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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: December 11, 2014

+ W.P.(C) 3808/2012 & CM Nos. 7984/2012 & 3474/2013, W.P.(C) 3809/2012 & CM Nos. 7985/2012, 3480/2013, W.P.(C) 3810/2012 & CM Nos. 3478/2013, 11079/2012, 7986/2012, W.P.(C) 3811/2012 & CM Nos. 7987/2012, 3483/2013, W.P.(C) 3812/2012 & CM Nos. 7988/2012, 3479/2013, W.P.(C) 3813/2012 & CM Nos. 7989/2012, 11108/2012, 3475/2013, W.P.(C) 3814/2012 & CM Nos. 7990/2012, 3477/2013, W.P.(C) 3815/2012 & CM Nos. 3481/2013, 7991/2012, W.P.(C) 3816/2012 & CM Nos. 7992/2012, 3482/2013, W.P.(C) 3818/2012 & 3476/2013, 8000/2012 & W.P.(C) 3969/2012 & 8313/2012

CHHAVI GROVER AND ORS. Petitioners

in W.P.(C) No. 3808/2012

MEERA DAWAR AND ORS. Petitioners

in W.P.(C) No. 3809/2012

VIKAS PALIWAL AND ORS. Petitioners

in W.P.(C) No. 3810/2012

MADHU BHANDARI AND ORS. Petitioners

in W.P.(C) No. 3811/2012

RASHMI JS THAPA AND ORS. Petitioners

in W.P.(C) No. 3812/2012

KUSUM SINGH AND ORS. Petitioners

in W.P.(C) No. 3813/2012

SUNIL KUMAR CHHILLAR AND ORS. Petitioners

in W.P.(C) No. 3814/2012

RITU MEHRA AND ORS. Petitioners
in W.P.(C) No. 3815/2012

REKHA AND ORS. Petitioners
in W.P.(C) No. 3816/2012

ARCHANA TANWAR & ORS. Petitioners
in W.P.(C) No. 3818/2012

HARJEET KAUR DADIALA Petitioner
in W.P.(C) No. 3969/2012

Represented by: Ms. Rekha Palli, Ms. Punam
Singh, Mr. Aftab Ali Khan, Ms.
Shruti Munjal, Ms. Ankita
Patnaik and Ms. Garima
Sachdeva, Advocates.

Versus

NAVYUG SCHOOL EDUCATIONAL SOCIETY & ANR.
..... Respondents

Represented by: Mr. B.B.Gupta and Mr. Udyan
Srivastava, Advocates for
Respondent No.1.
Mr.Arun Bhardwaj, ASC for
Respondent No.2/NDMC.
Mr.Anurag Ahluwalia, CGSC
with Mr. M.P.Singh, Advocates
for Union of India.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide these petitions, the petitioners seek setting aside of the order dated 22.06.2012, whereby in view of the report of the Inquiring Authority and decision taken by the respondent No.3/Ministry of

Home Affairs (for short 'MHA'), Recruitment Drive of 2008 (for short 'RD-2008') was cancelled. Consequently, the appointments of the petitioners as teachers have been cancelled.

2. The petitioners are aggrieved by the aforesaid order, therefore, all the petitions are being disposed of by this common judgment.

3. Facts in brief are that the respondent No.1/Navyug School Educational Society (for short 'School') made regular appointments of the teachers during the years 1999 to 2009 and thereby promoted 45 PGTs and 75 TGTs. As stated by the respondent No.1/School, about 170 teachers were engaged on contractual basis time-to-time from the year 2001 onwards apart from the regular appointments made by direct recruitment and departmental promotions. In the years, 2005, 2006 and 2007, the respondent No.1/School advertised in order to fill up the vacant posts of teachers on contractual basis. The said contractual appointments were advertised under the caption "Special Recruitment Drive for SC/ST/OBC", which was exclusively for reserved candidates for engagement on contractual terms, pending regular recruitment and promotions. Accordingly, the applications were invited on plain papers and the remuneration was mentioned as 'a consolidation salary', but not as per regular scale of pay. Like many others, few former contractual teachers also applied afresh for the said posts and were also engaged on a purely contract basis on the specific condition that the period of engagement would be up to the end of a particular academic session or till the regular appointments against the posts occupied by the contract teachers were made, whichever is earlier. That was,

purely a stop gap arrangement so that the studies of the students did not suffer.

4. The details of the contractual reserved category teachers engaged during the year 2005, 2006 and 2007 are as under:-

Year	PGT	TGT	Primary Teachers
2005	06 (SC-02, OBC-04)	20(SC-09, OBC-10, ST-01)	17 (SC-04, ST-01, OBC-12)
2006	Nil	05 (SC-03, ST-02)	08 (OBC-03, SC-05)
2007	01 (SC-01)	01(SC-01)	13 (SC-03, ST-04, OBC-06)

5. Thereafter, vide an advertisement dated 17.06.2008, the respondent No.1/School had advertised for filling up 55 posts of TGTs and Primary Teachers (Academics & Activity) on regular basis. In response thereto, large number of applications were received. After scrutinizing the applications, a written test was conducted with the help of an independent agency, namely, SCERT, to select the applicants for the interview. The candidates who qualified the written test were called for interview. For final selection, weightage was given for performance in the written test, educational qualification and experience, more than prescribed in RRs and performance in interview. A comprehensive selection process was adopted while recruiting candidates on regular basis. The Director (Liason) of respondent No.2/New Delhi Municipal Council (for short 'NDMC'), being a

representative of SC/ST, was an integral part of the constituted Selection Board.

6. Ms.Rekha Palli, learned counsel appearing on behalf of the petitioners submitted that originally 55 vacancies (TGT-24, Primary Teachers (Academics)-18), Primary Teachers (Activities)-13) were advertised on 17.06.2008, while reserving the right with respondent No.1/School to increase or decrease the same for the reasons considered appropriate by it. The posts occupied by the contractual teachers at the time of aforementioned advertisement were not taken into account as these were not actually vacant. However, as requested, 59 posts occupied by the contractual teachers were also added to be filled up through direct recruitment. At the time of advertisement, 59 contractual teachers were working in different schools of the respondent No.1. Out of 59, 58 contractual teachers (SC-18, ST-04, OBC-18 and UR-18) had applied against the aforementioned advertisement dated 17.06.2008, however, one SC contractual teacher did not apply for any post. Out of aforementioned 58 contractual teachers, 36 teachers (SC-09, ST-04, OBC-14 and UR-09) were finally selected.

7. Thereafter, 10 ex-contractual teachers, who could not get selected in the aforementioned regular recruitment process represented and filed complaints before several authorities including National Commission for Scheduled Casts (for short 'Commission'), a Constitutional Body set up under Article 338 of the Constitution of India. However, there was no complaint of any irregularity till those ex-contractual teachers failed to qualify for regular appointments. The

said ex-contractual teachers have been representing that their contractual service should be treated as 'regular' as they had been recruited on contractual basis against 'Special Recruitment Drive', even if it was on contractual terms. However, the aforesaid Drive was launched against the vacant posts, both in direct and promotion quota in 2005, 2006 and 2007 on purely contractual basis for the reserved category candidates.

8. Since the ex-contractual teachers, who could not get selected in RD-2008 on regular basis, had made representations, therefore the Commission enquired into the matter. Vide its order dated 24.05.2010, the Commission disposed of the representations of ex-contractual teachers observing, *inter alia*, that the respondent No.1/School had followed the reservation policy of the Government of India in letter and spirit.

9. Subsequently, the aforesaid ex-contractual teachers again approached the Commission and the matter is pending. The last communication vide letter dated 02.03.2012 was made by the Commission to the respondent No.1/School. The aforesaid ex-contractual teachers also filed complaints before the Central Vigilance Commission, Government of India, (for short 'CVC'), which after examining the case, decided to close the matter vide its order dated 27.01.2010.

10. It is important to note here that issue of regularization of contractual appointees was agitated before the Principal Bench of Central Administrative Tribunal. On dismissal of their applications, 09 ex-contractual teachers (05-SC, 01-OBC and 03-General Category)

filed writ petitions before this Court, which are pending for adjudication.

11. The ex-contractual teachers filed various representations dated 09.11.2010, 18.11.2010, 01.12.2010, 02.12.2010 and 07.12.2010 before the Parliamentary Committee on Welfare of SCs and STs. Pursuant to reply filed by the respondent No.1/School, the aforementioned Parliamentary Committee recorded evidence of the representations of the Ministry of Home Affairs, Ministry of Personnel, Public Grievance and Pension (Department of Personnel and Training) and New Delhi Municipal Council on 15.12.1010 and 07.01.2011.

12. Thereafter, the Parliamentary Standing Committee examined the matter and submitted various recommendations contained in its 13th Report. The MHA vide its letter dated 20.07.2011 forwarded a copy of 13th Report of the Parliamentary Committee on the Welfare of SC/ST to the Chief Secretary, Govt. of National Capital Territory of Delhi (for short 'GNCTD'). As per the said letter, MHA had requested GNCTD to take action on its behalf in consultation with MHA, specifically in respect of recommendations No. 6 and 7 and requested to take appropriate action regarding the discrepancies pointed out by the Parliamentary Committee in para 6 of its recommendations relating to the recruitment procedure in the respondent No.1/School in 2008-2009 and discrepancies noticed during the verification of rosters, cases of regularization of contract/*ad-hoc* teachers since the inception of respondent No.1/School and also the alleged irregularities in RD-2008. MHA also requested that the GNCTD might designate an officer of appropriate rank to regulate/supervise the affairs related to SCs/STs in

the respondent No.2/NDMC, including the respondent No.1/School in terms of para-7 of the recommendations of the Report of the Parliamentary Committee.

13. Accordingly, vide letter dated 29.06.2012, the respondent No.2/NDMC furnished the action taken replies to 8 out of the 10 recommendations of the Parliamentary Committee to MHA. As a follow-up action on the aforementioned Report of the Parliamentary Committee, submitted to the Hon'ble Speaker, Lok Sabha, on 01.06.2011. Thereafter, MHA vide its letter dated 30.11.2011 had designated Shri R. Chandramohan, Principal Secretary-cum-Commissioner (Transport), GNCTD, as the Inquiring Authority for the purpose of undertaking a verification drive to check the present recruitment procedure in *vogue* in respondent No.1/School and report to the Committee about the discrepancies noticed during the verification of the rosters, cases of regularization of contract/*ad-hoc* teachers since the inception of respondent No.1/School as also the alleged irregularities in RD-2008. This was conveyed by MHA to the Inquiring Authority and the respondent No.2/NDMC vide its letter dated 13.12.2011.

14. The Inquiring Authority after inquiring the matter submitted its report to MHA in the month of April, 2012, which in turn forwarded the same to the respondent No.2/NDMC vide its letter dated 18.04.2012, to furnish the comments on the report of the Inquiring Authority and other seven specific issues in the matter. Vide letter dated 10.05.2012, the respondent No.1/School submitted its comments to MHA, which read as under:-

“i) As regards the conclusion drawn by the Inquiring Authority in respect of verification of Roster, decided to first seek the advice of DoP&T before NDMC takes necessary action in this regard. The MHA will give necessary directions, if any, to NDMC only after obtaining the advice of DoP&T.

ii) As regards the conclusions drawn by the I.A. in respect of Regularization of Contract/ad-hoc teachers, it is felt that there is no such thing as “regularization”. An irregular appointment remains irregular. If the advertisement is made for contractual appointment, then the appointees cannot later be regularized, as the presumption is that if the advertisement would have been for regular appointment, more and better candidates would have applied.

iii) The Inquiring Authority’s conclusion in respect of the irregularities in the Recruitment Drive of 2008 has been carefully examined in this Ministry and it has been decided that considering the glaring irregularities in 2008 recruitment process, it may be cancelled. Rules for recruitment may be made and published, to be amended subsequently only after giving reasons for the same, and only if there are very strong reasons.”

15. Vide letter dated 20.06.2012, MHA communicated the aforesaid decision to the respondent No.2/NDMC with the directions to take the action as above under the intimation to MHA. Accordingly, in compliance of the above directions, the impugned order dated 22.06.2012 was issued by the respondent No.1/School, whereby the RD-2008 was cancelled. Hence, the petitioners, being aggrieved, filed the present petitions.

16. Ms.Rekha Palli, learned counsel submitted that Shri R.Chandramohan, the Inquiring Authority, submitted its report on the subject of “Termination of SC Ex-Teachers appointed by respondent No.1 on contract basis during Special Recruitment Drive 2005 and 2007”, as under:-

“1. The Reservation Roasters need to be recast by NSES and reservation points noted post wise and subject wise as the vacancy arises;

2. The backlog in unfilled reserved vacancies in a Recruitment Year should be carried over to the next Recruitment Year as per rules and the same cannot be cancelled/erased by amending the Recruitment Rules prospectively;

3. The contractual appointees of 2005 against backlog reserved vacancies only should be regularized as the Selection Process was elaborate and as per the approved RR's and established practice followed while making regular appointment'

4. The backlog in reserved vacancies in respect of PGT's against the Direct Recruitment Quota should be readvertised subject wise as per the relevant RR's and filled up. The unfilled reserved vacancies against Departmental Quota should also be got filled up by Direct Recruitment;

5. In respect of regularization of ad-hoc/contract employees the policy of BOG should be uniform without any distinction between Non-Teaching and Teaching staff;

6. In the recruitment made in 2008, the selection and appointment of candidates should be limited to the number of vacancies notified in the press and the

appointment of Non SC/ST candidates against reserved vacancies for SCs and STs should be got rectified.”

17. It is pertinent to mention here that all the above mentioned 10 candidates approached this Court vide W.P.(C) Nos.5592/2010 and 5738/2011, however, the said candidates, including one OBC and one General Category candidate, withdrew their petitions with liberty to approach the respondents. Accordingly, the abovementioned petitions were dismissed as withdrawn vide order dated 09.01.2013.

18. Thereafter, the respondent No.2/NDMC submitted the reply to the report of Inquiring Authority that the basis of regularisation proposed in the year 2007 was not finally accepted and approved by the Competent Authority as the Recruitment Rules (for short ‘RRs’) were amended on 24.03.2008 and the posts of TGTs were not taken into consideration for being advertised as per the modified RRs. However, there has been no change in reservation points for SCs/STs in overall Cadre. Accordingly, the respondent No.1/School had made departmental promotions on 23.06.2009 and promoted two SC candidates. However, efforts were made to fill up the vacant posts in reserved category in May, 2010 when respondent No.1/School had advertised 04-SC and 02-ST posts in PGT Cadre to be filled up on regular basis by direct recruitment as a ‘Special Recruitment Drive’. In TGT Cadre as on 31.12.2008, there were vacancies of 02-SC and 02-ST in the direct quota. Accordingly, the respondent No.1/School had selected 09-SC and 05-ST candidates by direct recruitment in RD-2008, which also included the posts mentioned for the Department

Recruitment Quota, in terms of provisions of RRs which provided for direct recruitment if the departmental candidates are not available.

19. As per the Roster in the direct quota, 05-SC and 02-ST points are in excess and in future these excess points will be adjusted against the departmental quota in terms of DOPT orders.

20. It is further submitted that originally 55 vacancies were notified vide advertisement dated 17.06.2008 by the respondent No.1/School. However, it was decided subsequently to fill up another 59 posts also on regular basis through the same selection process. Hence, inclusion of 59 posts to the earlier advertised posts of 55, totalling 114 posts, was well within the condition of the Employment Notice, which stipulates that the number of posts be increased/decreased at any time during the process. The reasons for increasing 59 posts subsequently for regular selection were that:-

(a) Vacancies arose due to the promotion of departmental candidates in the TGT and PGT Cadres.

(b) To fill up the posts on which the contractual teachers were earlier working.

21. Thereafter, vide communication dated 20.06.2012 to the respondent No.2/School, MHA stated that as regards the conclusion drawn by the Inquiring Authority in respect of regularization of direct/*ad-hoc* teachers, it is felt that there is no such thing as “regularization”. An irregular appointment remains irregular. If the advertisement is made for contractual appointment, then the appointees cannot later be regularized, as the presumption is that if the advertisement would have been for regular appointment, more and

better candidates would have applied. The Inquiring Authority's conclusion in respect of the irregularities in RD-2008 has been carefully examined by MHA, which in turn decided that considering the glaring irregularities in RD-2008, the same may be cancelled. It is further stated that Rules for recruitment may be made and published; to be amended subsequently only after giving reasons for the same, and only if there are very strong reasons. Accordingly, the respondent No.1/School cancelled the RD-2008 vide impugned order dated 22.06.2012.

22. Thereafter, vide letter dated 07.08.2012, the respondent No.2/NDMC requested to fix the responsibility in respect of irregularities in RD-2008 and initiate action against the delinquent officials/persons as per law.

23. Ms.Palli learned counsel for the petitioners submitted that in reply filed by the respondent No.3/MHA, it is specifically stated in para 10 that it is the duty of the respondents No. 1 and 2 to follow the requisite Provisions/Rules/Regulations applicable to their educational institutions and the provisions of reservation policy as well. Also stated that the respondents No. 1 and 2 are the main respondents in this case and the respondent No.3/MHA is only a proforma party.

24. Ms. Palli further submitted that though the respondent No.3/MHA has stated that there were glaring irregularities in RD-2008, however, it has not indicated as to what were the irregularities therein. Since the respondent No.1/School has powers to lay down service rules of the teachers and staff of the schools working under it, therefore, the MHA had nothing to do to issue the said letter directing the respondent

No.2/NDMC to cancel the RD-2008, which in turn directed the respondent No.1/School to cancel the process. Accordingly, the respondent No.1/School passed the impugned order dated 22.06.2012.

25. Ms. Palli submitted that the selection of the petitioners, being based upon the written test and interview and was a regular selection against the reserved vacancies. They all completed probation period successfully, thus, they were the regular teachers. However, their selection has been cancelled by the respondent No.1/School without putting them on notice or giving an opportunity of hearing, which is in violation of principles of natural justice. The respondent No.1/School is an autonomous body, hence, the decision of the respondents No. 2 and 3 cannot be thrust upon the respondent No.1/School. The respondents have not pointed out any of the irregularity allegedly committed in RD-2008.

26. Moreover, respondent No.3/MHA has specifically stated that the decision ought to have been taken by the respondent No.1/School as the respondent No.3/MHA is a proforma party and it has nothing to do with the recruitment of teachers and application of reservation policy for the teachers in the respondent No.1/School.

27. In support of her case, on the issue of principles of violation of natural justice, learned counsel for the petitioners has relied upon a case of ***Kamal Nayan Mishra Vs. State of Madhya Pradesh & Ors. (2010) 2 SCC 169***, wherein the Apex Court held, that the termination of a regular employee without an inquiry or affording an opportunity of hearing is illegal and invalid.

28. On the issue that vacancies available upto date of interview can be filled by the undergoing recruitment process, Ms.Palli has relied upon a case of ***Sandeep Singh Vs. State of Haryana and Anr.(2002) 10 SCC 549***, wherein the Apex Court held that the vacancies available in any particular service till the date of interview can be filled up from the very same examination unless there is any statutory embargo for the same.

29. On the issue of *Further relied upon a case of Inderpreet Singh Kahlon and Ors. Vs. State of Punjab and Ors. 2006 11 SCC 356*, the Apex Court held if principles of natural justice are given go by while terminating services, such order cannot be sustained.

30. Mr.B.B. Gupta, learned counsel appearing on behalf of the respondent No.1/School has supported the case of the petitioners and submitted that the detailed report apprising the approved vacancy position from the year 1997 till 01.08.2012 of all the teachers in question was filed before the Parliamentary Committee on Welfare of SCs and STs and before the Inquiring Authority. The same is part of the counter-affidavit filed by the respondent No.1/School.

31. Learned counsel submitted that regarding the TGT direct recruitment quota, due to change in RRs in 1998, it was modified to 75% by departmental promotion and 25% by direct recruitment. As on 31.12.2008, there was a short fall of 15 SC points (DR2 + DP13) and 09 ST points (DR2 + DP7) against which the respondent No.1/School had selected 09 SC candidates and 05 ST candidates by direct recruitment in 2009 in order to fill up the vacant posts of SC/ST in terms of provisions in RRs which provide, for direct recruitment if the

departmental candidates are not available. Thus, sanctioned strength of SC had increased from 05 to 12 and of ST from 02 to 05. There were 02 SC candidates from the TGT Cadre, who were promoted to the post of PGT in June, 2009, thereby bringing down the filled up SC points to 10. Similarly, the respondent No.1/School had selected 05 ST candidates by direct recruitment in 2009 but due to the fact that 01 SC candidate selected on regular basis did not join, hence, the filled ST points brought down to 04. In terms of DOPT orders, excess points filled under direct recruitment quota will be adjusted against the departmental promotion quota in future.

32. Regarding TGT departmental promotion quota, Mr. Gupta, learned counsel submitted that as on 31.12.2008, there was a shortfall of 15 SC points (DR2 + DP13) and 09 ST points (DR2 + DP7), against which, the respondent No.1/School had selected 09 SC and 05 ST candidates by direct recruitment in 2009 in order to fill up the vacant posts of SC/ST in terms of provisions in RRs which provide for direct recruitment if the departmental candidates are not available. Thus, sanctioned strength of SC had decreased from 15 to 08 and of ST from 07 to 04.

33. Learned counsel submitted that as per the approved RRs, the posts of Primary Teachers (Academics) are filled up 100% by direct recruitment. The details from 02.07.1997 to 01.08.2012 are part of the counter-affidavit filed by the respondent No.1.

34. As per the approved RRs, the posts of Primary Teachers (Activity) are filled up 100% by direct recruitment.

35. Mr. Gupta further submitted that the vacancy position as on 31.12.2011 in respect of PGT, TGT and Primary Teachers in different Schools of respondent No.1 was as under:-

(A) Direct Recruitment Quota

Posts	Vacancies	SC	ST	OBC	General
T.G.T.	NIL	NIL	NIL	NIL	NIL
Primary Teachers (Academics)	13	04	02	07	NIL
Primary Teachers (Activity)	11	01	01	04	05
Total	24	05	03	11	05

(B) Departmental Promotion Quota

Posts	Vacancies	SC	ST	General
P.G.T.	26	08	06	12
T.G.T.	11	04	04	03
Total	37	12	10	15

Vacancy position as on 01.08.2012 was as under:-

(A) Direct Recruitment Quota

Posts	Vacancies	SC	ST	OBC	General
T.G.T.	01	NIL	NIL	01	NIL
Primary Teachers (Academics)	11**	03	02	06	(02)**
Primary Teachers	11	01	01	04	05

(Activity)					
Total	23	04	03	11	05

36. Mr. Gupta submitted that as on 01.08.2012, there were 87 sanctioned posts. Against which, 78 persons have been working which includes excess of 02 persons in the General category. As per roster, there was a shortfall of 03-SC, 02-ST and 06-OBC points (total 11). Once the two senior most PRT (UR category) got promotion, the excess of two were not there and the vacancies remained as 11 (SC-03, ST-02, OBC-06).

37. Learned counsel further submitted that after adjusting three surplus points existing in direct quota to the departmental promotion, position was as under:-

(B) Departmental Promotion Quota

Posts	Vacancies	SC	ST	General
P.G.T.	42	11	07	24
T.G.T.	11	04	04	03*
Total	53	15	11	27

38. Learned counsel submitted that regarding the subject-wise vacancy position of TGTs (mode of recruitment: 25% by Direct Recruitment and 75% by Departmental Promotion failing which by Direct Recruitment) was as under:-

Subject	Total				Remarks
	S	E	V	SR	
Hindi	16	15	1	0	
Sanskrit	11	7	4	0	

English	20	20	0	0	
Social Studies	14	17	0	3	3 Surplus teachers will be adjusted in future requirement on account of promotions to be made by the NSES.
Mathematics	18	11	7	0	
Natural Science	14	16	0	2	3 Surplus teachers will be adjusted in future requirement on account of promotions to be made by the NSES.
Drawing	8	6	2	0	
Music	7	6	1	0	
Physical Education	6	6	0	0	
Work Experience	8	7	1	0	
Domestic Science	1	1	0	0	
Computer Science	8	7	1	0	
Total	131	119	17	*5	

(Note:- S=Sanctioned, E=Existing, V=Vacant, SR=Surplus)

39. Learned counsel further submitted that in case of PGTs points in TGT Cadre, there has been no subjectwise reservation in the respondent No.1/School, being the small number of sanctioned posts in various subjects. The Government of India O.M.1/4/70-Estt.(SCT)

dated 11.11.1971 stipulates that to secure adequate representation for SCs/STs in isolated posts or in small cadre posts or posts of similar status and salary may be grouped for the purpose of implementation of orders providing for SCs/STs.

40. He submitted that taking into consideration the aforerecorded background, it is manifest that the action impugned by the petitioners in these writ petitions was for the reasons stated above and more particularly because of the Directives of the Government of India, which are binding on respondents No. 1 and 2.

41. Learned counsel submitted that despite the fact that the impugned order specifically records that the Directives of the Government of India and the reports preceding thereto, which were specifically known to the petitioners, neither Government of India is a party to the present proceedings nor the said Directives or the reports of the Government of India are challenged before this Court. He submitted that in absence thereof, it is to be presumed in law as also on facts that the same are not disputed by the petitioners. It may also not be disputed by the petitioners that the said Directives of the Government of India are binding upon the respondents No. 1 and 2. Therefore, no fault or illegality can be found in the impugned action of the respondent No.1/School.

42. To strengthen his arguments, learned counsel has relied upon a case bearing W.P.(C) No. 5544/2011, titled as “***MCD Represented By Its Commissioner Vs. Dr. Ved Prakash Kanoji & Anr.***”, decided on 25.02.2013 by this Court, wherein held that:-

“39. That leaves the third question to be answered: Whether the Lt. Governor can issue the directions to the Corporation to initiate disciplinary proceedings against Dr.Ved Prakash and Dr.Jai Raj. As noted above, the proceedings were defended before the Tribunal by placing reliance upon Regulation 16 of the DMC Service (Control & Appeal) Regulations, 1959 and the view taken by the Tribunal is that unless a disciplinary action is taken, said power cannot be exercised, a view with which we agree. But, the view taken by the Tribunal that the power of the Central Government under Section 487 which can be exercised by the Lt. Governor by virtue of Section 490A cannot be exercised qua service matters and would only relate to municipal governance is patently incorrect and runs contrary to the Full Bench decision of this Court reported as 1982 MCC 254 Satish Chandra Khendalwal v UOI & Ors. Vide an order dated April 11, 1980, the Central Government superseded the Corporation. A writ petition was filed in this Court challenging said supersession. The supersession was preceded by a notice to show cause issued by the Central Government. The said notice enumerated various defaults of the Corporation and also set out instances of abuse of powers by it. One of the instances of abuse of powers, which was enumerated, was as follows:-

“The Corporation passed a resolution to sell the staff quarters in Nimri Colony to the occupants/allotters ignoring the fact that the quarters were meant to serve as an amenity to serving staff.”

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44. Since our opinion is a little lengthy, we summarize our findings:-

(1) Without determining the category in which the posts were held by Dr.Ved Prakash and Dr.Jai

Singh it cannot be found as to who would be the disciplinary authority and for this the matter is remanded to the Commissioner to decide the issue.

(2) If it is found that the Commissioner is the disciplinary authority, the fact that the Corporation has taken a decision to the contrary has to be ignored for the reason the appellate authority cannot usurp the jurisdiction of the disciplinary authority.

(3) If the Corporation is found to be disciplinary authority, it would be bound by the directive issued by the Lt. Governor and would act according to the said directive for which the matter would be placed before the Corporation for necessary sanction.”

43. While concluding the arguments, Mr.Gupta, learned counsel submitted that the respondent No.1/School has passed the impugned order dated 22.06.2012 pursuant to directions issued by the respondent No.3/MHA and subsequent directions of respondent No.2/NDMC. Thus, the illegality cannot be held against the respondent No.1/School.

44. Mr.Arun Bhardwaj, learned counsel appearing on behalf of the respondent No.2/NDMC submitted that the respondent No.2 is a proforma party and since the Inquiring Authority found that there were irregularities in RD-2008 and that the respondent No.2/NDMC received directions from the respondent No.3/MHA, accordingly, the same were conveyed to the respondent No.1/School, who passed the impugned order dated 22.06.2012, thereby quashing the RD-2008.

45. Mr.Anurag Ahluwalia, learned counsel appearing on behalf of the respondent No.3/MHA submitted that based upon the report filed by the Inquiring Authority, the respondent No.3/MHA directed the

respondent No.2 to quash RD-2008. Moreover, the respondents No. 1 and 2 are the main contesting party in this petition and the respondent No.3/MHA is only a proforma party. He further submitted that vide 13th Report of the Parliamentary Committee on Welfare of SCs and STs, the said Committee reported that there have been some irregularities in RD-2008 initiated by the respondent No.1/School. Accordingly, respondent No.3 issued directions which have been complied with by the respondents No. 1 and 2.

46. I have heard the learned counsel for the parties.

47. The petitioners are aggrieved by the order dated 22.06.2012, whereby in view of the report of the Inquiring Authority and decision taken by the respondent No.3/MHA, Recruitment Drive of 2008 has been cancelled. Consequently, the appointments of the petitioners as teachers have been withdrawn. The issue before this Court for consideration is whether the respondents have rightly taken the aforesaid decision without putting the petitioners to show-cause notice and by violating the principles of natural justice.

48. It is pertinent to mention here that vide order dated 02.07.2012 passed by this Court, the impugned order dated 22.06.2012 has been stayed, thus, the petitioners are in service by the order of this Court. The petitioners have undergone through the written test and interview and thereafter selected as teachers in the respondent No.1/School. None of the candidate challenged the RD-2008 before the exam and interview conducted by the respondents. However, after declaration of the result, some of the candidates, who failed to get berth, challenged

the same by making complaints to the Scheduled Castes Commission and Central Vigilance Commission as well.

49. It is pertinent to mention here that both the aforesaid Commissions filed the complaint finding no basis therein. Thereafter, 10 candidates again made the complaints before the aforementioned Commission, which are still pending with the Commission. It seems that the Commission did not find any substance in their complaints.

50. Since the issue raised by the said candidates was decided by the Parliamentary Committee on the Welfare of SCs/STs and that was of the view that some irregularities have been committed by the respondent No.1, therefore, the said Committee recommended that the matter should be inquired in depth by an independent authority. Accordingly, the GNCTD appointed Shri R.Chandramohan as the Inquiring Authority, who after calling the record and recording evidence, submitted its report, whereby stated that the Reservation Roasters need to be recast by the respondent No.1/School and reservation points should be noted post wise and subject wise as the vacancy arises. The backlog in the reserved vacancies in a Recruitment Year should be carried over to the next Recruitment Year as per rules; the same cannot be cancelled/erased by amending the Recruitment Rules prospectively.

51. As noted above, the aforementioned Inquiring Authority did not point out what were the faults in the vacancies advertised in RD-2008.

52. The Inquiring Authority further recorded that the contractual appointees of 2005 against backlog reserved vacancies only should be regularized as the Selection Process was elaborate and as per the

approved RR's and established practice followed while making regular appointment. The backlog in reserved vacancies in respect of PGT's against the Direct Recruitment Quota should be re-advertised subject wise as per the RR's and filled up. The unfilled reserved vacancies against the Departmental Quota should also be got filled up by Direct Recruitment. It is further noted that in respect of regularization of an *ad-hoc*/contract employees, the policy of BOG should be uniform without any distinction between Non-Teaching and Teaching staff. In the recruitment made in 2008, the selection and appointment of candidates should be limited to the number of vacancies notified in the press and the appointment of Non SC/ST candidates against reserved vacancies for SCs and STs should be got rectified.

53. Fact remains that initially 55 vacancies (TGT-24, Primary Teachers (Academics)-18), Primary Teachers (Activities)-13) were advertised on 17.06.2008, while reserving the right with respondent No.1/School to increase or decrease the same for the reasons considered appropriate by it. The posts occupied by the contractual teachers at the time of aforesaid advertisement were not taken into account as these were not actually vacant. However, as requested, 59 posts occupied by the contractual teachers were also added to be filled up through direct recruitment. At the time of advertisement, 59 contractual teachers were working in different schools of the respondent No.1. Out of 59, 58 contractual teachers (SC-18, ST-04, OBC-18 and UR-18) had applied against the aforementioned advertisement dated 17.06.2008, however, one SC contractual teacher did not apply for any post. Out of aforementioned 58 contractual

teachers, 36 teachers (SC-09, ST-04, OBC-14 and UR-09) were finally selected. Thereafter, 10 ex-contractual teachers, who could not get selected in the aforementioned regular recruitment process represented and filed complaints before several authorities as mentioned above. However, there was no complaint of any irregularity till those ex-contractual teachers failed to qualify for regular appointments.

54. It is pertinent to mention here that the said 10 ex-contractual teachers challenged the appointment process before this Court vide W.P.(C) Nos.5592/2010 and 5738/2011, however, the said candidates, including one OBC and one General Category candidate, withdrew their petitions with liberty to approach the respondents. Accordingly, the abovementioned petitions were dismissed as withdrawn vide order dated 09.01.2013.

55. It is pertinent to mention here that 8 out of 10 mentioned above have been given appointments on their representation. One OBC candidate has been appointed on contractual basis, who is still in service and another unreserved candidate could not get berth despite representation. However, both the candidates mentioned above are not party to these petitions. Their representations with the respondent No.1/School is pending for considering their appointments against regular vacancies.

56. It is pertinent to mention here that vide order dated 24.05.2010, the Scheduled Castes Commission disposed of the representations of the ex-contractual teachers observing, *inter alia*, that the respondent No.1/School had followed the reservation policy of the Government of India in letter and spirit. Moreover, the Central Vigilance

Commission, Government of India, after examining the case, decided to close the matter vide its order dated 27.01.2010.

57. It is important to note here that issue of regularization of contractual appointees was agitated before the Principal Bench of Central Administrative Tribunal. On dismissal of their applications, 09 ex-contractual teachers (05-SC, 01-OBC and 03-General Category), filed writ petitions before this Court, which are pending for adjudication.

58. The Ministry of Home Affairs had requested GNCTD that respondents No. 1 and 2 might seek reply in terms of para-7 of the recommendations of the Report of the Parliamentary Committee. Accordingly, vide letter dated 29.06.2012, the respondent No.2/NDMC furnished the action taken replies to 8 out of the 10 recommendations of the Parliamentary Committee to MHA. As a follow-up action on the aforementioned Report of the Parliamentary Committee, submitted to the Hon'ble Speaker, Lok Sabha on 01.06.2011. Thereafter, MHA vide its letter dated 30.11.2011 had designated Shri R. Chandramohan, Principal Secretary-cum-Commissioner (Transport), GNCTD, as the Inquiring Authority for the purpose of undertaking a verification drive to check the present recruitment procedure in vogue in respondent No.1/School. Accordingly, he found the irregularities in RD-2008 as noted above.

59. Vide letter dated 10.05.2012, the respondent No.1/School submitted its comments to MHA, whereby stated that the conclusion drawn by the Inquiring Authority in respect of verification of Roster, decided to first seek the advice of DOPT before respondent

No.2/NDMC takes necessary action in this regard. The MHA will give necessary directions, if any, to respondent No.2/NDMC only after obtaining the advice of DOPT. As regards the conclusions drawn by the Inquiring Authority in respect of Regularization of Contract/*ad-hoc* teachers, it is felt that there is no such thing as “regularization”. An irregular appointment remains irregular. If the advertisement is made for contractual appointment, then the appointees cannot later be regularized, as the presumption is that if the advertisement would have been for regular appointment, more and better candidates would have applied.

60. The respondent No.2/NDMC clarified in reply to the report of Inquiring Authority that the basis of regularisation proposed in the year 2007 was not finally accepted and approved by the Competent Authority as the RRs were amended on 24.03.2008 and the posts of TGTs were not taken into consideration for being advertised as per the modified RRs. However, there has been no change in reservation points for SCs/STs in overall Cadre. Accordingly, the respondent No.1/School had made departmental promotions on 23.06.2009 and promoted two SC candidates. However, efforts were made to fill up the vacant posts in reserved category in May, 2010, when respondent No.1/School had advertised 04-SC and 02-ST posts in PGT Cadre to be filled up on regular basis by direct recruitment as a ‘Special Recruitment Drive’. In TGT Cadre as on 31.12.2008, there were vacancies of 02-SC and 02-ST in the direct quota, accordingly, the respondent No.1/School had selected 09-SC and 05-ST candidates by direct recruitment in RD-2008, which also included the posts

mentioned for the Department Recruitment Quota, in terms of provisions of RRs which provided for direct recruitment if the departmental candidates are not available.

61. As per the Roster in the direct quota, 05-SC and 02-ST points are in excess and in future these excess points will be adjusted against the departmental quota in terms of DOPT orders.

62. Moreover, the respondent No.3/MHA specifically stated in para 10 of its counter-affidavit that it is the duty of the respondents No. 1 and 2 to follow the requisite Provisions/Rules/Regulations applicable to their educational institutions and the provisions of reservation policy as well. Though the respondent No.3/MHA has stated that there were glaring irregularities in RD-2008, however, it has not indicated as to what were the irregularities therein. The selection of the petitioners, being based upon the written test and interview and was a regular selection against the reserved vacancies. They all completed probation period successfully, thus, they were the regular teachers. However, their selection has been cancelled by the respondent No.1/School without putting them on notice or giving an opportunity of hearing, which is in violation of principles of natural justice.

63. In case of ***Kamal Nayan Mishra*** (*supra*), the Apex Court held that the termination of a regular employee without an inquiry or affording an opportunity of hearing is illegal and invalid.

64. In case of ***Sandeep Singh*** (*supra*), the Apex Court held that the vacancies available in any particular service till the date of interview can be filled up from the very same examination unless there is any statutory embargo for the same.

65. Moreover, in case of *Inderpreet Singh Kahlon (supra)*, the Apex Court held if principles of natural justice are given go by while terminating services, such order cannot be sustained.

66. It is pertinent to mention here that regarding the TGT direct recruitment quota, due to change in RRs in 1998, it was modified to 75% by departmental promotion and 25% by direct recruitment. As on 31.12.2008, there was a short fall of 15 SC points (DR2 + DP13) and 09 ST points (DR2 + DP7) against which the respondent No.1/School had selected 09 SC candidates and 05 ST candidates by direct recruitment in 2009 in order to fill up the vacant posts of SC/ST in terms of provisions in RRs which provide for direct recruitment if the departmental candidates are not available. Thus, sanctioned strength of SC had increased from 05 to 12 and of ST from 02 to 05. There were 02 SC candidates from the TGT Cadre, who were promoted to the post of PGT in June, 2009, thereby bringing down the filled up SC points to 10. Similarly, the respondent No.1/School had selected 05 ST candidates by direct recruitment in 2009 but due to the fact that 01 SC candidate selected on regular basis did not join, hence, the filled ST points brought down to 04. In terms of DOPT orders, excess points filled under direct recruitment quota will be adjusted against the departmental promotion quota in future.

67. Regarding TGT departmental promotion quota, there was a shortfall of 15 SC points (DR2 + DP13) and 09 ST points (DR2 + DP7), against which, the respondent No.1/School had selected 09 SC and 05 ST candidates by direct recruitment in 2009 in order to fill up the vacant posts of SC/ST in terms of provisions in RRs which provide

for direct recruitment if the departmental candidates are not available. The sanctioned strength of SC had decreased from 15 to 08 and of ST from 07 to 04.

68. As per the approved RRs, the posts of Primary Teachers (Academics) and Primary Teachers (Activity) are filled up 100% by direct recruitment.

69. Thus, as on 01.08.2012, there were 87 sanctioned posts. Against which, 78 persons have been working which includes excess of 02 persons in the General category. As per roster, there was a shortfall of 03-SC, 02-ST and 06-OBC points (total 11). Once the two senior most PRT (UR category) got promotion, the excess of two were not there and the vacancies remained as 11 (SC-03, ST-02, OBC-06).

70. Regarding the subject wise vacancy position of TGTs (mode of recruitment 25% by Direct Recruitment and 75% by Departmental Promotion failing which by Direct Recruitment) was filled up as noted above.

71. In case of PGT, there has been no subject-wise reservation in the respondent No.1/School, being the small number of sanctioned posts in various subjects. The Government of India O.M.1/4/70-Estt.(SCT) dated 11.11.1971 stipulates that to secure adequate representation for SCs/STs in isolated posts or in small cadre posts or posts of similar status and salary may be grouped for the purpose of implementation of orders providing for SCs/STs.

72. It is also significant to note, there is no petition before this Court, whereby the Recruitment Drive-2008 has been challenged. Moreover, directly or indirectly, the respondents have supported the

case of the petitioners. The appointments of the petitioners were regular. Therefore, I find no substance in the submissions made by the respondents that the impugned order dated 22.06.2012 deserves to be sustained.

73. Accordingly, these petitions are allowed by setting aside the order dated 22.06.2012 passed by the respondent No.1 and order dated 20.06.2012 passed by the respondent No.3.

74. Consequently, pending applications are disposed of.

**SURESH KAIT
(JUDGE)**

DECEMBER 11, 2014

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