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W.P.Nos.1422 & 5596 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 07..07..2023

Orders Pronounced on : 18..07..2023

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition Nos.1422 and 5596 of 2022

and

W.M.P.Nos.1563 & 5684 of 2022

W.P.No.1422 of 2022

Mrs.Revathi

..... Petitioner

-Versus-

1.Central Board of Secondary Education,
Siksha Kendra,
2, Community Centre,
Preet Vihar,
New Delhi – 110 092.

2.The Directorate of School Education,
DPI College, Campus Road, Chennai.

3.The Director,
Army Welfare Education Society (AWES),
HQ Delhi Area, Delhi Cantonment – 110 010.

4.The Chairman,
Army Public School, Chennai,
Head Quarter – Dakshin Bharat Area,
Island Ground, Chennai 600009.

5.Army Public School, Chennai,
Through its Manger (Chairman's Nominee),
60 Feet Road, Nandambakkam,
Chennai 600089.

..... Respondents



W.P.Nos.1422 & 5596 of 2022

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of impugned letter dated 12.11.2021 vide proceedings No.298/APS/Ch/AWES passed by the 4th respondent and consequently directing the respondents 4 and 5 to issue confirmation order as enlisted in the Application submitted by the 5th respondent School in the Final Submission dated 21.05.2012 to the petitioner within a stipulated time.

W.P.No.5596 of 2022

K.N.Pandi Thurai

..... Petitioner

-Versus-

1. Central Board of Secondary Education,
Siksha Kendra,
2, Community Centre,
Preet Vihar, New Delhi – 110 092.
2. The Directorate of School Education,
DPI College, Campus Road, Chennai.
3. The Director,
Army Welfare Education Society (AWES),
HQ Delhi Area, Delhi Cantonment – 110 010.
4. The Chairman,
Army Public School, Chennai,
Head Quarter – Dakshin Bharat Area,
Island Groud, Chennai 600009.
5. Army Public School, Chennai,
Through its Manger (Chairman's Nominee),
60 Feet Road, Nandambakkam,
Chennai 600089.

..... Respondents



W.P.Nos.1422 & 5596 of 2022

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of impugned relieving order in letter No.APSC/RO/2022/2 dated 28.02.2022 passed by the 5th respondent and to quash the same and to direct the respondents 4 and 5 to issue confirmation letter thereby regularizing the petitioner in connection with his appointment of TGT (Mathematics) Teacher post with effect from the completion of one year of probationary period i.e., from 03.04.2017 with all monetary benefits as per judgement rendered in W.P.(C) No.1439 of 2013 dated 30.08.2013, which was upheld by the Division Bench of Delhi High Court by judgement dated 29.10.2015 and the same was confirmed by the Hon'ble Supreme Court of India in by order dated 12.02.2016 in SLP (C) No.3609 of 2016.

For Petitioner : *Mr.N.Vijaya Bhaskar &
Ms.B.Keerthi Vasan for
M/s.Law Vision for petitioner
in W.P.No.1422 of 2022
Mr.N.G.R.Prasad for
M/s.Law Vision for
petitioner in W.P.No.5596 of 2022*

For Respondents : *Mr.G.Nagarajan for R1 in both
Writ Petitions
Mr.P.Baladhandayutham,
Spl. Government Pleader for
R2 in both Writ Petitions
Lieutenant Colonel Ganesan for
RR4 & 5 in both Writ Petitions
No Appearance for R3 in both
Writ Petitions*



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COMMON ORDER

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W.P.No.1422 of 2022 challenges the letter of the 4th respondent dated 12.11.2021 vide proceedings No.298/APS/Ch/AWES passed by the 4th respondent and seeks a writ in the nature of mandamus, directing the respondents 4 and 5 to issue a confirmation order as enlisted in the Application submitted by the 5th respondent School in the Final Submission dated 21.05.2012 to the petitioner within a stipulated time; and

W.P.No.5596 of 2022 challenges the relieving order issued by the 5th respondent in letter No.APSC/RO/2022/2 dated 28.02.2022 in respect of the petitioner and seeks a direction to the respondents 4 and 5 to issue a confirmation letter thereby regularizing his appointment as TGT (Mathematics) Teacher with effect from the completion of one year of probationary period i.e., from 03.04.2017 with all monetary benefits.

2. The brief facts leading to the filing of W.P.No.1422 of 2022 are as follows:-

(a) The petitioner completed her B.Sc., (Chemistry) in 1990. She worked as a Science Teacher in Lord Krishna Matric School for Classes VI to VIII for the subjects of Physics, Chemistry, Botany and Zoology. Thereafter, she joined B.Ed., in Madurai Kamaraj University, Madurai and completed the course in



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1992-93. After completion of her B.Ed., degree, she worked as Science Teacher in Mydeen Matric School, for classes VI to X.

(b) In the mean time, on 23.03.2002 she obtained a Diploma in School Administration through S.E.T. Madurai. She worked as a Chemistry Teacher at ARR Matric Higher Secondary School from 2004 to 2006 for IX and X standards. She took one year break. Then, she joined Velammal Matric Higher Secondary School, Surapet, Chennai as Chemistry Teacher for classes VI to IX and worked as such from 2007-2010. She also worked as NCC Cadet Teacher in that school since she held 'C' Certificate in the course.

(c) She participated in the Written Test conducted by the 3rd respondent for Teachers of Army Welfare Education Society, Delhi, and got selected. She attended the interview on 21.02.2011 at Bangalore and got appointed as Science Teacher in Army Public School , Chennai, on 03.05.2011. At the time of appointment, she was informed by the 3rd respondent that the teachers should pass out Central Teacher Eligibility Test (CTET). Accordingly, she got through CTET conducted by Central Board of Secondary Education (CBSE), Delhi.

(d) On 03.11.2011, she got appointed as a Trained Graduate Teacher (TGT) in the 5th respondent school for a period of 3 years. On completion of 3 years, though she was terminated on 03.05.2014 by the respondents 4 & 5,



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without any break, she was reappointed on 03.05.2014 on ad hoc basis for a further period of one year from 12.05.2014 to 11.05.2015. Again she was terminated on 11.05.2015 and after a week's time, she was taken back as a temporary teacher. Again on 31.10.2015, a letter of appointment was issued appointing her as TGT Science Teacher. On 30.10.2018, she was again terminated and reappointed on 08.11.2018. On 27.02.2021, she was again terminated and order of termination was issued on 31.03.2021. Subsequently, she was again reappointed on 07.04.2021 for a period of three years as TGT Science Teacher.

(e) In the mean time, on the information which she got through the Right to Information Act, she came to know that her appointment which was made on 03.05.2011 got confirmed on 31.03.2012 and her second appointment which was made on 08.11.2018 got confirmed on 31.03.2012 and she became a permanent teaching staff and she could not be termed as a contractual staff. Suppressing the earlier two confirmations of appointments dated 31.03.2012 and 08.11.2019, the respondents 4 & 5 issued termination orders repeatedly. It is highly illegal and unlawful. She should be treated as permanent teaching staff w.e.f. 31.03.2012 and placed under permanent category.



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(f) One Vasantha Pushpam was appointed as a Computer Teacher by the 5th respondent in March, 2021 in a regular post without any contract of appointment or any probation. She did not even possess experience and she got such appointment only through influence. One Mrs.M.Usha, TGT Science Teacher, who was appointed on 01.04.2010, got her service regularized on 31.03.2013. Though in the Application submitted by the 5th respondent school on 21.05.2012 in Sl.No.10 it was found mentioned that on 31.03.2012 itself she was confirmed and regularised, till date no regularization order was issued to her and every three years once the 5th respondent school terminates her and reappoints her.

(g) The 5th respondent runs the school under the guidelines and supervision of the 1st respondent and the norms prescribed by the 2nd respondent. However, the 5th respondent violating all the norms and guidelines issued by the 2nd respondent had reported to the 1st respondent that postings of the teachers have been regularized and they would be treated as regular staff. But, the 5th respondent without the knowledge and without any information to the respondents 1 and 3 used to terminate and reappoint her on contractual basis which is totally illegal and unlawful.

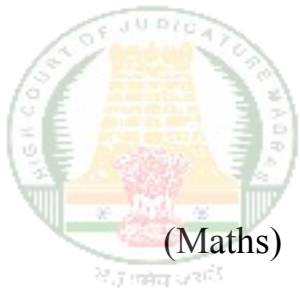


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(h) In the affidavit filed by the 3rd respondent before the 1st respondent it has been affirmed that it would ensure compliance of all statutory requirements, like EPF, ESI and labour laws, etc. with respect to school and staff of the school; the school will ensure that sufficient number of qualified teachers as per the provisions contained in the affiliation bye-laws are available with the school before starting classes. The service condition is governed under Chapter-IV of the Bye-Laws of the CBSE. Therefore, the entire action of the respondent is assailed and the order is sought to be impugned on the ground that without regularizing the services of the petitioner as permanent TGT (Maths) she is being terminated and reappointed periodically.

3. The brief facts leading to the filing of W.P.No.5596 of 2022 are as follows:-

(a) The petitioner completed B.Sc., (Mathematics) in 2006 and MCA in 2009. He also obtained B.Ed., degree in Tamil Nadu Teacher's Education University. Thereafter, he obtained M.Sc., (Mathematics) in Manonmanium Sundaranar University, Tirunelveli. Thereafter, he worked as a TGT (Maths) in Army Public School at Bengdubi in West Bengal from 2014-16. The said school was under the control of the 3rd respondent. He qualified in All India Written Test for Teachers held on 11.12.2011 at APS Wellington for TGT



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(Maths) conducted by Army Welfare Education Society and also qualified in

all India Written Test for Teachers held on 07.12.2012 at Siliguri for PGT

(Maths) conducted by Army welfare Education Society, Delhi. Subsequently,

in September 2015, he got through CTET conducted by the CBSE, Delhi. He

got all the requisite qualifications which are required to be possessed by a

person to be appointed as a teacher in the 5th respondent school. On

22.01.2016, he applied for the post of Trained Graduate – Teaching Staff in a

regular vacancy in the 5th respondent school. He was called for interview on

04.04.2016 and was issued with an order of appointment. Though he applied

for the regular post, he was informed by the management that his appointment

would be on contract basis and after successful completion of one year,

appointment would be made as permanent. On believing the words of the 5th

respondent, he joined the duty in the 5th respondent school on 04.04.2016 as

TGT (Maths) with fond hope that he would be made permanent after the expiry

of one year.

(b) Initially he was appointed for a period of three years and after

completion of three years of service, he was terminated from service. After a

break of one week, an interview was conducted by the respondents 4 & 5 and he

was reappointed on 08.03.2019 as a fresh TGT (Maths) Teacher and a letter of



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appointment dated 11.04.2019 was issued for a fixed period of three years

which is highly illegal and unlawful and the action on the part of the respondents 4 & 5 is liable to be set aside.

(c) This petitioner also expressed his grievance over the appointment of one Vasantha Pushpam on regular basis.

4. The 1st respondent CBSE filed a formal counter on 11.04.2022 stating that they are unnecessary party to the writ petition and the writ petition is liable to be dismissed as against them as no relief has been sought against them.

5. Though 1st respondent-CBSE did not specifically dispute any of the allegations made in the writ petitions in the counter affidavits filed by them earlier, by way of a common affidavit dated 09.01.2023, they specifically stated that 5th respondent school comes under Government Category, vide Affiliation No.1980011 and they got it ascertained the same from the Affiliation Unit, CBSE, Head Quarters, Delhi.

6. The respondents 4 & 5 filed their counter inter alia contending in common that a writ is not maintainable as against any private educational institution, like the 5th respondent school under Article 226 of the Constitution of India. It is further contended that State Government cannot force the management of a private unaided school to regularize the appointment of the



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petitioners which would indirectly be forcing the institution to surrender the fundamental right guaranteed under Article 30(1) of the Constitution of India.

7. The appointment of the petitioner in W.P.No.1422 of 2022 was purely on contractual basis. As per Article 121 of the Rules and Regulations for Army Public Schools, selection by Combined Screening Committee Board (CSB) is mandatory for regular appointment as teachers in any Army Public School and selection by Local Selection Board is mandatory for fixed term contractual employment and the recommendation of the respective Boards are final.

8. After the initial tenure of fixed term, she applied for another fixed term employment in the school. But, she did not clear CTET conducted by the CBSE and hence, she was appointed only for one year w.e.f. 12.05.2014 on ad hoc basis. Again she applied for fixed term employment but was appointed for one year only w.e.f. 12.05.2015 on ad hoc basis. During this tenure, she had managed to get through CTET conducted by the CBSE and as such her employment was modified for three years fixed term employment w.e.f. 30.10.2015. After his tenure, she was once again on application appointed for another term w.e.f. 08.11.2018. The school had only one TGT vacancy in Computer Science as regular post and no vacancy arose since 2011. A regular vacancy was created only in 2021. After her fixed term employment, she



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applied for regular vacancy and appeared for CBB interview on 18.02.2021.

There were four candidates interviewed and of them, one Athul U Krishnan, who had secured 153 out of 200 marks, was recommended on merit by the CSB and the petitioner had secured only 89 out of 200 marks in CSB. However, on her request, she was considered for re-employment for fixed term of three years w.e.f. 07.04.2021.

9. It is the further contention of the respondents 4 & 5 that status of Army Public Schools have been reiterated in AWES letter dated 28.03.2023. The State Government has no role whatsoever in the policy regarding service conditions. Even CBSE in its letter dated 05.01.2013 clarified the position in this regard. While admitting that the petitioner's appointment was confirmed on 31.03.2012 and again on 08.11.2019, the respondents 4 & 5 contended that the appointment of the petitioner for a fixed term of three years on contract basis was confirmed after one year of probation. Though the fact that the management had informed the petitioner in W.P.No.1422 of 2022 that her appointments were confirmed on 31.03.2012 and again on 08.11.2019 is admitted by the respondents 4 & 5, they denied the fact she was appointed on contractual basis for a fixed tenure of three years as per orders of appointment and her appointments were confirmed after one year of probation.



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10. Insofar as W.P.No.5596 of 2022 is concerned, the respondents 4 & 5 contended that on the expiry of initial contract, he was terminated on 03.04.2019, however, on his application, he was reappointed on 11.04.2019 for another fixed tenure of three years. During such tenure, since a vacancy arose, he was advised to apply for selection in CSB interview. Accordingly, he was called for CSB interview by the authority on 08.03.2022 in Bengalaru. However the petitioner did not qualify in the CSB interview and as such he was not recommended for regular position in the school. In the mean while, the petitioner appeared for local screening board interview for appointment as TGT (Maths) in the same school on 21.03.2022 for a fixed term to commence after his termination of the current contract. However, as the petitioner was not selected in the LSB on 21.03.2022, his contractual services were terminated on 31.03.2022 after placing him on due notice period. However, he once again applied for third tenure as contractual staff for another fixed term. However, the LSB did not recommend his candidate for another fixed term employment as TGT (Maths) Teacher.

11. Therefore, the respondents 4 and 5 pray for dismissal of the writ petitions.



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12. Mr.N.G.R.Prasad, learned counsel for the petitioner in both writ petitions strenuously submitted that the appointments of the petitioners were purely based on merits and they were not appointed through back door entry. Having appointed the petitioners in 2011 and 2016 as TGT (Chemistry) and TGT (Maths) Teachers respectively on regular position, the orders of appointment were issued to the effect that the appointments were on contractual basis for a fixed tenure. This act of the respondents 3 to 5 is nothing but a fraud played on the statutes.

13. Mr.N.G.R.Prasad, learned counsel further submitted that for the year 2012, in the application filed before the CBSE, the position of the petitioner in W.P.No.1422 of 2022 has been shown as 'appointment is confirmed on 31.03.2012', again in 2019, her position has been shown 'appointment is confirmed on 08.11.2019'. Suppressing the above facts, the 5th respondent school reiterated that the appointments of the petitioners were made on contractual basis without giving permanent status to the petitioners. When the petitioners were interviewed and were selected in the interview by the duly constituted board as per the rules, they have been exploited for all these years. According to him, since imparting education is a public duty, a writ is very well maintainable against a private school.



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14. Mr.N.G.R.Prasad, learned counsel for the petitioners has in support of his submissions placed reliance heavily upon the judgement of the High Court Uttarakhand at Nainital in Smt. Kishre Devi Uniyal and another v. The Committee of Management and another [Writ Petition No. (S / S) 1752 of 2001 dated 17.08.2012 wherein the court has held that writ is maintainable and on appeal in Special Appeal No.396 of 2012, by judgement dated 01.07.2013, a Division Bench of the High Court of Uttarakhand at Nainital was pleased to confirm the order of a single Judge. This was later on confirmed by the Supreme Court in SLP (C) Nos.35048 of 2013 by order dated 05.07.2016.

15. Mr.N.G.R.Prasad would also place reliance on the judgment of a Division Bench of the High Court of Delhi in relation to the similarly placed persons, where also a termination order of the person appointed on regular basis was cancelled and reappointments were made repeatedly after termination on contractual basis was put under challenge in LPA No.223 of 2015 etc. batch cases. The Division Bench of Delhi High Court by order dated 29.10.2015 has held that writ petition is maintainable and one of the Special Leave Petitions filed by the Army Welfare Education Society in SLP No.3609 of 2016 came to be dismissed by the Supreme Court by order dated 12.02.2016.



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16. Mr.N.G.R.Prasad has also placed much reliance on the judgements of the Supreme Court in **Nihal Singh v. State of Punjab [(2013) 14 SCC 65]**; a judgement of a Division Bench of the High Court of Rajasthan Bench at Jaipur in **The Chairman, Army Public School v. Anamika Saxena** [D.B. Special Appeal Writ No.772 of 2019 dated 29.05.2019]; and a judgement of a single Judge of High Court of Calcutta in **Bineeta Patnaik Padhi v. Union of India** [W.P.A.No.5544 of 2021 dated 01.06.2021].

17. Per contra, Lieutenant Colonel Ganesh, learned counsel for the respondents 4 & 5 contended that Writ Petition is not maintainable as against the 5th respondent which is a private educational institution as no grant whatsoever provided by the Government and it is further contended by him that State Government has no role whatsoever in controlling the school run by the Army Welfare Education Society (AWES). The Teachers and Staff members have been appointed as per the bye-laws of the AWES.

18. Lieutenant Colonel Ganesan further contended that the petitioners were appointed only on contractual basis and not on any permanent post on regular basis. Students of the Army alone are given admission in the school and therefore, at no stretch of imagination, it can be held that the school discharges public duty. Therefore, according to him, the writ petitions are not maintainable



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He further added that even the circular issued by AWES would clearly indicate that State Government has no controlling authority over the schools run by the AWES.

19. In support of his submission, Lieutenant Colonel Ganesan would place strong reliance upon the judgement(s) of

(i) the Supreme Court in **T.M.A. Pai Foundation and others v. State of Karnataka and others** (2002) 8 SCC 481;
(2005) 6 SCC 537;

(ii) a Full Bench of this court in **The Correspondent / Principal Arokiamada Matriculation Higher Secondary School, Pollachi v. Tmt.Sourubarani (Deceased) and others** [Writ Appeal No.1307 of 2009 dated 15.10.2015];

20. Finally, Lieutenant Colonel Ganesan, relying upon the orders passed by the Central Information Commission to the effect that no aid is given by the State Government to the respondents 4 and 5, contended that 5th respondent's school is run by the society and the society is not receiving any aid from the State and finances for its running are generated by way of collections received from fee and voluntary contributions made by the officials. Therefore, the 5th respondent's private educational institution will not come under the purview of



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State within the meaning of Article 12 of the Constitution of India. In support of his contention he relied upon a judgement of the High Court of Himachal Pradesh at Shimla in **The Chairman, Army Public school, Dagshai, Tehsil Kasauli, District Solan, Himachal Pradesh and another v. Smt.Urmila Chauhan and another** [LPA No.97 of 2021 along with Civil W.P.No.2693 of 2021 dated 30.03.2022]; a judgment of the High Court of Gujarat at Ahmedabad in **Bhagwanjibhai Kathanbhai Baradiya v. State of Gujarat** [Spl. Civil Application No.17270 of 2021 etc., batch dated 24.06.2022] and a judgement of the High Court of Jammu & Kashmir and Ladakh at Srinagar in **Showkat Ahmad Rather and others v. Government of Jammu & Kashmir and others** [WP(C) No.2197 of 2021] .

21. I have considered the rival submissions and also perused the records carefully.

22. The point that primarily arises for consideration in the writ petitions is whether the writ is maintainable as against the respondents 4 & 5.

23. Here it would be useful to refer to the judgements of the Supreme Court in **Dr.Janet Jeyapaul v. SRM University and others** [Civil Appeal No.14553 of 2015 dated 15.12.2015] wherein the Supreme Court has held in para 22 that *imparting education is the public function and therefore, the writ*



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is maintainable.

24. In **T.M.A. Pai Foundation and others v. State of Karnataka and**

others [(2002) 8 SCC 481], the Supreme Court has held *that in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to an university or board have to be complied with, but in the matter of day-to- day management like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.*

25. Thus the legal position would make it clear that there cannot be any interference in the day-to-day administration including admission of students, recruiting of staff and the quantum of fee to be charged.

26. In **Santhosh Kumar v. Chief of the Army Staff cum President, Army Welfare Education Society, Army Headquarters, Dhq Post New Delhi and others** [S.B.Civil Writs No.4872 of 2018 dated 02.05.2018] a single Judge of the High Court of Rajasthan Bench at Jaipur has held that a writ is not maintainable as against the army school and appropriate remedy is only to



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file an appeal before the tribunal.

27. In **Rajesh Kumar Srivastava and others v. State of U.P. and others** [Writ A.No.29911 of 2012 dated 28.01.2020], a single Judge of High Court of Allahabad has held that a writ is not maintainable since employment offered by the privately managed unaided educational institution are subject to contract of personal service.

28. In **Venkatesan v. Government of Tamil Nadu rep. by its Secretary School Education Department** [W.P.No.5527 & 5267 of 2010 dated 10.03.2020], a single Judge of this Court has dismissed the writ petition following the judgement of the Full Bench of this Court dated 15.10.2015 made in W.A.No.1307 of 2009 in the case of **Correspondent v. T.Sourubarani [2015 (6) CTC 129]** on the ground that issue regarding claim of the salary by unaided private school staff on par with the government school/aided school staff is no longer res integra.

29. Similarly, in **Annamalai v. Saint John's I.T.I. Society, Manjampatty and others** (W.P.(MD) No.1393, 3438 of 2014 and 9913 & 9914 of 2013), a single Judge of the Madurai Bench of this Court has held that when there is a contract of employment governing the payment of salary to the petitioners, the petitioners are not entitled to claim salary on par with the staff



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of the State Government.

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30. In **Chairman, Army Public school, Dagshai, Tehsil Kasauli, District Solan, Himachal Pradesh and another v. Smt.Urmila Chauhan and another** [LPA No.97 of 2021 along with Civil W.P.No.2693 of 2021 dated 30.03.2022], a Division Bench of the High Court of Himachal Pradesh at Shimla though dismissed the writ petition, it had left the issue whether the appellant-school is amenable to the writ jurisdiction to be raised in appropriate proceedings as it was not urged before the bench.

31. In **Bhagwanjibhai Kathanbhai Baradiya v. State of Gujarat** [Spl. Civil Application No.17270 of 2021 etc., batch dated 24.06.2022], a single Judge of the High Court of Gujarat at Ahmedabad has held that writ petition is not maintainable as against the army school. Similar view has been taken in **Showkat Ahmad Rather and others v. Government of Jammu & Kashmir and others** [WP(C) No.2197 of 2021] by a single Judge of the High Court of Jammu & Kashmir and Ladakh at Srinagar.

32. From the conspectus of the judgements in **T.M.Pai's case** the Supreme Court has held that as far as unaided minority institutions are concerned, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. It is



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relevant to note that in an identical situation, in a writ filed against one of the schools run by the Army Welfare Education Society in Smt. Kishore Devi Uniyal and another v. The Committee of Management and another [Writ Petition No. (S / S) 1752 of 2001 dated 17.08.2012 , the High Court of Uttarakhand at Nainital had held that writ petition is maintainable and the same was confirmed by a Division Bench in Special Appeal No.396 of 2012, by judgement dated 01.07.2013. When the Army Public School took up the matter on appeal before the Supreme Court, by order dated 05.07.2016 in SLP (C) Nos.35048 of 2013 the Supreme Court was pleased to confirm the same and dismiss the SLP with cost of Rs.2000/-.

33. It is also relevant to note here that similar issues of tenure appointments and repeated terminations and reappointments of teachers in the Army Public School were subject matter of challenge before the High Court of Delhi in Army Welfare Education Society v. Manju Nautiyal [LPA No.223 of 2015 etc. batch cases]. In those cases, the main defence put forth by the Army Welfare Education Society was that a writ could not be maintained as against the Army Public School. In that matter also reliance had been placed on T.M.A. Pai Foundation and others v. State of Karnataka and others [(2002) 8 SCC 481] and few other judgements of the Supreme Court. However, considering the



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above objections and also the fact that a school recognized under the Delhi

School Education Act, 1973 has to comply with the provisions of the said Act

and the Rules made thereunder, the court has held that a writ petition is

maintainable and confirmed the order of the single Judge. In paragraph 16, the

Division Bench of Delhi High Court has held as follows:-

“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



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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.”

34. In particular, in paragraph 27, the court has held as under:-

“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.



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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.”

35. Challenging the above order of the Division Bench of the Delhi High Court, the Army Welfare Education Society approached the Supreme Court by way of SLP in 3609 of 2016 and the Supreme Court by order dated 12.02.2016 was pleased to dismiss the SLP. When the issue has been settled in an identical matter by the Supreme Court holding that that writ petition is maintainable against the Army Public School and respondents 4 & 5 cannot again contend that writ is not maintainable against their school. In the light of the judgement of the Supreme Court on the subject, the judgements of the other High Courts upon which much reliance have been placed by the counsel for the respondents 4 and 5 would no way helpful to his case.

36. In **The Chairman, Army Public School v. Anamika Saxena** [D.B.



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Special Appeal Writ No.772 of 2019 dated 29.05.2019], the Division Bench of

the High Court of Rajasthan Bench at Jaipur in paragraph 9 has held as under:-

“9. Keeping this perspective in mind it is apparent that the practice of the appellant school is to engage teachers on contractual basis and dispensed their service with at the end of the term. The extent of prevalence of such practice is not before the Court; the only observation in these circumstances that can be made is that if it is widely prevalent in respect of majority of age groups and classes it would undoubtedly undermine the core (5 of 5) [SAW-772/2019] objective of imparting education. So far as the correctness of the Single Judge's approach and conclusions are concerned, this Court is of the opinion that the findings made are sound and proper, even through the Court had merely followed the Supreme Court ruling in Mohd. Abdul Kadir (supra) that one set of contractual employees cannot be replaced by another.”

37. When the issue with regard to maintainability of writ petition against the Army Public School has reached its finality and the SLPs filed by the Army Public School came to be dismissed and the judgements of the High Court of Uttarakhand at Nainital and High Court of Delhi have been confirmed



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by the Supreme Court by dismissing the SLPs filed by the Army Public School, the respondents 4 & 5 cannot say that the school run by them is a private unaided school and as such writ is not maintainable against them. In **Dr. Janet Jeyapaul v. SRM University and others** also the Supreme Court has held that imparting education is a public duty and as such writ petition is very well maintainable. Therefore, the contention of the respondents 4 & 5 in this regard is non-suited.

38. With regard to the other contention that the petitioners were appointed only on contractual basis for a fixed tenure, it is not in dispute that the both petitioners are eligible to be appointed as TGT. Further , it is not the case of the respondents 4 & 5 that the petitioners were appointed through back door method.

39. The petitioner in W.P.No.1422 of 202 did possess relevant qualification which is not in dispute. She is a Trained Graduate Teacher. She qualified in Combined Screening Committee Board (CSB). She also qualified in Central Teacher Eligibility Test (CTET) conducted by Central Board of Secondary Education (CBSE), Delhi. She was initially appointed as TGT (Science) for a period of three years from 04.05.2011 to 03.05.2014. According to the petitioner she completed her probation on 31.03.2012. However, she



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was terminated from service on 03.05.2014 and was reappointed on the same day for another period of one year from 12.05.2014 to 11.05.2015. Thereafter again she was terminated and was reappointed for period of one year from 12.05.2015 to 11.05.2016. Once again, she was terminated and reappointed from 31.10.2015 to 30.10.2018. After that, she was again terminated on 31.10.2018 and reappointed on 08.11.2018 for a period of three years. Lastly she was relieved on 27.02.2021 and again she was reappointed as TGT Science for a period of three years from 07.04.2011 to 31.03.2024. These facts are not disputed in the entire counter. The only contention raised is to the effect that the petitioner in W.P.No.1422 of 2022 not qualified in Combined Screening Committee Board (CSB) which is mandatory for regular appointment as teachers in any Army Public School. However, no particular whatsoever was placed before this court to show the manner in which the said screening test was done.

40. Be that as it may, as far as the petitioner in W.P.NO.5596 of 2022 is concerned, he attended the interview on 11.02.2016 and qualified in Combined Screening Committee Board (CSB) at Bangalore. He was appointed on 06.04.2006 as TGT Maths. However, he was given appointment for a fixed term of three years from 04.04.2016 to 31.03.2019 and again he got qualified in



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Local Screening Board (LSB) at Chennai on 26.12.2018. Thereafter, he was relieved from service on 31.03.2019 and reappointed on 08.03.2019 as TGT Maths for a period of three years from 11.04.2019 to 31.03.2022. These facts are also not disputed by the respondents 4 & 5.

41. It is relevant to note here that call letter for interview to the post of TGT was issued to the petitioner in W.P.No.1422 of 2022 at the first instance reads as under:-



42. The above call letter would make it clear that once a candidate



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cleared All India Written Test for Teachers, there is no requirement to appear again for any other test. Only based on that, she was given appointment on 03.05.2011. The condition No.5 in the letter of appointment states that performance of the petitioner would be reviewed after completion of one year and outcome of the interview will be intimated in writing by the management. However, whether such review had been done or not was not made known to this court by the respondents 4 & 5. In the mean time, the petitioner in W.P.No.1422 of 2022 completed her probation period as could be seen from letter dated 08.05.2012 issued by the Army Public School of Chennai to her. Despite the same, the petitioner was repeatedly terminated and reappointed on tenure basis either for a period of one year or three years.

43. It was brought to the notice of this court about an application filed by the School to CBSE in 2012 for affiliation obtained through RTI Act, 2005. The above document would make it clear that under Sl.No.10 of Staff Statements, it has been clearly mentioned that the petitioner in W.P.No.1422 of 2022 was appointed on 03.05.2011 and her appointment was confirmed on 31.03.2012 with a basic pay and it has also been stated that she was a trained teacher. Similarly, in the year 2018, it was stated to the CBSE that she has been confirmed in the year 2019. These facts would clearly indicate that in the



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official records, the petitioner in W.P.No.1422 of 2022 and other teachers have been shown as permanent appointees. So also every year for the purpose of recognition, whenever they submitted necessary application it was shown as teachers have been confirmed. But the fact was never brought to the notice of the teachers concerned and the information was kept in secret. It is also necessary to take note of the circular issued by CBSE dated 30.01.2019 in CBSE/AFF-BYELAWS/Circular No.03/2019/1444946 whereunder the attention of the School Education of all States / Union Territories was drawn towards certain important provisions of the revamped Affiliation Bye-Laws for information and compliance by the State Education Department and by the schools affiliated with the board. Rule 5.2.1 of the Bye-Laws reads as under

“Rule 5.2.1 – The school shall have well defined recruitment rules for the staff on the lines of the recruitment rules of the **Appropriate Government**.

Rule 5.2.2 - Teaching & non-teaching staff should be appointed on pay scales and allowances prescribed by the **Appropriate Government**.

Rule 5.3 – The School shall define the service rules of teaching & non-teaching staff on the lines of the services rules of the employees of **Appropriate Government**.

Rule 7.2 – Admission Fee and Fee charged under



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any other head are to be charged only as per the regulations of **Appropriate Government**.

Rule 7.6 – The Acts and regulations of the Central and State / UT Governments enacted / framed in connection with regulation of fee in respect of the various categories of the schools situated in the State will be applicable to the school affiliated with CBSE also.

Rule 8.1 – All the schools affiliated with the board shall have a School Management Committee as stipulated in RTE Act 2009, any other enactment or regulations framed by the State / **Appropriate Government**.

Rule 8.5 – The provisions contained in aCts and Regulations of the **Appropriate Government** will prevail upon the provisions related to School Management Committee in these bye-laws.

Rule 14.17 – Every school is bound to follow the directions issued by the Central Government, State / UT Government and the Board in the form of Notifications, Circulars and Advisories, etc., from time to time.

44. In the affidavit filed by the Secretary of the Army Welfare Education Society before the CBSE while seeking approval it has been under taken that school will abide by the provisions contained in the affiliation & examination bye-laws, directions issued from time to time and the law of the land. Even



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under Rule 1.3.24 of the revamped Affiliation Bye-Laws-2018 of CBSE the

term **“recognition”** has been defined as “formal recognition of school in accordance with the provisions contained in the Right to Education Act and/or the Education Act of the concerned State / UT Government/ Administration: Bye-Law 2.1 deals with the categories of Schools. Bye-Law 2.1.5 deals with the Schools managed directly by (Central or State), Public Sector Undertakings and Statutory Bodies, Autonomous Bodies etc. Rule 2.1.6 deals with the school managed by society formed by (Central or State), Public Sector Undertakings, Statutory Bodies, Autonomous Bodies and Government Departments etc. Bye-Law 2.1.7 deals with Schools managed by Societies for (Central or State) Public Sector Undertakings, Statutory Bodies, Autonomous Bodies and Government Departments etc. under the financial control of such Public Sector Undertakings, Statutory Bodies, Autonomous Bodies and Government Departments etc. 2.18 deals with Private Schools established by (a) Societies registered under the Societies Registration Act, 1860 of the Government of India or under Acts of the State Governments as educational, charitable or religious Societies having non-proprietary character or, (b) by Registered Trusts, or, (c) Companies registered under Section 8 of the Companies Act, 2013, having education as one of its objects.



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45. Bye-Law 2.3.4 states that the schools seeking affiliation with the Board shall submit formal prior Recognition Certificate from concerned State Education Department as per extant rules and provisions contained in RTE Act, 2009. Bye-Law 2.3.5 states that schools mentioned under clauses 2.1.5, 2.1.6, 2.1.7 and 2.1.8 seeking affiliation with the Board shall submit formal prior “No Objection Certificate” to the effect that State Government has no objection to the affiliation of the School with CBSE. No objection Certificate once issued to any school will be considered at par even if it prescribes a specific period and / or level unless it is withdrawn.

46. Thus, the Bye-Laws, 2018 of CBSE make it very clear that affiliation to any private school owned by the societies or individual is governed by the State law operating on the field without no objection from the concerned State Government or Union Territory may not be feasible. No doubt, The Tamil Nadu Recognized Private Schools (Regulation) Rules, 1973 was operating the field as that of Delhi School Education Act, 1973 which was considered by the High Court of Delhi in *Army Welfare Education Society v. Manju Nautiyal* cited supra. The Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 was extended to whole of State. It applied to all the private schools. Sub-section (10) of Section 2 of The Tamil Nadu Recognized Private Schools



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(Regulation) Act, 1973 reads as under:-

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“(10) “**private school**” means a pre-primary, primary, middle or high school (or higher secondary school) or any other institution imparting education or training, established and administered or maintained by any person or body of persons, and recognized by the competent authority under this Act but does not include a school or an institution:-

a. Imparting technical or professional education;

b. Established and administered or maintained by the Central Government or the State Government or any local authority;

c. Maintained or approved by, or affiliated to, any University established by law; or

d. Giving, providing or imparting religious instruction alone, but not any other instruction;”

47. The above said definition makes it clear that irrespective of any grant from the Government or not, any school administered or maintained by any person or body of persons, and recognized by the competent authority under this Act comes within the ambit of Private School.

48. Section 5A of the Tamil Nadu Recognized Private Schools



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(Regulation), Act, 1973 makes it clear that Educational Agency of every higher secondary school which is a private school and in existence on the date of publication of the Tamil Nadu Recognized Private Schools (Regulation) Amendment Act, 1987, in the Tamil Nadu Government Gazette, shall, before the expiry of six months make an application to the competent authority for permission to continue to run such school. On such application, recognition to be given as per Section 11 of the said Act.

49. Section 15 of the Tamil Nadu Recognized Private Schools (Regulation), Act, 1973 deals with the Constitution of School Committee and its functions. According to it, private school shall have a duly constituted school committee which shall include the headmaster of the private school and the senior most teachers employed in the private school provided in sub-section (2). Section 18 deals with the functions of the school committee under the Act. School committee shall have the following functions (a) to carry on the general administration of the private school excluding the properties and funds of the private school; (b) To appoint teachers and other employees of the private school, fix their pay and allowances and define their duties and the conditions

of their service; which shall not contravene any of the provisions made in the



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Rules or directions issued under the Act, and (c) to take disciplinary action against teachers and other employees of the private school following the prescribed procedure. Section 19 gives power to the Government to make rules regulating the number, qualifications and conditions of service (including promotion, pay, allowances, leave, pension, provident fund, insurance and age of retirement and rights as respect to disciplinary matters) of the teachers and other persons employed in any private school. Section 20 deals with appointment of teachers and other employees in private schools. A combined reading of provisions in Section 20 would go on to show that only the persons who possess the qualifications prescribed under Section 19 alone shall be appointed as teacher in a private school. Section 22 deals with the dismissal, removal or reduction in rank or suspension of teachers or other persons employed in private schools. This makes it clear that subject to any rule that may be made in this behalf, no teacher or other person employed in any private school shall be dismissed, removed or reduced in rank nor shall his appointment be otherwise terminated except with the prior approval of the competent authority.

50. Rule 15 of the Tamil Nadu Recognized Private School (Regulation)



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Rules, 1974 deals with qualifications, conditions of service of teachers and other persons. The same would make it clear that the number of teachers and other persons employed in a private school shall not exceed the number of posts sanctioned by Director of School Education from time to time, with reference to the academic requirements, teacher-pupil ratio and overall financial considerations. Thus, it is clear that there must be an appropriate methodology for appointment and in a regular vacancy, a fully qualified candidate shall be appointed only on a regular basis. However, in a temporary vacancy, i.e., leave vacancy, deputation for training or suspension of the teacher's certificate a teacher or other persons may be appointed for a specified period. Further sub-rule (7) of Rule 15 makes it very clear that every private school, not being minority school, shall reserve 18 per cent of the vacancies in teaching as well as non-teaching staff candidates belonging to Scheduled Castes and Scheduled Tribes. Rule 9 deals with recognition while Rule 10 deals with withdrawal of recognition. Even the new Act i.e., Tamil Nadu Private School (Regulation) Act, 2018, which came into force on 13.01.2023, makes it clear that “private school” means a Play School, Nursery and Primary, Primary, Middle, High and Higher Secondary School or Teacher Training Institute imparting education and training, whether receiving grant from the



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Government or not, established and administered or maintained by an educational agency and recognized by the competent authority under this Act, but does not include a school or an institution, (i) established and administered or maintained by the Central Government or the State Government or any local authority; or (ii) imparting religious instruction alone, but not any other instruction. Education agency has been defined under sub-section (h) of Section 2 of the Act. Societies registered under the Societies Registration Act, 1860 or Tamil Nadu Societies Registration Act, 1975, comes under the ambit of educational agency.

51. Therefore, when the statutes stipulated that certain things to be done in a particular manner without adverting to any of the provisions, the respondents 4 & 5 appointed the teachers on contractual basis for a specified term in violation of the very statute and rule, which were operating the field, terminated their services indiscriminately and again reappointed them either creating an artificial break or without break was nothing but a clear fraud played on the statutes and it would amount to exploitation of their services. [Relieving them when they reached particular age / become overaged so that they may not be in a position to go for any other avenue is nothing but a fraud played on the constitution as well as the statute. It is not the case of the



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respondents 4 & 5 that the Army Public School is exclusively run by the Government of India. Where as it is their contention that it is run by Army Welfare Education Society. Such view of the matter, Tamil Nadu Act 29 of 1974 (Old Act) and Tamil Nadu Act 35 of 2019 (New Act) operating the field would apply. Thus, school run by the respondents 4 & 5 is amenable to State Law operating the field.

52. When the Tamil Nadu Recognized Private Schools (Regulation) Act, 1973 was applicable to all private school as defined in the rules made thereunder including the school run by the society [until it was repealed by Tamil Nadu Recognized Private Schools (Regulation) Act, 2019] all the rules and statute in force would apply to the respondents 4 & 5 also. The status of the Army Public School was categorized as Government by the CBSE only for the purpose of affiliation and not otherwise.

53. Much reliance was placed by the learned counsel appearing for the respondents 4 & 5 on the circular issued by the Army Welfare Education Society on 28.03.2023 in B/45785/Affiliation/AWES to state that State Government has no role whatsoever in the above said matter and an interpretation has been given by the Army Welfare Education Society itself to the effect that since the ownership of land allotted for Armed Forces Children



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Schools including the school buildings etc. continues with the Government and are located in defence land and the funds from which the buildings are constructed are provisioned by the QMG's Branch, IHQ, Ministry of Defence (Army), from the budgetary sp allotted by respective service HQ by GOI, and the schools are managed by Local Military Authorities as per GOI provisions, the state Government have no role whatsoever in the matter.

54. This court is of the view that such interpretation by themselves have no legs to stand. The respondents 4 & 5 cannot contend that they are not amenable to any State law when the law is operating the field and it applies to a school established in Tamil Nadu whether it receives grant from the government or not, or any other institution imparting education or training, established and administered or maintained by any person or body of persons, and recognized by the competent authority under this Act which would come within the ambit of private school Affiliation Bye-Laws 2018 refer to by the respondents 4 & 5 would make it very clear that every school managed by a society formed either by Central or State Government, Public Sector Undertakings, Statutory Bodies or established by a society registered under the Societies Registration Act has to obtain a “No Objection Certificate” from the appropriate State Government under Rule 2.3.5. In such view of the matter,



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this court is of the view that as qualifications of the writ petitioners are not in dispute, their selection was also not through back door method, and they were appointed on merits and the petitioner in W.P.No.1422 of 2022 has put in service for more than 11 years and as long as her qualification is not in dispute, she should be made as permanent and the respondents 3 to 5 cannot take advantage of the letter of appointment given to her for a fixed term of three years.

55. In **Md. Abdul Kadir and another v. Director General of Police, [2009] 6 SCC 611** practice of terminating the contractual employees by filling up the vacancies with another set of contractual employees was not approved by the Supreme Court. In such view of the matter, when this court has found that qualifications of the petitioners are not in dispute and they were appointed as TGT through proper mode, the respondents 4 & 5 without adhering to the statutory provisions could not terminate the services of the teachers stating that the appointment was on contractual basis for a fixed term. In such view of the matter this court is of the view that the very action on the part of the respondents 4 & 5 in appointing the teachers for a fixed tenure either for 1 year or 3 years, terminating their services at the end of the term and reappointing them is illegal and it would undoubtedly undermine the core



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object of imparting education. Thus both the writ petition succeeds.

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In the result, the writ petitions are allowed. The respondents 4 & 5 are directed to issue a confirmation order as enlisted in the Application submitted by the 5th respondent School in the Financial Submission dated 21.05.2012 to the petitioner in W.P.No.1422 of 2022 within a period of eight weeks from the date of receipt of a copy of this order. The relieving order issued by the 5th respondent to the petitioner in W.P.No.5596 of 2022 is set aside and the respondents 4 & 5 are directed to issue a confirmation letter regularizing his appointment as TGT (Mathematics) Teacher with effect from the completion of one year of probationary period, i.e., from 03.04.2017 with continuity of service and 50% of back wages and all other attending benefits. No costs. Consequently, connected WMPs are closed.

18..07..2023

Index : yes / no
Neutral Citation : yes
Speaking / Non Speaking Order
kmk



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To
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1. Central Board of Secondary Education,
Siksha Kendra,
2, Community Centre,
Preet Vihar, New Delhi – 110 092.
2. The Directorate of School Education,
DPI College, Campus Road, Chennai.
3. The Director,
Army Welfare Education Society (AWES),
HQ Delhi Area, Delhi Cantonment – 110 010.
4. The Chairman,
Army Public School, Chennai,
Head Quarter – Dakshin Bharat Area,
Island Ground, Chennai 600009.
5. Army Public School, Chennai,
Through its Manager (Chairman's Nominee),
60 Feet Road, Nandambakkam,
Chennai 600089.



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N.SATHISH KUMAR.J.,
kmk

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