations, while supported by our statistical findings, are based more on our observations and qualitative analysis of the cases we reviewed.

#### ***Clearer Guidelines on Eligibility Criteria for Appointments and Calculation of Seniority and Communication of these Guidelines by State Education Departments to the Public:***

A number of cases arose from confusion over the appointment and service related rules for teachers in the various states studied. As discussed in preceding chapters, much of the confusion on eligibility criteria for appointments stemmed from the NCTE guidelines and their implementation by States. Some areas of confusion include the weightage to be given to the Teachers Entrance Test (TET) as opposed to other criteria, the date from which these criteria would apply and which degrees or qualifications are to be considered equivalent to one another. Similarly, there appears to be much confusion on pay scale and calculation of seniority under the service rules for teachers in the different States. We believe that clearer rules on these issues would go a long way in helping teacher applicants understand the appointment eligibility criteria better and in helping teachers understand the benefits to which they are entitled. Further, given the very large number of appointment and service benefit

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<sup>140</sup> As discussed above, data on time periods was only available for a subset of the total number of cases analysed.

grievances in the states studied, clearer rules are also likely to reduce the amount of teacher related litigation on these issues.

### ***Need for Implementing Decisions of the High Courts:***

One issue that struck us in reviewing cases from each of the states is that there were a number of cases with remarkably similar fact patterns that were heard by the High Courts. For example, the Madras High Court heard several different petitions from qualified computer science teachers who challenged the appointments of what they termed “underqualified” computer science teachers in the state’s government secondary schools. Similarly, the Jharkhand High Court heard many different cases of “untrained” teachers who challenged orders of the State denying them increases in their pay scale on the grounds that the state had not provided them with the training they had been promised. In all of these cases, a lot of time and costs of teacher-related litigation could have been saved if the State Governments had implemented the decisions of the High Courts for all similarly situated teachers rather than waiting for individual teachers to approach the High Courts in turn to get similar benefits.

### ***Alternative Grievance Redressal Fora:***

In the course of our study, we came across two types of dispute resolution fora that could serve as alternatives to the High Courts. The first of these, which are described in the Karnataka and Tamil Nadu chapters, are grievance redressal sessions offered by state education officers at the block and district levels. While these sessions are limited in the scope of grievances they can address, they are helpful as they are easily accessible for teachers, particularly in rural areas, who may not have the resources to access the High Courts. Holding such grievance redressal sessions on a regular basis could also weed out relatively simple matters that could be resolved without the need to approach a formal dispute resolution forum.

The second of these types of fora are specialized tribunals that exist in many states for addressing service related matters of government employees (of which teachers from government schools constitute a significant proportion) Some states also have tribunal for addressing teacher-related grievances for private and aided schools (such as the Jharkhand Education Tribunal, the Rajasthan Non-Governmental Education Institutions Tribunal, etc.). As we saw in the state chapters, the service tribunals in some states appear to be functioning better than others and in some cases (for example, Tamil Nadu), the tribunal was actually abolished as a policy decision of the state. Where they do function, such tribunals could be helpful in reducing the load off the High Court and could also provide teachers with a more specialized forum in which their service related grievances could be heard.

While both of these fora could potentially be helpful in bringing down the volume of teacher-related litigation, we do not currently have sufficient evidence to assess whether this has actually been the case. We believe there is scope for further research into the nature and effectiveness of these alternative grievance redressal fora to study whether they have helped in terms of resolving teacher related grievances more efficiently and in reducing the burden on the High Courts.