

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

% *Judgment Reserved on: October 14, 2015*
Judgment Delivered on: October 29, 2015

+ **LPA 223/2015**

ARMY WELFARE EDUCATION
SOCIETY & ANR

..... Appellant

Represented by: Mr.R.Bala Subramanian, Advocate
with Mr.Ankur Chhibber, Advocate

versus

MANJU NAUTIYAL & ANR

..... Respondents

Represented by: Mr.M.A.Niyazi, Advocate with
Ms.Anamika Ghai, Advocate for R-1
Mr.Gautam Narayan, Additional
Standing Counsel (Civil) for R-2

LPA 225/2015

ARMY WELFARE EDUCATION
SOCIETY & ANR

..... Appellants

Represented by: Mr.R.Bala Subramanian, Advocate
with Mr.Ankur Chhibber, Advocate

versus

SHAYAM DUTT & ANR

..... Respondents

Represented by: Mr.M.A.Niyazi, Advocate with
Ms.Anamika Ghai, Advocate for R-1
Mr.Gautam Narayan, Additional
Standing Counsel (Civil) for R-2

LPA 227/2015

ARMY WELFARE EDUCATION
SOCIETY & ANR

..... Appellants

Represented by: Mr.R.Bala Subramanian, Advocate

with Mr.Ankur Chhibber, Advocate

versus

ANITA SOHARU GULERIA & ANR Respondents
Represented by: Mr.M.A.Niyazi, Advocate with
Ms.Anamika Ghai, Advocate for R-1
Mr.Gautam Narayan, Additional
Standing Counsel (Civil) for R-2

LPA 314/2015

ARMY WELFARE EDUCATION
SOCIETY & ANR Appellants
Represented by: Mr.R.Bala Subramanian, Advocate
with Mr.Ankur Chhibber, Advocate

versus

RENU BARROT & ORS Respondents
Represented by: Mr.M.A.Niyazi, Advocate with
Ms.Anamika Ghai, Advocate for R-1
Mr.Gautam Narayan, Additional
Standing Counsel (Civil) for R-2

LPA 347/2015

ARMY WELFARE EDUCATION
SOCIETY & ANR Appellants
Represented by: Mr.R.Bala Subramanian, Advocate
with Mr.Ankur Chhibber, Advocate

versus

RAVI KUMAR & ANR Respondents
Represented by: Mr.M.A.Niyazi, Advocate with
Ms.Anamika Ghai, Advocate for R-1
Mr.Gautam Narayan, Additional
Standing Counsel (Civil) for R-2

LPA 348/2015

ARMY WELFARE EDUCATION
SOCIETY & ANR

..... Appellants

Represented by: Mr.R.Bala Subramanian, Advocate
with Mr.Ankur Chhibber, Advocate

versus

VIKRAM SINGH & ANR

..... Respondents

Represented by: Mr.M.A.Niyazi, Advocate with
Ms.Anamika Ghai, Advocate for R-1
Mr.Gautam Narayan, Additional
Standing Counsel (Civil) for R-2

LPA 353/2015

ARMY WELFARE EDUCATION
SOCIETY & ANR

..... Appellants

Represented by: Mr.R.Bala Subramanian, Advocate
with Mr.Ankur Chhibber, Advocate

versus

SHATRUGHAN THAKUR & ANR

..... Respondents

Represented by: Mr.M.A.Niyazi, Advocate with
Ms.Anamika Ghai, Advocate for R-1
Mr.Gautam Narayan, Additional
Standing Counsel (Civil) for R-2

LPA 355/2015

ARMY WELFARE EDUCATION
SOCIETY & ANR

..... Appellants

Represented by: Mr.R.Bala Subramanian, Advocate
with Mr.Ankur Chhibber, Advocate

versus

SHEEJA BENOY & ANR

..... Respondents

Represented by: Mr.M.A.Niyazi, Advocate with
Ms.Anamika Ghai, Advocate for R-1
Mr.Gautam Narayan, Additional
Standing Counsel (Civil) for R-2

LPA 356/2015

ARMY WELFARE EDUCATION
SOCIETY & ANR

..... Appellant

Represented by: Mr.R.Bala Subramanian, Advocate
with Mr.Ankur Chhibber, Advocate

versus

BIR SINGH & ANR

..... Respondents

Represented by: Mr.M.A.Niyazi, Advocate with
Ms.Anamika Ghai, Advocate for R-1
Mr.Gautam Narayan, Additional
Standing Counsel (Civil) for R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. LPA No.223/2015, LPA No.225/2015 and LPA No.227/2015, lay a challenge to a common judgment and order dated February 25, 2015, allowing W.P.(C) No.1944/2014, W.P.(C) No.2112/2014 and W.P.(C) No.1845/2014 filed by Manju Nautiyal, Shayam Dutt and Anita Soharu Guleria respectively : the contesting respondent No.1 in the three appeals. LPA No.314/2015 lays a challenge to a judgment and order dated April 27, 2015 allowing W.P.(C) No.6180/2013 filed by Renu Barrot : the contesting respondent No.1 in the said appeal. LPA No.347/2015, LPA No.348/2015, LPA No.353/2015, LPA No.355/2015 and LPA No.356/2015 lay a challenge to a common judgment and order dated April 29, 2015 allowing

W.P.(C) No.5191/2014, W.P.(C) No.5190/2015, W.P.(C) No.5189/2014, W.P.(C) No.5809/2014 and W.P.(C) No.5344/2014 filed by Ravi Kumar, Vikram Singh, Shatrughan Thakur, Sheeja Benoy and Bir Singh respectively : the contesting respondent No.1 in the five appeals. The appeals are being decided by a common judgment because identical issues arise for consideration in all the appeals, the common appellants whereof are the Army Welfare Education Society and either Army Public School, Dhaula Kuan or the Army Public School Delhi Cantonment. Both schools are independently recognized under the Delhi School Education Act, 1973 and the rules framed thereunder and are thus separate juristic entities, but having a common linkage because of the fact that the society which established the schools is the same i.e. Army Welfare Education Society. Manju Nautiyal was appointed as a Primary Teacher, Shayam Dutt as an Estate Supervisor, Anita Soharu Guleria as TGT Science (Biology), Renu Barrot as TGT Computer Science, Ravi Kumar as Computer Lab Helper, Vikram Singh and Shatrughan Thakur as Drivers, Sheeja Benoy as Nursing Assistant and Bir Singh as LDC (Account Clerks). The first four under the Army Public School Dhaula Kuan and the latter five under the Army Public School, Delhi Cantonment.

2. It would be necessary for us to note the date of initial appointment and its nature concerning respondent No.1 in the nine captioned appeals because the same would be of considerable relevance while deciding the legal issues. (i) Manju Nautiyal, having acquired Post Graduate Degree in Botany and a degree in B.Ed. was appointed as a Primary Teacher in the Army Public School Dhaula Kuan on September 01, 2009. Appointment was for a tenure till October 31, 2009 and the very next day i.e. on

November 01, 2009 tenure was extended up to March 31, 2010. With a break in service from April 01, 2010 till July 07, 2011 i.e. after one year three months and seven days, on July 08, 2011 she was appointed on contract as a T.G.T. till March 31, 2013. With a break in service for the month of April, 2013, on May 02, 2013 she was appointed on an ad-hoc basis as a TGT with tenure notified to come to an end on March 26, 2014. Relevant would it be to further note that Manju Nautiyal's appointment on tenure basis in July 08, 2011 was pursuant to a selection made by means of an interview after inviting applications, expressly indicating that the appointment would be for a tenure. Similar was the position when she was appointed once again on tenure basis in the year 2013. (ii) Shayam Dutt was appointed by the Army Public School Dhaul Kuan as an Assistant Estate Supervisor from December 01, 2009 till May 15, 2010 and with a short break, for another term commencing from May 24, 2010 to May 23, 2011. In between, on November 01, 2010 the post was designated as Estate Supervisor and tenure of appointment was changed to that of Estate Supervisor on November 01, 2010 with tenure notified till September 30, 2011. After a break of 7 days, on October 08, 2011 he was re-appointed as an Estate Supervisor till September 30, 2013 and after a break of 10 days was once again appointed as an Estate Supervisor on October 11, 2013 till March 31, 2014. (iii) Anita Soharu Guleria, having acquired a graduate degree in Geology and B.Ed. was appointed as TGT (Science) for 6 months and 17 days from July 14, 2007 to March 31, 2008. On July 21, 2008 she was appointed as a Primary Teacher till March 31, 2009. On August 03, 2009 till March 31, 2010 she was appointed as a TGT (Biology). On July 01, 2010 she was appointed as a TGT (Science) till March 31, 2011 and

thereafter once again she was appointed as a TGT (Science) on April 08, 2011 till March 31, 2013. With a break in service of 7 days, on April 08, 2013 she was appointed once again as a TGT (Science) till March 26, 2014. (iv) Renu Barrot having acquired a Post Graduate Degree in Science and a Post Graduate Diploma in Computer application was appointed as a TGT Computer Science in the Army Public School, Dhaula Kuan on August 02, 2010 till March 31, 2011 with a break of 7 days, on April 08, 2011 she was re-appointed to the same post for a period of two years till March 31, 2013. With a break in service of seven days, on April 08, 2013 she was re-appointed to the same post till March 26, 2014. (v) Ravi Kumar was appointed by the Army Public School, Delhi Cantt. as a Computer Laboratory Helper/Attendant for one year from May 14, 2013 till May 13, 2014. With a break of seven days, on May 21, 2014, for a period of 89 days till August 17, 2014 he was appointed once again to the same post and after a break of 44 days on October 01, 2014 till September 30, 2015 he was appointed for a tenure of one year to the same post. (vi) Vikram Singh was appointed by the Army Public School, Delhi Cantonment as a Driver on July 12, 2005 till August 08, 2005 i.e. for 89 days. With a break in service of 2 days, for six months commencing from October 11, 2005 till April 09, 2006 he was once again employed as a Driver. With a break of seven days each he was appointed thrice again for six months each as a driver and thus worked till May 07, 2008. From May 08, 2008 he was once again appointed as a Driver, but this time for two years, till May 07, 2010. After breaks of seven days each he was appointed thrice for one more year as a Driver and thus worked as a Driver till May 27, 2014. With a gap of seven days he was re-appointed as a Driver on January 04, 2014 for 89 days till August 31,

2014 and the very next day he was appointed as a Driver for one year from October 01, 2014. (vii) Shatrughan Thakur was appointed as a Driver for one year on June 01, 2006 till May 31, 2007. After a break of seven days each he was re-engaged as a Driver for one year, two years, one year, one year, one year and one year respectively and thus worked as a Driver till July 05, 2014 continuously with seven breaks of seven days each in between. His services were continued as a driver since July 13, 2014 till September 30, 2015. (viii) Sheeja Benoy was appointed as a Nursing Assistant for one year on August 08, 2008 till April 07, 2009. With a break of 21 days in service, on April 29, 2009 she was re-engaged to the same post for one year and worked till March 28, 2010. With a break of seven days she was re-engaged as a Nursing Assistant on April 05, 2010 for a year and thus served till April 01, 2011 after a break of 11 days, on April 12, 2011 she was re-appointed as a Nursing Assistant for two years till April 11, 2013. With two breaks of seven days each she was continued to be re-engaged till July 23, 2014 after seven days break she was re-appointed to the same post on July 31, 2014 and continued till September 30, 2015. (ix) Bir Singh was appointed as a LDC Account Clerk for one year on October 08, 2005 till October 07, 2006. With break in service for seven days on five occasions he continued to be re-engaged till November 10, 2015.

3. The reasoning of the learned Single Judge in favour of the writ petitioners is simple. Army Public School, Dhaula Kuan and Army Public School, Delhi Cantt. being recognized schools were bound by the mandate of the Delhi School Education Act, 1973 and the rules framed thereunder. As per Rule 105 of the Delhi School Education Rules, 1973 the appointment of employees in recognized schools in Delhi has to be on a probation with

entitlement to confirmation if satisfactory work is rendered during period of probation. Only if a vacancy was for a temporary period or for a limited duration could appointment be resorted to other than by the process of a regular appointment. Noting the duration of appointment of all writ petitioners, the learned Single Judge has granted relief to all the writ petitioners. We note that the lead judgment was pronounced by the learned Single Judge on August 30, 2013 in W.P.(C) No.1439/2013 Army Public School Vs. Narender Singh Nain & Anr., in which writ petition the appellants herein who were the appellants in said writ petition had challenged an order obtained by Narender Singh Nain in his favour from the Delhi School Tribunal, in which decision the learned Single Judge had held that if there were regular vacancies resort could not be made to contractual, ad-hoc or temporary employment. Learned Single Judge noted that Narender Singh Nain had initial appointment, albeit under a contract since December 03, 2007. The argument that Narender Singh Nain could not be made permanent because he lacked the necessary qualification was rejected by the learned Single Judge on the reasoning that the appellants could not oppose the claim of Narender Singh Nain because the appellants themselves overlooked said fact while giving employment and Narender Singh Nain.

4. Concerning the writ petitioners we note that as regards Manju Nautiyal the non-eligibility was pleaded by the appellants on the ground that she did not possess a two-year's diploma in Elementary Education, an essential qualification as per the Rules to be appointed as a Primary Teacher. Regarding Shayam Dutt's claim, we note that lack of qualification was not pleaded as a defence by the appellant. Qua him it was pleaded that there was no sanctioned post of an Estate Supervisor and thus it was pleaded by

the appellants that his services could not be regularized. Regarding Anita Soharu Guleria it was pleaded that in terms of a notification dated July 02, 2011 issued by the National Council for Teacher's Education (NCTE), Anita Soharu Guleria was required to clear a teacher's eligibility test (TET), which as per the appellants she had not cleared. As regards Renu Barrot, admitting she to be having the necessary educational qualification, her claim for regularization was opposed on the ground that as on December 20, 2010 she had crossed the maximum permissible age of 40 years and thus would not be eligible to be regularized. It was admitted that a regular post of a TGT Computer Science existed in the school. Concerning Ravi Kumar there is no plea of he not being qualified to be appointed as a Computer Laboratory Helper/Attendant. It was pleaded that when he was appointed to said post there was no sanctioned post. But it was conceded that subsequently a post was sanctioned. Regarding Vikram Singh and Shatrughan Thakur who were appointed as Drivers it was pleaded that the prescribed qualification for the post was matriculation, but the two were class 8 pass. Qualifications of Sheeja Benoy were conceded as making her qualified to be appointed as a Nursing Assistant, but it was pleaded that there was no sanctioned post. Claim of Bir Singh to be regularized was questioned on lack of prescribed qualifications pleading that he was only a matriculate and the minimum prescribed educational qualification for the post of LDC Account Clerk was a Graduate.

5. Concerning Shatrughan Thakur and Bir Singh, it would be relevant to note that the two are ex-servicemen. Shatrughan Thakur had worked as a driver in the Indian Army for 22 years and 7 months. Bir Singh had served the Indian Army as a Clerk for 17 years.

6. Attacking the impugned judgments, Mr.R.Bala Subramanian, Advocate who appeared for the appellants contended that as held in the decisions reported as (2002) 6 AD (Delhi) 109 Asha Vij Vs. Chief of Army Staff the Army Welfare Educational Society i.e. appellant No.1 in each appeal was not a state and thus no writ could be issued concerning termination of services of employees by the society in a school established by the society. Referring to the decision reported as AIR 1999 SC 376 UOI & Anr. Vs. Chotey Lal & Anr. learned senior counsel urged that payment made from regimental funds do not partake the colour of a public fund and thus for the reason the Army Welfare Education Society carried on its affairs using regimental funds, no claim could be made by any employee of a school established by the society concerning right to employment. Citing the decisions reported as (2004) 6 SCC 224 Brahmo Samaj Educational Society & Ors. Vs. State of West Bengal & Ors., 2005 (123) DLT 89 Kathuria Public School Vs. Director of Education, (2002) 8 SCC 481 TMA Pai Foundation & Ors. Vs. State of Karnataka & Ors. and 2005 (123) DLT 89 Management of Geeta School Vs. Director of Education it was urged that as per the decisions private individuals have a right to establish schools and managed the affairs of the school which would include the right to lay down the procedure for selection of teaching and non-teaching staff in the schools with reference to the decisions reported as 2004 (11) DLT 374 P.L.Aggarwal Vs. Lt. Governor Delhi & Ors. and 2011 (3) SCC 346 State of Orissa & Anr. Vs. Mamta Mohanty learned counsel urged that the decisions recognized that there should be academic excellence of teachers and thus a person who did not possess necessary educational qualifications would not be entitled to be employed as a teacher in a school. Referring to the

decisions reported as 2013 (3) SCC 705 University of Rajasthan & Anr. Vs. Premlata Aggarwal 2011 (2) SCC 429 State of Rajasthan & Ors. Vs. Daya Lal & Ors., 2009 (13) SCC 90 Harinder Kaur & Ors. Vs. UOI & Ors. and 2003 (3) SCC 485 Chanchal Goyal Vs. State of Rajasthan, learned counsel urged that howsoever long may be contractual, ad-hoc or tenure appointment, unless a person was appointed permanently to a sanctioned post the employee could not claim any right to be made permanent or lay a claim to any pensionary benefits. Learned counsel relied upon an unreported decision of a Division Bench of this Court pronounced on May 11, 2012 in LPA No.913/2010 Army Welfare Education Society & Anr. Vs. Shalu Kataria & Anr. which recognize that the appellant society could devise a suitable recruitment process.

7. In all fairness Mr.R.Balasubramanian, Advocate conceded that the mandate of the Delhi School Education Act, 1973 and the rules framed thereunder enjoin upon the appellants to comply with the provisions of the act and the rules. Learned counsel conceded that the scheme of management which was approved while according recognition to the two schools established by the first appellant, in terms of Rule 59 of the Delhi School Education Rules, 1973, vide para 15 of the scheme of management require the Managing Committee of both schools to set up Selection Committees for recruitment of the school staff in accordance with the provisions of Rule 96 of the Rules, but hastened to add that as per sub-Rule 6 of Rule 96 of the Rules the Selection Committee was free to regulate its procedure for selection. Referring to paragraph 8 of the approved scheme of management of the two schools, learned counsel argued that the scheme of management which was approved recognize that the Managing Committee of the two

schools could conduct its business in accordance with the aims and objects of the appellant No.1. Learned counsel urged that way back in the year 2006, by way of guidelines the first appellant had required the Managing Committee of all schools established by the first appellant to make appointments through a written test followed by an interview conducted jointly by the Combined Screening Board of the first appellant and the Selection Committee nominated by the Managing Committee of each school. Learned counsel urged that neither respondent was appointed in the manner prescribed. Defending the claim made by the respondents of being entitled to be made permanent, Mr.R.Bala Subramanian, learned counsel for the appellants urged that Manju Nautiyal could not be regularized as a Primary Teacher because she did not possess the necessary eligibility qualification of a diploma in Elementary Education, a requirement mandatorily to be met in view of NCTE notification dated July 02, 2011. Concerning Shayam Dutt it was urged that there was no permanent post of an Estate Supervisor. Regarding Anita Soharu Guleria the argument was that she had not cleared the requisite teachers' eligibility test as notified by NCTE on July 02, 2011. Regarding Renu Barrot it was urged that she was overage. With respect to Ravi Kumar it was urged that there was no sanctioned post of a Computer Laboratory Helper/Attendant. Vikram Singh and Shatrughan Thakur's claim for being made permanent as drivers was being questions on the ground that they lacked the necessary educational qualification of being matriculates. It was highlighted that the two were Class VIII passed. Sheeja Benoy's claim was sought to be repelled on the ground that there was no sanctioned post of Nursing Assistant. Regarding Bir Singh it was urged that he lacked the necessary educational

qualification.

8. The respondents predicated their defence with reference to a decision authored by this Bench in LPA No.750/2015 in which the decision of the learned Single Judge in Narendra Singh Nain's case was upheld. We note that LPA No.750/2015 was not laying a challenge to the decision of the learned Single Judge in Narendra Singh Nain's case. It related to one Satya Chhitaka, appointed as a Primary Teacher, in which decision in favour of Satya Chhitaka the learned Single Judge had relied upon his earlier decision in Narender Singh Nain's case which had not been challenged in appeal.

9. It strikes clearly that the underlying theme of the argument advanced by Mr.R.Bala Subramanian, Advocate recognizes that a school recognize under the Delhi School Education Act, 1973 has to comply with the provisions of the said Act and the Rules framed thereunder with such freedom to administer the schools as the Act and the Rules permit. There is no quarrel with the said preposition. The decisions in Brahmo Samaj Educational Society's case, Kathuria Public School's case, TMA Pai Foundation's case and Management of Geeta School's case recognize that private individuals have a complete freedom in regulating the procedure to be followed while making appointments in educational institutions as also freedom to enforce discipline, but at the same time the decisions recognize that keeping in view the importance of education in society such statutory regulations which enhance excellence in teaching have to be followed by these private institutions. This explains the decision in Brahmo Samaj's case where a private minority aged institution was given the freedom to make appointments of teachers and not through the College Service Commission but with the rider that only qualified candidates could be

selected as teachers. In paragraph 7, with reference to the decision in TMA Pai's case it was explained that independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution but the State can very well provide for the basic qualification of teachers. We therefore need not labour to note the individual facts in Brahmo Samaj Education Society's case, Kathuria Public School's case, TMA Pai Foundation School's case and Managemnet of Geeta School's case (supra). We also need not bother ourselves with the fact of P.L.Aggarwal's case and Mamta Mohanty's case because the four preceding judgments recognize what has been held in the latter two i.e. academic excellence of teachers should be adhered to and thus persons not possessing necessary educational qualification would not be entitled to be appointed as a teacher in educational institutions.

10. A word needs to be spoken by us concerning the decision of this Court in Asha Vij's case. No doubt, it was the first appellant which was litigating in the said case, but its ratio is not applicable in the instant case for the reason the learned Single Judge of this Court noted that the branch of the school at Noida was left with only Nursery and Preparatory Classes to act as feeders for its main schools and because the said Nursery and Preparatory Classes were not governed, either by terms of recognition or otherwise, by any supervening law, employees of the said Nursery and Preparatory Classes could not enforce any claim by way of a writ petition because regimental funds were used to manage the affairs of the said Nursery and Preparatory Classes. In Chottey Lal's case washermen appointed to wash clothes of cadets in the National Defence Academy were held not holding civil posts

because regimental funds out of which they were paid salaries were held not to be public funds.

11. Reliance by the respondents on Narendra Singh Nain's case is also misplaced for the reason it was rendered on the facts of said case and notwithstanding it being followed when the learned Single Judge decided Satya Chhitaka's case, we had upheld the decision passed by the learned Single Judge on totally different grounds. We had noted that Satya Chhitaka was appointed after selection process was completed and at the stage when the Army Public School concern had yet to be recognized. We had noted that her name was forwarded to the Director of Education for purposes of grant of age relaxation and notwithstanding the Director of Education granting age relaxation, Satya Chhitaka's appointment was sought to be cancelled on the ground that she was not qualified when selected because she was overage.

12. Instant appeals have to be decided keeping in view the law and the facts of each case.

13. Concededly the two schools in question established by the appellant No.1 society have obtained recognition under the Delhi School Education Act, 1973 and the Rules framed thereunder. Admittedly both schools have been accorded a recognition which obliges the two schools to manage their affairs as per the approved scheme of management and both schemes require that the Managing Committee of the two schools shall effect recruitment of the staff keeping in view the Delhi School Education Rules, 1973 by setting up selection committees.

14. The argument of the appellants can only be accepted to the extent that they have a right to prescribe the mode and manner of selection of their

employees and to constitute Selection Committees, but the Managing Committee would be obliged to follow the Delhi School Education Rules, 1973. Sub-Rule 6 of Rule 96 of the Delhi School Education Rules, 1973 protects the independence of the private schools by prescribing that the Selection Committees shall regulate their own procedures while effecting selections. But that does not mean that the Managing Committee of the two schools established by the first appellant can violate such Rules which are intended to enhance the quality of education in schools. The Delhi School Education Act, 1973 protects not only the tenure of appointment by making it co-terminus with the attainment of the age of superannuation of employees of recognized private schools with reference to the post held by them and equivalence being with employees of government schools. The Act and the Rules recognize the right of the private schools to select suitable candidates, but confer rights upon the candidates : if probation is successfully cleared, to be made permanent. The security of tenure of employees in schools serves the purpose of enhancing the quality of education because the permanent employee has to achieve benchmarks to earn further promotion. It also acts as a bulwark against harassment of the employee at the hands of the Managing Committees of schools. Rule 105 of the Delhi School Education Rules, 1973 clearly envisages regular appointments, albeit on a probation for an initial period to be resorted to and as per sub-Rule 3 temporary or short term vacancies can be filled up, but limited to the duration of the limited period by resorting to tenure appointments. The exception to the Rule i.e. of a tenure appointment is clearly linked to the vacancy being for a short term and cannot be used as a tool of oppression. Regretfully we note that large number of cases are being filed in this Court where teachers are being

exploited. In spite of vacant posts being available contract appointment is being resorted to and this results in deterioration in the quality of education being imparted in Delhi.

15. It ill-lies in the mouth of the appellant to argue that if all the respondents are regularized by being made permanent the quality of education in the two schools established by appellant No.1 would deteriorate. If such respondents who are teachers are found good teachers to teach as contract employees we see no deterioration taking place if they are made permanent. Of course, the issue of the necessary educational qualifications is a different matter and we would deal with the same while deciding individual appeals.

16. To put the law in its correct perspective we hold that recognized private schools in Delhi cannot resort to temporary, tenure or contractual appointments save and except where a vacancy is available for a limited duration. To give some examples. A teacher has proceeded on child care leave for a period of one year. The lien being retained to the post, a short term vacancy for one year ensues and can be filled up for said period. A teacher, on being unwell, applies for and is sanctioned medical leave for three months. The lien being retained to the post, a short term vacancy for three months ensues and can be filled up for said period. A teacher may suddenly resign. The process to fill up the vacancy is likely to consume say 6 months. Teaching would suffer if no teacher is available immediately. It would be a situation of a short term vacancy pending regular selection and it would be permissible to recruit a teacher without following the process of selection and limiting the tenure till when a regular teacher is appointed. But where a vacancy exists it would be a fraud on the statute to resort to

short term tenure appointment and that too endlessly.

17. We now turn to individual cases. We transpose ourselves back to paragraph 2 of our opinion, where we have noted the different tenures of appointment of the nine respondents in the nine captioned appeals.

18. Manju Nautiyal has a post graduate degree in Botany as well as a Bachelor's Degree in Education. Appointed as a Primary Teacher on September 01, 2009 she worked as a Primary Teacher till March 31, 2010 and after a break of one year, three months and seven days was appointed as a Trained Graduate Teacher on July 08, 2011 and with short breaks in service of less than 30 days she continued to be employed till March 26, 2014. Her appointment at every stage was preceded by a selection process being resorted to. Qua her it is not the case that there was no regular vacancy. The defence is that she does not possess a two years' diploma in Elementary Education, a mandatory requirement as per the Rules. When questioned as to why was she appointed on a tenure if she was not qualified, learned counsel for the appellant had no answer. We find that the requirement of two year diploma in Elementary Education was prescribed as per a notification dated July 29, 2011. Her appointment as a TGT preceded said notification. We therefore concur with the reasoning of the learned Single Judge that in the peculiar facts and circumstances concerning Manju Nautiyal she would be entitled to be made permanent.

19. Right to Shayam Dutt is questioned on the ground that there was no permanent post of either Assistant Estate Supervisor or Estate Supervisor. We find that his appointment was preceded by a selection undisputedly one Mr.Nayyar had worked as an Estate Supervisor from 1995 to the year 2000 and thereafter one Mr.Shekhawat till the year 2003. Shayam Dutt was

appointed as an Assistant Estate Supervisor on December 01, 2009 and with short breaks tenure was extended till May 23, 2011, but in between, on November 01, 2010 the post was designated as Estate Supervisor and he was re-appointed with breaks of between 7 and 10 days till March 31, 2014. Facts belie the defence of the appellant that they do not require on permanent basis an Estate Supervisor and thus we hold against the appellant and in favour of Shayam Dutt.

20. Anita Soharu Guleria's claim was opposed on she not clearing a Teacher's Eligibility Test notified as per NCTE notification dated July 02, 2011. That she possesses the requisite educational qualifications was conceded to. We find that Anita Soharu Guleria was appointed as a TGT way back on July 14, 2007 and with a short tenure as a primary teacher in the year 2009 she was once again taken back as a TGT and continues to work as a TGT. The NCTE notification does not have any retrospective operation and thus we hold in favour of Anita Soharu Guleria.

21. Concerning Renu Barrot the plea was that she was overage. The plea overlooks that when she was appointed as a TGT on August 02, 2010 she was 39 years of age. The maximum age for female teachers is 40 years. The defence qua her is also rejected.

22. Vikram Singh and Shatrughan Thakur were appointed as Drivers. The former in the year 2005 and the latter in the year 2006. The two are Ex-Servicemen and had a past experience of driving. It may be true that they do not possess the matriculation degree, but keeping in view the fact that the educational degree is otherwise having no concern with the duties to be performed by the two, we hold that the learned Single Judge has correctly decided in their favour by directing their services to be regularized.

23. Ravi Kumar was appointed as a Computer Laboratory Helper/Attendant on May 14, 2013 and his services were continued till September 30, 2015. As per the appellant there is no sanctioned post of a Computer Laboratory Helper/Attendant. Ravi Kumar has not given any proof of a sanctioned post of a Computer Laboratory Helper/Attendant and keeping this in mind as also the fact that he worked on contract for only two years and when he was appointed the process of selection was not followed. We hold against him and in favour of the appellants.

24. As regards Sheeja Benoy we find that she has continued to work as a Nursing Assistant since August 08, 2008. The defence qua her is that there is no sanctioned post of a Nursing Assistant, but since the school where she was employed and continues to be employed has a sick room we hold that the nature of job performed by her requires permanency and thus repel the challenge to the relief granted to her by the learned Single Judge.

25. Bir Singh was appointed as a LDC Account Clerk in October, 2005 and was reengaged with artificial breaks till November, 2015. He had a past experience of working as a Clerk in the Indian Army of 17 years. He may not be qualified as per the Recruitment Rules but since the appellant themselves waived said requirement when they gave him appointment on contract in October, 2005 and continued with the same for 10 years we are of the opinion that it has to be held that the appellant has deemed waived the requirement of educational qualification qua Bir Singh. It is not the case of the appellants that a permanent post of an Account Clerk does not exist.

26. Thus, LPAs No.223/2015, 225/2015, 227/2015, 314/2015, 348/2015, 353/2015, 355/2015 and 356/2015 are dismissed. LPA No.347/2015 is allowed. Writ petition filed by Ravi Kumar is dismissed and impugned

order dated April 29, 2015 in so far it has allowed the writ petition filed by Ravi Kumar is set aside.

27. Concerning directions issued by the learned Single Judge that the Director of Education should look into the working of the two schools established by the first appellant, we agree with the same for the reason we find that large number of employees of the two Army Public Schools are in litigation with their Managing Committee and we find that the appellants are indiscriminately resorting to contract appointments notwithstanding existence of permanent posts. In some cases like that of Sheeja Benoy, notwithstanding the nature of the work being perennial the appellants are not sanctioning a permanent post. The Director of Education would look into the strength of students and keeping in view the applicable norms determined the number of posts of teachers in various categories to be sanctioned. The Director of Education would also look into repeated tenure appointments made and extended for periods between 5 to 10 years. We would expect the visit by the Director of Education to be friendly and intended to guide the appellants through the allays of the law and not to find false to take action against the management. We would also hope and expect that the appellants would work with transparency and as per law.

28. Parties shall bear their own costs all throughout.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

OCTOBER 29, 2015

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