

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

+ W.P.(C) No.6180/2013

% **27th April, 2015**

RENU BARROT Petitioner

Through: Mr.M.A.Niyazi with Ms.Anamika
Niyazi and Mr.Manish Kumar,
Advocates.

versus

THE DIRECTORATE OF EDUCATION & ORS. Respondents

Through: Ms.Bandana Shukla, Advocate for R-1.
Mr.Ankur Chhibber, Advocate for R- 2
& 3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. I must commence this judgment with certain observations qua Army Public Schools and the Army Welfare Education Society which runs these Army Public Schools. These strong observations which I am making I am constrained to make against the Army Public Schools and the Army Welfare Education Society. Similar observations have already been made by me against the Army Public Schools and Army Welfare Education Society in various other writ petitions, and which observations I was forced to make because Army Public Schools and Army Welfare Education Society have

really shown themselves to be incorrigible and persistent violators of the provisions of the Delhi School Education Act and Rules, 1973 (hereinafter referred to as 'DSEAR, 1973') as also the judgments which are passed by this Court. Respondent no. 3 is the Army Public School, Dhaula Kuan and respondent no. 2 is the Army Welfare Education Society controlling the School. The judgments which are passed by this Court against the Army Public Schools on the issue of Army Public Schools abusing the provisions of DSEAR, 1973 by appointing teachers on contract basis without there existing administrative exigencies etc under Rule 105(3) of the DSEAR, 1973 and only in which circumstances temporary/contractual appointments can be made by a school in Delhi, are as under:-

- I. W.P.(C) No.1439/2013 titled as Army Public School & Anr. Vs. Narendra Singh Nain decided on 30.8.2013.*
- II. W.P.(C) No.2176/2013 titled as Army Public School & Anr. Vs. Ayodhya Pd. Semwal decided on 30.8.2013.*
- III. W.P.(C) No.2535/2013 titled as Army Public School & Anr. Vs. Anusuya Prasad decided on 30.8.2013.*
- IV. W.P.(C) No.11484/2009 titled as Satya Chchikara Vs. Management Committee of APS & Anr. decided on 03.9.2013.*
- V. W.P.(C) No.5964/2010 titled as Tejbeer Singh Vs. Directorate of Education & Ors. decided on 18.12.2013.*
- VI. W.P.(C) No.1845/2014 titled as Anita Soharu Guleria Vs. Directorate of Education & Ors. decided on 25.2.2015.*

- VII. *W.P.(C) No.1944/2014 titled as Manju Nautiyal Vs. Directorate of Education & Ors. decided on 25.2.2015.*
- VIII. *W.P.(C) No.2112/2014 titled as Shayam Dutt Vs. Directorate of Education & Ors. decided on 25.2.2015.*

2. The main judgment which has been passed by this Court is the judgment in the case of ***Army Public School & Anr. Vs. Narendra Singh Nain & Anr.*** in W.P.(C) No.1439/2013 decided on 30.8.2013, being the lead case in the bunch of cases. Counsel for the petitioner, and who was a counsel for the employee of the Army Public School in the said case of ***Narendra Singh Nain (supra)*** informs this Court that the judgment in the case of ***Narendra Singh Nain (supra)*** achieved finality and it was not challenged by the Army Public School.

3. The issue in the present case covered as per ***Narendra Singh Nain's*** case (***supra***) is a simple one. The issue is with respect to entitlement of a school functioning in Delhi, and which functions under the DSEAR, 1973 to appoint non-regular teachers i.e not as regular and permanent appointment to the post of a teacher, but appointment only on contract basis or *ad hoc* basis. The statutory provision in this regard is Rule 105(3) of the DSEAR, 1973, and which provision in categorical terms provides that appointment of an employee in a temporary or in vacancy for a limited period is an exception to regular appointment and the normal position being that a regular employee

after completion of period of probation has to be confirmed in the post, inasmuch as, there is no entitlement under the DSEAR, 1973 to harass teachers by keeping them on contractual or *ad hoc* appointments by not giving them regular appointments. Also, that a probationary teacher appointed in a school must ordinarily be confirmed after three years of probation, has been so held and decided by me in the judgment in the case of ***Hamdard Public School Vs. Directorate of Education and Anr.*** in W.P.(C) No.8652/2011 decided on 25.7.2013.

4. At this stage, let me re-produce the relevant paragraphs containing the ratio of the judgment in the case of ***Narendra Singh Nain (supra)***, and in this judgment I have extended the ratio of ***Hamdard Public School (supra)*** passed with respect to probationary teachers. Whereas in ***Hamdard Public School's*** case (*supra*), it was held that a probationary teacher should ordinarily be confirmed in her appointment in a school after probation of three years, in ***Narendra Singh Nain's*** case (*supra*), this Court has held that even a contractual or *ad hoc* employee will be deemed to be confirmed as a regular employee of the school on completion of three years of contractual period or extension(s) thereof once it is found that the school did not have necessary administrative exigency under Rule 105(3) of the DSEAR, 1973 for only a

temporary appointment in the school. The relevant paragraphs of the judgment in the case of *Narendra Singh Nain (supra)* reads as under:-

“2. The facts of the case are that respondent No.1 was firstly appointed as Lower Division Clerk (LDC) on contractual basis by the petitioner-school for a period of one year in terms of letter dated 3.12.2007. After the contractual period came to an end, respondent No.1 was immediately re-appointed as LDC, however on probation, in terms of the appointment letter dated 30.5.2008. The period of probation was one year from 1.4.2008. As per the appointment letter the respondent No.1 was to continue in probation till the services were confirmed in writing by the Managing Committee of the petitioner-school. The period of probation of the petitioner was extended by the petitioner-school for one more year from 1.4.2009 (i.e till 31.3.2010) by the letter dated 31.3.2009. Respondent No.1's services were terminated by a letter dated 21.3.2010 observing that as per the performance reports and advisories given during the extended period of probation, the respondent No.1's services were to stand terminated w.e.f 29.3.2010. Respondent No.1 was however immediately again appointed on 8.4.2010 as a part-time Admission Clerk for one year w.e.f 3.4.2010. Respondent No.1 had however in the meanwhile challenged the order of the petitioner-school terminating his services vide letter dated 21.3.2010 before DST, and consequently when the notice of the appeal filed before the DST reached the petitioner-school, it is contended by the respondent No.1 that immediately thereafter on 10.6.2010, the petitioner-school terminated the contractual appointment given by the letter dated 8.4.2010 by simply stating that the petitioner school no longer requires the services of the respondent No.1.

3. On the basis of the admitted facts: in the form of various appointment letters and the termination letters which have been issued by the petitioner-school as detailed above; the provision of Rule 105 of the Delhi School Education Act & Rules, 1973; the judgment delivered by me in the case of *Hamdard Public School Vs. Directorate of Education and Anr.* in W.P.(C) No.8652/2011 decided on 25.7.2013 interpreting Rule 105; and, the judgment of the Supreme Court in the case of *Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors., (2005) 7 SCC 472* read with Division

Bench judgment of this Court in the case of ***Social Jurist, a Civil Rights Group Vs. GNCT & Ors. 147 (2008) DLT 729***, the issues which arise, and on which counsel for the parties have been heard, are first as to whether the respondent No.1 at all can be said to only be a contractual employee in terms of the first contractual appointment letter dated 3.12.2007 or whether the employment of respondent No.1 since inception in the peculiar facts of this case would have a statutory favour in view of the provisions of the Delhi School Education Act and Rules, 1973, and secondly as to whether the actions of the petitioner-school amount to over-reach the provision of Rule 105 and is, therefore, against the ratio not only of the categorical language of Rule 105 but also the ratio of the judgment passed by me in the case of ***Hamdard Public School Vs. Directorate of Education and Anr.*** (supra). The following issues are, therefore, crystallized for decision by this Court:

(i) Should the respondent No.1's services in the facts of this case be not taken as having statutory protection in terms of the Delhi School Education Act and Rules, 1973 since the original date of the contractual appointment in terms of letter dated 3.12.2007. Related with this issue would be whether the respondent No.1 is estopped from challenging the nature of appointment as contractual inasmuch as respondent No.1 thereafter accepted services first as a probationer and thereafter again on contractual basis.

(ii) Whether all the appointment letters, whether giving contractual appointment or as appointment on probation, have to be read in their substance and not in form whereby actually the respondent No.1 should be treated as on probation either from 28.11.2007 or in any case from 1.4.2008 and since there is no mention of termination on account of unsatisfactory services in the termination letter dated 10.6.2010, and none exist as stated in the letter dated 21.3.2010, therefore, respondent No.1 would have confirmation of employment on account of language of Rule 105 and the judgment in the case of ***Hamdard Public School Vs. Directorate of Education and Anr.*** (supra).

4. So far as the first issue is concerned, as to whether the respondent No.1's services originally w.e.f 28.11.2007 are contractual in nature or

statutory in character, it would be necessary at this stage to refer to the relevant para 10 of the Supreme Court judgment in the case of ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra), but, before I do so I must hasten to add that the observations which are being made by me in this judgment as regards the first issue is because of the facts of this case whereby I am not treating the first appointment as contractual in nature in spite of the letter dated 3.12.2007 so specifying because I hold this letter, and also subsequent probationary/contractual appointment letters, to be a sham and given only for denying regular employment to respondent No.1 as LDC. The repeated appointments and terminations, have persuaded me to hold that the petitioner's-school's actions are a fraud upon the requirement to normally not to appoint an employee on contract basis. Accordingly, in a case where on account of genuine exigencies a contractual appointment is required (like when a regular employee suddenly leaves etc.) then such employment will be treated as adhoc/temporary/contractual and not a statutory one having protection of the Act & Rules. With this preface let us reproduce para 10 of ***Montfort Senior Secondary School's case (supra)*** and which reads as under:-

“10. In St. Xaviers' case (supra) the following observation was made, which was noted in Frank Anthony's case (supra):

"A regulation which is designed to prevent mal-administration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulation nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30 is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of Rev. Sidhajibjai Sabhai (supra), regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution as an educational institution. Such regulation must satisfy a dual test – the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conclusive to making the institution an effective vehicle of education for the minority or other persons who resort to it."

The effect of the decision in Frank Anthony's case (supra) is that the statutory rights and privileges of Chapter IV have been extended to the employees covered by Chapter V and, therefore, the contractual rights have to be judged in the background of statutory rights. In view of what has been stated in Frank Anthony's case (supra) the very nature of employment has undergone a transformation and services of the employees in minorities un-aided schools governed under Chapter V are no longer contractual in nature but they are statutory. The qualifications, leaves, salaries, age of retirement, pension, dismissal, removal, reduction in rank, suspension and other conditions of service are to be governed exclusively under the statutory regime provided in Chapter IV. The Tribunal constituted under Section 11 is the forum provided for enforcing some of these rights.....”

5. A reference to aforesaid para shows that the Supreme Court in ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra) has laid down the ratio that the very nature of employment of the employees of a school are that they are no longer contractual in nature but statutory. This observation was made by the Supreme Court in spite of the fact that the minority schools had entitlement under the provisions of Section 15 and Rule 130 of the Delhi School Education Act and Rules, 1973 to have a contract of services for its employees. It be noted that so far as the non-minority schools are concerned there is no provision in the Delhi School Education Act and Rules, 1973 to have a contractual appointment. Therefore, once if minority schools’ employees cannot have contractual employment and they have to be treated as statutory employees, then a *fortiorily* non-minority schools whose employees cannot be engaged in employment on contractual basis, such employees in non-minority school would surely have statutory protection of their services. In ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra) the Hon’ble Supreme Court has made it clear in the aforesaid paragraph 10 that the qualifications, leaves, salaries, age of retirement etc, removal and other conditions of services are to be governed “**exclusively**” under the statutory regime provided under the Delhi School Education Act and Rules, 1973. Once that is so, then, as per Rules 118 to 120 of the Delhi School Education Rules, 1973 the services of an employee can only be terminated on account of misconduct and that too after following the requirement of holding of a

detailed enquiry and passing of the order by the Disciplinary Authority. Therefore, in view of the categorical ratio of the judgment of the Supreme Court in the case of ***Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors.*** (supra) and in view of the facts of this case the respondent No. 1's services from the inception cannot be taken as only contractual in nature and would be statutory in nature. Once the services are statutory in nature, and admittedly the respondent No. 1 has not been removed by following the provisions of conducting an enquiry and passing of an order by the Disciplinary Authority as required under the Rules 118 to 120 of the Delhi School Education Rules, 1973, the respondent No. 1's services cannot be said to have been legally terminated. Respondent No. 1, therefore, continues to be in services.

6. To distinguish the applicability of the Supreme Court in the case of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** (supra), learned counsel for the petitioner has urged the following two arguments:

(i) Respondent No.1 is estopped from questioning his first appointment as contractual, thereafter appointment on probation and his termination during the probation period and thereafter again a fresh contractual appointment and finally his termination as per the last contract dated 8.4.2010. It is argued that respondent No.1 having acted upon the aforesaid sequence of events comprised in different appointments cannot now contend that the ratio of the judgment in ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** (supra) should come to his aid.

(ii) It is argued that the judgment in ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors.*** (supra) was intended only to apply to minority schools and ratio of the said judgment cannot be read to apply to non-minority schools.

7. So far as the second arguments urged on behalf of the petitioner-school to distinguish the applicability of the ratio in the case of ***Management Committee of Montfort Senior Secondary School vs. Sh.***

Vijay Kumar and Ors. (supra), I have already dealt with this aspect above by holding, and the same is reiterated herein, that, if for minority schools, there cannot be contractual appointments, and which in fact was so envisaged under the relevant provisions of the Delhi School Education Act and Rules, 1973, then, surely and indubitably, so far as non-minority schools are concerned, and who do not have provisions even in terms of Delhi School Education Act and Rules, 1973 for making contractual appointments, the ratio of ***Management Committee of Montfort Senior Secondary School vs. Sh. Vijay Kumar and Ors. (supra)*** would squarely apply and the employees of the non-minority schools will be treated not as contractual employees of the schools but statutory employees having statutory protection in terms of the relevant provisions of the Delhi School Education Act and Rules, 1973.

8. So far as the first argument of estoppel is concerned, that argument is attractive only at the first blush, however, this argument overlooks the elementary principle that there is no estoppel against law. Of course, there may be estoppel against law where the provisions of law are only for private individual interest and not meant to be in public interest, however, considering that statutory protection is given to the employees of a school and which results in stability to the education system, the same therefore cannot be held to be as not in public interest, more so after amending of the Constitution by introduction of Article 21A by which right to education has been made as a fundamental right for children from the ages of 6 to 14 years. Also one cannot ignore the fact that right to education otherwise also is an important part of Directive Principles of State Policy vide Article 41 and Article 45 of the Constitution, and thus subject of education itself has been treated by the Supreme Court as a public function and consequently, writ petitions lie against even private educational institutions. Reference need in this regard be only made to the Constitution Bench judgment of the Supreme Court in the case of ***Unni Krishnan J.P. & Ors. etc. etc. Vs. State of A.P. & Ors. etc. etc. 1993(1) SCC 645*** and which clearly holds that the subject of education is a public function, and hence writ petitions are maintainable even against private educational institutions.”

5. The facts of the present case show that the petitioner was appointed by the respondent no.3/School on contractual basis for the post of T.G.T

(Computer Science) for the first time on 02.8.2010. The appointment letter of the petitioner is dated 30.7.2010. This contractual appointment was regularly extended by the respondent no.3/School and which continued till the writ petition was filed on 26.9.2013 i.e petitioner's contractual employment continued for more than three years. Once the petitioner has continued in the post in question for more than three years, petitioner is entitled to regularization in terms of the ratio in the case of *Narendra Singh Nain (supra)*, of course subject to the right of the respondent no.3/ School to show that appointment was a temporary appointment because of existence of administrative exigency as per Rule 105(3) of the DSEAR, 1973.

6. Let us examine the position as to whether the respondent no.3/School has established before this Court that petitioner's appointment was for an existing administrative exigency as required under Rule 105(3) of the DSEAR, 1973. The respondent no.3/School also argues that the petitioner is estopped from questioning her contractual employment and continuation thereof on contractual basis on account of petitioner seeking extension of her contractual employment by her letter dated 20.4.2013.

7. Let us at this stage turn to the relevant averments made by the respondent no.3/School with respect to existence of administrative exigency required under Rule 105(3) of the DSEAR, 1973. The relevant averments in

this regard are made by the respondent nos. 2 & 3 i.e the Society and the School in para 1 of its preliminary submissions, and this para in its entirety reads as under:-

“ PRELIMINARY SUBMISSIONS:

1. That a perusal of the petition filed by the petitioner shows that entire claim of petitioner is based upon the premise that she was selected for the post of TGT (Computer Science) on a regular basis in July, 2010. It is submitted that aforesaid premise is completely fallacious inasmuch as petitioner was appointed to the post of TGT (Computer Science) on contractual basis and not regular as claimed by her. The initial appointment letter dated 30.7.2010 issued to petitioner clearly records that the appointment offered to petitioner was contractual and for a specified period of time. Furthermore, even the advertisement issued by respondent no.3 school in the year 2010 clearly specified that the appointments were to be made on contract/ad-hoc basis. A copy of advertisement issued by the school is annexed herein as **Annexure R-1**. In that view of the matter, the petitioner has not approached this Hon'ble Court with clean hands and present petition is liable to be dismissed on said count. It is further submitted that APS Dhaula Kuan and Shankar Vihar are different schools with different Managements. The jobs of teachers are not transferable within the Army School. Petitioner was selected for Shankar Vihar School. The Principal has given an appointment letter for PGT comp Science relating to Shankar Vihar School twice in January. Petitioner is denying having received the first one. The second one was received by her but she is refusing to go to the Shankar Vihar School. A copy of appointment letter is annexed herein as **Annexure R-2**. In 2013 academic session, petitioner did not appear for any interview for APS Dhaula Kuna School. There was no vacancy for TGT Compt. Science, APS Dhaula Kuan has 4 TGT Comp Sc teachers. Petitioner was on contract because the school was undergoing automation and she agreed to the terms which were clearly stated in her interview and appointment letter. The workload in APS, Dhaula Kuan is that 41 sections of class VI to VII x 2 periods per section = 82 periods + 10 sections of class * 3 periods = 30 periods. Total workload of Comp. Teachers is 102 periods. Each teacher must have at least 30 period load according to CBSE. 102 periods shared by 4 teachers is 25.5. periods. Petitioner is surplus and has no workload. However, petitioner continued to come school in 2013, one of the regular computer TGTs was underutilized and had to be occupied with mundane work like date entry in place of a data entry operator. Petitioner has been teaching computer activity to Classes VI to VIII. There is

no Vacancy for TGT Comp Sc. In APS, Dhaula Kuan School. The vacancy was not there even last year but petitioner continued to come. Out of goodness the Management continued with her service till an appointment letter was issued from the Shankar Vihar School which was given to her in January.”
(underlining added)

8. A reading of the aforesaid stand stated on behalf of respondent nos. 2 & 3 shows that, it is contended that there were four sanctioned posts of T.G.T (Computer Science), and all of which were filled in when the petitioner was appointed in July, 2010, and petitioner was only appointed on contractual/temporary basis, inasmuch as certain automation was going on in the respondent no. 3/School. The question is whether these averments are correct and at all have any credibility for acceptance by this Court.

9. The aforesaid stand of the respondent nos. 2 & 3 is absolutely baseless because if there were only four sanctioned posts of T.G.T (Computer Science) in July, 2010, and all of which were filled-in by regular appointments, then it was incumbent upon the respondent nos. 2 & 3 to file proof along with its counter-affidavit as to there existing only four sanctioned posts of T.G.T (Computer Science) in the respondent no.3/ School but this has not been done by the respondent nos. 2 & 3 and, there is nothing except a self-serving statement of the respondent nos.2 & 3 that there were four sanctioned posts of T.G.T (Computer Science) and that all of such posts were filled-in in July, 2010. Not only that, respondent nos. 2 & 3 in their counter-affidavit are

vague as to when and who are the four teachers who allegedly were appointed to the four sanctioned posts of T.G.T (Computer Science). Not only respondent nos. 2 & 3 have not given any details as to who were the four teachers appointed to the alleged only four sanctioned posts of T.G.T (Computer Science) on permanent basis, even the averment of automation going on in the respondent no.3/School and only for which purpose temporary/contractual employment of the petitioner was made, is not substantiated by any document whatsoever of the respondent nos. 2 & 3. Even the advertisement filed by the respondent nos. 2 & 3 as Annexure R-1 to their counter-affidavit does not show that it is because of the automation going on in the respondent no.3/School that the petitioner had to be appointed on contractual/temporary basis. Of course, it may be argued that it may not be required and possible in the advertisement to give the reasons for contractual/temporary appointment, then surely this aspect could and ought to have been definitely stated in the appointment letter of the petitioner, but even the appointment letter of the petitioner does not state that the petitioner is appointed for contractual/temporary period allegedly on account of automation going on in the respondent no.3/School. The stand of the respondent nos. 2 & 3 in their counter-affidavit therefore completely lacks credibility and is rejected.

10. I may also note that it was the duty of the respondent nos. 2 & 3 as per Section 106 of the Evidence Act, 1872 to file all documents in its power and possession on the aspects averred in the counter-affidavit, and which would have shown existence only of four sanctioned posts of T.G.T (Computer Science) and that who and when the four persons were appointed on the four posts on permanent basis prior to the petitioner, and that no vacancy remained, however, in spite of respondent nos. 2 & 3 being obligated to do so in terms of Section 106 of the Evidence Act, they have failed to do so. I, therefore, hold that it is a mere convenient stand of the respondent nos. 2 & 3 that administrative exigency of automation existed for contractual/temporary appointment of the petitioner and that there did not exist any vacancy in the four sanctioned posts of T.G.T (Computer Science) or that there only existed four sanctioned posts of T.G.T (Computer Science) in the respondent no.3/School.

11. The effect of the above is that the contractual employment of the petitioner will have to be treated as being not in satisfaction of Rule 105(3) of the DSEAR, 1973, and hence applying the ratio of *Narendra Singh Nain's* case (*supra*), petitioner will be held to be entitled to be regularized to her post w.e.f 03.8.2013, otherwise the same will amount to perpetrating a fraud on the provisions of the DSEAR, 1973 as also upon the petitioner. The argument of

the learned counsel for respondent nos. 2 & 3 that petitioner was appointed on contractual basis and she continued on contractual basis, especially in view of her letter of request dated 20.4.2013, and hence petitioner cannot be regularized is an argument which has already been dealt with extensively in the judgment in the case of *Narendra Singh Nain (supra)* and rejected and wherein it has been held that there cannot be estoppel in such a case against an employee/teacher of a school, otherwise it will amount to creating estoppel against law and allowing fraud being perpetuated on the provisions of the DSEAR, 1973 as also the ratio of the judgment of the Supreme Court in the case of *Management Committee of Montfort Senior Secondary School Vs. Sh. Vijay Kumar and Ors., (2005) 7 SCC 472*, and which holds that appointments of teachers/employees in schools in Delhi have statutory protection and flavor and such employees/teachers of schools cannot be removed except by following the provisions of the DSEAR, 1973 of conducting of departmental proceedings etc provided under Rule 120 of the DSEAR, 1973.

12. I may also note that the present is not a case where appointment of the petitioner is made in an unauthorized manner by an individual or by the principal of the School individually or any other person holding a position of influence/authority in the respondent no.3/School, but petitioner has in fact

been appointed by a properly constituted board/committee which was authorized to conduct selections for appointments to the posts of T.G.T (Computer Science). Surely, there can be no doubt as regards this aspect, inasmuch as, appointment is pursuant to issuance of an advertisement for the posts in question by the respondent no.3/School in the Hindustan Times, New Delhi dated 10.7.2010, and pursuant to which posts were filled by the respondent nos. 2 & 3 and who have themselves filed the advertisement as Annexure R-1 to the counter-affidavit.

13. I may at this stage note that counsel for the petitioner does not seek the relief of petitioner being appointed to the post of P.G.T (Computer Science), and which was an alternative relief prayed in terms of the relief clause in the writ petition.

14. In view of the above, the writ petition is allowed with costs of Rs.25,000/- to the petitioner. In view of the chain of cases decided by this Court showing blatant violations by Army Public Schools of the DSEAR, 1973 I must also direct the Director of Education who is present through its counsel before this Court, and I hereby direct the Directorate of Education to conduct a thorough enquiry of the records of the respondent no.3/School for the last about 10 years to find out as to whether the respondent no.3/School is or is not violating the letter and spirit of the provisions of the DSEAR, 1973

by illegally giving only contractual/temporary employments, although no administrative exigencies exist in terms of Rule 105(3) of the DSEAR, 1973 for such appointments. I am constrained to pass this direction as I have already noted above the various judgments which this Court has passed against the Army Public Schools, showing the recalcitrant and illegal attitude of the Army Public Schools in deliberately violating the provisions of the DSEAR, 1973. The Director of Education will constitute a committee in order to examine the violations by the respondent no.3/School of the provision of Rule 105(3) of the DSEAR, 1973, as already stated above. The Director of Education is requested to complete the enquiry through its committee within a period of three months from today. Director of Education will thereafter take necessary action on the report of the committee, if the same is adverse to the respondent no.3/School.

APRIL 27, 2015
KA

VALMIKI J. MEHTA, J.