

(1994) 06 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2072 of 1994

Keshar Lal Kumawat

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-06-1994

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 166, 19

Evidence Act, 1872 — Section 115

General Clauses Act, 1897 — Section 6

Citation : (1994) 2 WLN 332

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Judgement

V.K. Singhal, J.—This judgment shall disposed of the writ petitions enumerated in the Schedule "A". Since the questions involved are common, all these writ petitions are decided by this Single Order.

2. The dispute relates to the termination of services of the Teacher Grade-III, who have obtained the training certificate from Rajkiya Udyog Prashikshalaya Parasuramdwar, Jaipur (in short Parasuramdwar) and, Vidyabhawan Kala Sansthan Udaipur (in short Vidyabhawan). Few of the teachers have obtained the B.Ed, qualification with permission or without permission of the employer. A circular was issued by the Director-Cum-Special Secretary, Gramin Vikas and Panchayatiraj Vibhag on 7.4.94, in which directions were given that the teachers having National Trade Certificate (N.T.C.) are not capable of teaching in the schools which are run by the Panchayat Samitis, and, therefore the services of such teachers who have been appointed after 6.01.1985 shall be terminated. The copy of the circular is as under:

****jktLFkku ljdkj ****

xzkeh.k fodkl ,oa iapk;rh jkt foHkkx

dzekad% ,Q13?1? fof/k@xzkfoi@94@1294@t;iqj fnukad 7-4-94 1- leLr eq[;

dk;Zdkjh vf/kdkjh ,oa lfpo] ftyk ifj"knA

2- leLr fodkl vf/kdkjh] iapk;r lfefrA

fo"k;% p;fur m|ksx v/;kidksa ds laca/k esa eq[; dk;Zdkjh vf/kdkfj;ksa dh cSBd fnukad 21-8-93 esa fn, x, funsZ"kksa ds lanHkZ esa!

mijksDr fo"k;kUrxZr eq[; dk;Zdkjh vf/kdkfj;ksa dh cSBd fnukad 21-8-93 esa ftyk LFkkiuk lfefr }kjk m|ksx fo"k; esa izf"k{k.k izkIr p;fur v/;kidksa dks vizf=f{kr v/;kid ekurs gq, i=kpkj ls izf"k{k.k dh lqfo/kk miyC/k djkus ds funsZ"k fn;s x;s FksA ekuuh; mPp U;k;ky; }kjk fofHkUu ;kfpdk;sa ,l-ch- flfoy fjp la- 1614@90 ,oa Mh-ch-Lis"ky vihyksa ,oa ,sls vU; ekeyksa esa ikfjr fu.kZ;ksa esa ,u-Vh-lh- dks ch-Vh-lh- ds led{k u ekuus ds dkj.k fn, x;s FksA bu ekeyksa esa ikfjr fu.kZ;ksa ds fo:) jkT; ljdkj }kjk lokZsPp U;k;ky; esa fo"ks"k vuqefr ;kfpdk izLrqr dh x;h Fkh rFkk dqN O;fDr;ksa us lh/ks gh loksZPp U;k;ky; esa ;kfpdk izLrqr dh FkhA ftudk fu.kZ; fnukad 16-11-93 dks gks pqdk gSA

ekuuh; lokZsPp U;k;ky; us flfoy vihy la- 7031@93 jktLFkku jkT; cuke Jh ";ke yky tks"kh ,oa vU; rFkk 5 vU; ;kfpdkvksa esa fu.kZ; fn;k gS fd m|ksx fo"k; esa izf"kf{kr v/;kid dsoy m|ksx fo"k; i<+kus ;ksX; ugha gSA ;s O;fDr izkFkfed fo|ky;ksa esa i<+kus ;ksX; rHkh gksaxs tcfd os fu;eksa esa of.kZr izf"k{k.k ?ch-,l-Vh-lh-? izkIr dj v/;kid in gsrq vkosnu izLrqr djsaA

ekuuh; loksZPp U;k;ky; esa ,dy ihB ;kfpdk la[k 1614@90 ";ke yky tks"kh ,oa vU;] fjV la- 122@99 thokjke ,oa vU; 974@92 nsokjke ,oa vU;] 45@93 txnh"k izlkn ckxfM;k ,oa vU; rFkk 766@93 Hkaojyky ,oa vU; cuke jktLFkku jkT; ,oa vU; rFkk 519@93 cDlkjke ,oa vU; dks izLrqr djus okys ;kfpdk drkZvksa dks ;g NwV nh xbZ gS fd ;fn os O;fDr fu;eksa esa fu/kkZfjr izf"k{k.k ?ch-,l-Vh-lh-? fu.kZ; ikfjr gksus ls 3 o"kZ dh vof/k esa izkIr dj v/;kid in gsrq vkosnu izLrqr djsa] rks bUgsa vuqHko dh vof/k cjkcy vk;q lhek esa NwV nh tkosa!

ekuuh; lokZsPp U;k;ky; esa ,dy ihB }kjk ikfjr fu.kZ; fnukad 12-1-90 ,oa [k.MihB }kjk ikfjr fu.kZ; fnukad 12-9-90 dks fujLr djrs gq, leLr ;kfpdkvksa dks fuf.kZr fd;k gSA

ekuuh; lokZsPp U;k;ky; }kjk ikfjr fu.kZ; fnukad 16-11-93 dh izfr layXu dj funsZ"k fn, tkrs gSa fd ,u-Vh-lh- /kkjh v/;kid iapk;r lfefr;ksa }kjk lapkfyr fo|ky;ksa esa i<+kus ;ksX; ugha gSA vr% fofHkUu iapk;r lfefr;ksa esa dk;Zjr m|ksx fo"k; esa izf"k{k.k izkIr v/;kidksa dh fu;ekuqlkj lsok,a lekIr djus dh dk;Zokgh djsa tks vp;fur gS vFkok 6-1-85 ds ckn ftyk LFkkiuk lfefr ls p;fur gSa! lsok lekIr vkns"kkksa esa loksZPp U;k;ky; }kjk ikfjr fu.kZ; fnukad 16-11-93 dk mYys[k fd;k tkosa! Ikyuk u djus okys vf/kdkjh futh :i ls ftEesokj gksaxs] vr% ftyk ifj"kn ds eq[; dk;Zdkjh vf/kdkjh futh Lrj ij ikyuk lqfuf"pr djok,saA

g-&

?th-,l-ujokuh?

funs"kd ,oa fof"k"V "kklu lfpo] jktLFkku] t;iqj

3. At the time of admission of the writ petitions the learned Counsel for the respondent was directed to apprise the Court on the following points:

(1) It has been submitted by the learned Counsel for the petitioner that the petitioners are permanent employees and the procedure for termination of services in accordance with the rules has not been followed. The learned Counsel for the respondent shall inform the correct factual position on this point.

(2) The learned Counsel for the respondent shall also inform the Syllabus of N.T.C./STC/Craft Teacher, to show that there is a difference between the subjects of STC and Craft TEacher than BSTC.

(3) The learned Counsel for the respondent shall also submit as to how the STC Course/Craft Teacher Course is equivalent to NTC, on which the Judgment of the Apex Court and the Full Bench decision of this Court, is based.

(4) The learned Counsel for the respondent shall also take appropriate instructions and would call the Deputy Secretary and the Director, as to in what manner the relaxation or other benefits to the present employees can be given, even if they are not eligible for appointment as a IIIrd Grade Teacher.

4. A circular was issued on 24.11.1982 by the Special Officer (Education) Government of Rajasthan addressed to the Director Primary and Secondary Education, to the effect that the Education Department has started special courses for teaching minority language, Sanskrit, "Udyog (Craft) and pre-primary education from the session of 1982-83. The copy of the circular is as under:

****jktLFkku ljdkj ****

dzekad% i- 12?5? f"k{k&1@82@ fnukad 24 uoEcj] 1982 funs"kd]

izkFkfed ,oa ek;/fed f"k{k]

jktLFkku] chdkusjA

fo"k;% nks o"khZ; laLFkx ,l-Vh-lh- ds fof"k"V ikB;dzeksa dks fu;qfDr gsrq ik=rkA

egksn;]

mDr fo"k; ds laca/k esa ys[k gS fd f"k{k foHkkx ds l= 1982&83 ls ,l-Vh-lh- dk nks o"khZ; laLFkx ikB~;dze izkjEHk fd;k gSA blesa vYiHkk"kk] lad`r] m|ksx o iwoZ izkFkfed ds v;/kidksa ds izf"k{k.k ds fy, fof"k"B ikB~;dze Lohd`r fd, gS! bl fof"k"B ikB~;dzeksa dk izf"k{k.k f}rh; o"kZ esa gksxk rFkk izFke o"kZ esa bu pkjksa fo|ky;ksa esa d{k 1 ls 5 rd ds lkekU; f"k{k izf"k{k.k gh fn, tkus dh O;oLFkk dh xbZ gSA l= 1982&83 esa bu fof"k"B ,l-Vh-lh- ikB;dzeksa esa izos"k ysus okys izf"k{k.kkfFkZ;ksa dks Li"V ugha gS fd bl f}o"khZ; izf"k{k.k esa mRrhZ.k gksus ds i"pkr mUgSa fu;qfDr gsrq fdu inksa ds fy, ik= ekuk tkosxA

bl laca/k esa funsZ"kkuqlkj ;g Li"V fd;k tkrk gS fd bu pkjksa fof"k"B ,l-Vh-lh- ikB;dzeksa ds nks o"khZ; laLFkx ikB;dzeksa esa mRrhZ.k gksus okys

izf"k{k.kkfFkZ;ksa dks jkt dh;@iapk;r lfe fr o vU; ekU;rk izkIr izkFkfed fo|ky;ksa
esa r`rh; osru J`a[kyk ds lkekU; v/;kid ds :i esa fu;qfDr gsrq ik= ekus tkosaxsA
bu izf"k{k.kkfFkZ;ksa dks vYi Hkk"kk laLd`r] m|ksx o iwoZ izkFkfed ds r`rh;
osru J`a[kyk ds inksa ij fu;qfDr gsrq izkFkferk nh tkosxhA

Hkonh;

?eueksgu vxzoky?

fo"ks"kkf/kdkjh f"k{k

izfrfyfi fuEukafr dks lwpukFkZ ,oa vko";d dk;Zokgh gsrq izsf"kr gS%

1- iz/kkukpk;Z] jkt dh; f"k{k kd izf"k{k.k ?vYiHkk"kk? fo|ky;] vtesjA

2- iz/kkukpk;Z] jkt dh; f"k{k kd izf"k{k.k ?laLd`r? fo|ky;] egkiqjk] t;iqjA

3- iz/kkukpk;Z] jkt dh; f"k{k kd izf"k{k.k ?m|ksx? fo|ky;] ij"kqjke] }kjk t;iqjA

4- iz/kkukpk;Z] jkt dh; f"k{k kd izf"k{k.k ?iwoZ izkFkfed? fo|ky;] ?lsUV vkQ
dkfLed ,T;wds"ku? jktynslj] ftyk&pq:A

Hkonh;

?eueksgu vxzoky?

fo"ks"kkf/kdkjh f"k{k

5. The teachers who have complete two years service were confirmed and their services were regularised by the Zila Parishad in accordance with Rule-27-A of the Rajasthan Zila Parishad and Panchyat Samiti Service Rules, 1969.

6. The Educational qualification require for appointment of Teacher Grade-III in the Primary Schools in accordance with the Rajasthan Education Subordinate Services, which is governed by Rajasthan Education Subordinate Service Rules, 1971, according to which the candidate should be Secondary with Basic School Training Certificate (BSTC) or a training qualification recognised as equivalent to BSTC, by a State Government.

7. The first order which was issued in this regard was dated 11.12.1974 by which the State Government recognised the Certificates of Industrial Examination of the Rajasthan Government as equivalent to the Art and Handicraft Examinations of Vidyabhawan Kala Sansthan Udaipur. A circular was issued by the Director-Cum-Special Secretary, Government of Rajasthan, Rural Development and Panchayati Raj Department on 6th August 1984, in which the order dated 11.12.74 was referred and it was stated that the Handi-Craft Diploma Certificates of Vidya Bhawan Handicraft Institute, Udaipur, was recognised equivalent to BSTC by the Education Department since the commencement of the training by the Government.

8. In the case of State of Rajasthan Vs. Shri Shyam Lal Joshi and others, the Apex Court considered the eligibility of candidates having National Trade

Certificate for appointment of Primary School Teacher. A distinction was drawn between the General Teacher and Craft Teacher. It was held that the holders of N.T.C, are eligible for appointment to the post of Craft Teacher in the craft for which they hold the N.T.C., and, they can be appointed as General Teacher, only after they have secured the prescribed training qualification under the relevant rules.

9. The Apex Court has taken into consideration the two years training course of BSTC having following subjects:

IST YEAR

A. Principles of Education and Education in Modern India

B. Educational Psychology

C. Optional Subjects (One of the following)

(i) Pre-Primary School Education Training

(ii) Population Education Teaching

(iii) Unformal Education and Adult Education.

(iv) Education for Children of Special Category.

D. Mother Tongue - Hindi, Urdu, Sindhi, Gujarati, Punjabi

E. Mathematics - Subject matter and teaching methodology.

F. Environmental Study and teaching methodology.

G. Health Education and Physical Education.

H. School Utility and Productive Works/Work experience and Social Service - Subject matter and teaching methodology.

PRACTICAL PAPERS:

A. Physical Education.

B. Social Utility and Productive Works

C. Art Education

D. Moral Education

IIIND YEAR

A. School (Institution) Administration and Health Education

B. Mother Tongue - Subject matter and teaching methodology (Hindi, Urdu, Sindhi, Gujarati, Punjabi)

C. English - Subject matter and teaching methodology

- D. Third Language - Subject matter teaching methodology (Sanskrit, Urdu, Gujarati, Punjabi)
- E. Mathematics - Subject matter and teaching methodology
- F. Social Science - Subject matter and teaching methodology
- G. Science - Subject matter and teaching methodology.
- H. Art - Subject matter and teaching methodology.
- I. Practical exercise teaching planning (IIInd Year)

PRACTICAL PAPERS

- A. Physical Education
- B. Social Utility and productive Work
- C. Art Education
- D. Moral Education.

10. The Full Bench of this Court in a reference arising out of S.B. Civil Writ Petition No. 1287/92 in the case of Ram Chandra Swami card Ors. v. State of Rajasthan has observed in its order dated 27.4.93 that the Course was earlier known as Basic School Trailing Certificate Course (BSTC) and also as School Training Certificate (STC) Course. Now it is known as Shikshak Prashikshan Pariksha ?f"k{k d izf"k{k.k ijh{k{k?. The various courses of trades which are conducted by State Council for Vocational Training are known as State Trade Certificate (STC)/National Trade Certificate (NTC) Course.

11. Another circular was issued by the Gramin Vikas Avam Panchayati Raj Vibhag on 10th August, 1987, wherein the training by the Rajkiya Udyog Prashikshalaya Parashuramdwar Jaipur and Vidyabhawan Kala Sansthan Udaipur, of two years was considered equivalent to BSTC for appointment of teachers in Panchayat Samiti. This circular was withdrawn on 30th October, '92.

12. It has been submitted on behalf of the petitioner that the services have been terminated without giving any opportunity or notice for hearing, as to whether the petitioners are trained or not. Reliance has been placed on the decision of Patna High Court in the case of Arya Chandra Kumar v. The State (Patna) (1973(1) SLR 744) wherein the candidate was appointed as a teacher and appointment order was issued, but before he could join the service, the said order of the Government was cancelled on the ground that the petitioner was not fully trained. It was observed by the High Court that candidate should have been given an opportunity to explain, as to whether he was trained or not. It is submitted that the teachers have been appointed by the Panchayat Samiti, are Government Servants, as has been held by the Apex Court in the case of State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others, A strees has been laid on the Rule of Audi Alteram Partem, which form part of Article-14 of

the Constitution and a requirement of natural justice. The termination of the services on the basis of the circular, without giving any opportunity of hearing is alleged to be effecting the right guaranteed under the Constitution. It is submitted that Article-21 guarantees a right to live which includes the right to livelihood, the deprivation thereof could be in accordance with the procedure prescribed by law conformable to the mandate of Article 14 & 21.

13. The decision of the Apex Court in the case of Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, wherein it was observed,

a permanent employee of a statutory authority, corporation or instrumentality under Article 12 has a lien on the post till he attains superannuation or is compulsorily retired or service is duly terminated in accordance with the procedure established by law. Security of tenure ensures the benefit of pension or retirement. Dismissal, removal or termination of his/her service for inefficiency, corruption or other misconduct is by way of penalty. He/she has a right to security of tenure which is essential to inculcate a sense of belonging to the service or organisation and involvement for maximum production or efficient service. It is also a valuable right which is to be put to an end only as per valid law.

The haunting fear of dismissal from service at the vagary of the concerned officer would dry up all springs of idealism of the employee and in the process coarsen the conscience and degrade his spirit. The nobler impulses of mind and the higher values of life would not co-exist with fear. When fear haunts a man, happiness vanishes. Where fear is, justice can not be, where fear is, freedom can not be. There is always a craving in the human heart for satisfaction of the needs of the spirit, by ascertaining by certain freedom for some basic values without which life is not worth living. It is only when the satisfaction of the physical needs and the demands of the spirit co-exists, there will be true efflorescence of the human personality and the free exercise of individual faculties. Therefore, when the Constitution assures dignity of the individual and the right to livelihood the exercise of the power by the executive should be cushioned with adequate safeguards for the rights of the employees against any arbitrary and capricious use of those powers.

The nature and content of the protection of the fundamental rights is measured not by the operation of the State action upon the rights of the individual but by its objects. The validity of the State action must be adjudged in the light of its operation upon the rights of the individuals or groups of the individual in all their dimensions. It is not the object of the authority making the law impairing the right of the citizen nor the form of action taken that determines the protection he can claim; it is the effect of the law and of the action upon the right which attracts the jurisdiction of the court to grant relief. In *Minerva Mills Ltd. v. Union of India* the fundamental rights and directive principles are held to be the conscience of the Constitution and disregard of either would upset the equilibrium built up therein. In *Mrs. Maneka Gandhi Vs. Union of India (UOI)* and *Another*, , it was

held that different articles in the Chapter of fundamental rights of the Constitution must be read as an integral whole, with possible overlapping of the subject matter of what is sought to be protected by its various provisions particularly by articles relating to fundamental rights contained in Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at many points. They are all parts of an integrated scheme in the Constitution. Their waters must mix to constitute that grand flow of unimpeded and impartial justice; social, economic and political, and of equality of status and opportunity which imply absence of unreasonable or unfair discrimination between individuals or groups or classes. The fundamental rights protected by Part III of the constitution, out of which Articles 14, 19 and 21 are the most frequently invoked to test the validity of executive as well as legislative actions when these actions are subjected to judicial scrutiny. Fundamental rights are necessary means to develop one's own personality and to carve out one's own life in the manner one likes best, subject to reasonable restrictions imposed in the paramount interest of the society and to a just, fair and reasonable procedure. The effect of restriction or deprivation and not of the form adopted to deprive the right is the conclusive test. It is already seen that the right to a public employment is a constitutional right under Article 16(1). All matters relating to employment include the right to continue in service till the employee reaches superannuation or his service is duly terminated in accordance with just, fair and reasonable procedure prescribed under the provisions of the Constitution or the rules made under proviso to Article 309 of the Constitution or the statutory provision or the rules, regulations or instructions having statutory force made thereunder. But the relevant provisions must be conformable to the rights guaranteed in parts III and IV of the Constitution. Article 21 guarantees the right to live which includes right to livelihood, to a man the assured tenure of service is the source, the deprivation thereof must be in accordance with the procedure prescribed by law conformable to the mandates of Articles 14 and 21 as be fair, just and reasonable but not fanciful, oppressive or at vagary. The need for the fairness, justness or reasonableness of the procedure was elaborately considered in Maneka Gandhi Case and it hardly needs reiteration.

Thus it could be held that Article 14 read with Article 16(1) accords right to an equality or an equal treatment consistent with the principles of natural justice. Any law made or action taken by the employer, corporate statutory or instrumentality under Article 12 must act fairly, justly and reasonably. Right to fair treatment is an essential ingredient of natural justice. Exercise of unbridled and uncanalised discretionary power impinges upon the right of the citizen vesting of discretion is no wrong provided it is exercised purposively judiciously and without prejudice. Wider the discretion, the greater the chances of abuse. Absolute discretion is destructive of freedom more than of man's other inventions. Absolute discretion marks the beginning of the end of the liberty. The conferment of absolute power to dismiss a permanent employee is antithesis to justness or fair treatment. The exercise of discretionary power wide of the mark would breed

arbitrary, unreasonable or unfair actions and would not be consistent with reason and justice. The provisions of a statute, regulations or rules that empower an employer or the management to dismiss, remove or reduce in rank of an employee. Must be consistent with just, reasonable and fair procedure. It would further, be held that right to public employment which includes right to continued public employment till the employee is superannuated as per rules or compulsorily retired or duly terminated in accordance with the procedure established by law is an integral part of right to livelihood which in turn is an integral facet of right to life assured by Article 21 of the Constitution. Any procedure prescribed to deprive such a right to livelihood or continued employment must be just, fair and reasonable procedure. In other words an employee in a public employment also must not be arbitrarily unjustly and unreasonably by deprived of his/her livelihood which is ensured in continued employment till it is terminated in accordance with just, fair and reasonable procedure. Otherwise any law or rule in violation thereof is void.

14. The decision of Nand Lal Etc. v. State of Rajasthan (1988 (2) RLR 738) has also been relied on the proposition that, even if the order of appointment is illegal or void in law still before termination of services an opportunity of being heard should be given to an employee.

15. Mr. Rastogi, on behalf of the petitioner, has also relied on the decision of Medical Council of India v. Sila Nelson and Ors. (JT 1993 (3) SC 355) that the question of equivalence of courses, can be decided by an expert body, and not by the High Court. Therefore the expert body alone should be constitute to find out as to whether the training given by the two institution is equivalent to BST Course or not.

16. It is also submitted that the topics which being taught may differ but the subjects are the same. The teachers are the member of the services and are governed by the Rules of 1959, and they have rendered long services, and, therefore the experience gained itself entitles them continuing in the services. The termination of the services is against principles of natural justice.

17. The decision of D.K. Yadav Vs. J.M.A. Industries Ltd., has also been relied to point out that the opportunity of hearing has to be given before termination of services, which is itself in violation of principles of natural justice. The procedure prescribed for deprivation of livelihood must be answered by the requirement of Article-14.

18. It has been submitted by Mr. S.K. Beniwal, that the Panchayat Samiti, are running the schools having School-Class upto Vth standard and the difference between the Syllabus of Parashramdwara and BSTC Course is that the subject of English and Sanskrit are not taught in Parashramdwara. Requisite qualification have to be examined at the time of initial entry into services, and now, after such long time when they were successfully teaching students, it can not be said that the teachers are un-trained. The services can not be terminated. In any case the

teachers have acquired sufficient experience from their field and that the recognition which has been withdrawn can not be retrospective in effect. The respondents are estopped now to raise the said plea.

19. Mr. Man Singh submitted that the Government Teachers Training Course is run by the Government. The examination is also conducted by the Government. It is submitted that the circular dated 24.11.82, 10.8.87 and 28th September, 1981 have given the recognition for appointment of Teacher Grade-III. A policy decision has been taken by the Government on 12.3.94, wherein the services of un-trained teachers were not to be terminated and it was required that such teachers should have the training through correspondence course, for which a circular was issued on 6.1.93. It is submitted that nothing was concealed at the time of joining services and therefore, the candidates, can not be punished for no fault of theirs. He has referred to the Educational Policy and stated that the object of pre-independence was to manufacture the clerks. It is submitted that the education is state subject and the Central Policy can not be applied. The decision of Ashok Chand Singhvi Vs. University of Jodhpur and Others, and Rajendra Prasad Mathur Ors. Vs. Karnataka University and Another, has been relied upon. It is also submitted that even the appointment was not proper the appointee should be continued on humanitarian ground as was directed by the Apex Court In the Case of H.C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others, The respondent who have given the order of appointment can not allege that it was illegal and on that ground they can not terminate the services. The de- recognition could be only prospective. Assistance have also sought from Section-6 of the General Clauses Act, 1987. It Is also submitted that the Special Secretary to Government and Director Gramin Vikas & Panchayati Raj have no jurisdiction to withdraw the recognition which was granted by the General Administration Department of the Government, and the said order is contrary to Article-166 of the Constitution of India.

20. Mr. Soni, has elaborately explained the syllabus of the two Courses and submitted that the matter before the High Court Is with regard to NTC which Is one year course and not of STC which is two year's course. The candidates who are working since last 5 to 10 years, their services can not be terminated. Subsequent de-recognition can not affect the initial appointment and for that reliance has been placed on the decision of Suresh Pal and Others Vs. State of Haryana and Others, the procedure for terminating the confirmed and regular employees Is said to be contrary to the provisions of Article-311 of the Constitution and the decision of the Apex Court in the case of Leeladhar v. State of Rajasthan (AIR 1991 SC 1777) has also been relied.

21. Mr. Asopa, submitted that the circular dated 7.4.94 is not applicable, because, the said circular refers only to the teachers having N.T.C. Certificate. It is also submitted that the procedure for the termination of the services of the employees have not been followed. No opportunity has been given to them to

say that there is a discrimination in choosing the date as 6.11.1985. The respondents are bound by the Doctrine of Promissory Estoppel, as in most of the cases the appointment was given by them without the order of the Court, in respect of the candidates selected, and, that the circular issued could only be prospective and could not effect the right of those candidates, who have already been confirmed and were selected by due process of law. The teachers have obtained the experience from 5 to 8 years has also not taken into consideration. The termination of the services proposed is not justified.

22. Mr. Alok Sharma, appears on behalf of the petitioner submitted that, it is a case of non-application of mind, because the decision refers to is in respect of N.T.C. candidates; whereas now the services sought to be terminated is not of N.T.C. candidates, but, is of S.T.C. candidates, and even the candidates who had B.Ed degree, their services have also been dispensed with. It is submitted that the State should formulate the policy which should have been incorporated in law and for that action should have been taken. The respondent are estopped on the Doctrine of Promissory Estoppel.

23. Mr. Hanuman Chaudhary, submitted that the teachers whose services now is sought to be terminated are more qualified and therefore, they stands at a better footing, because, beside the subjects which are taught in BSTC, they have been given additional training of Craft, which could not be the dis-qualification and should rather be an additional qualification.

24. Mr. R.K. Mathur, submitted that, there is no decision at the highest level to terminate the services of the teachers, and the object should have been job oriented rather than terminating the services of those teachers who have already rendered 6 to 7 years of successful teaching. The presumption u/s 115 of the Evidence Act should also be drawn in favour of the teachers.

25. On behalf of the respondent, Mr. Gupta submitted that the appointments were illegal abinitio and therefore, the services have to be terminated. It is submitted that since the earlier circular was quashed by Rajasthan High Court and the Judgment of the High Court has been reversed by the Apex Court, therefore action has been taken now to terminate the services of such teachers, who were appointed on the basis of the earlier order of the High Court, considering the STC Certificate given by Vidhya Bhawan Kala Sansthan and Parasamdwara, equivalent to S.T.C. It is submitted that the name of the subjects in these two institution may be similar, but, the education and training is different. Even in the case of Parasramdwara the learned Counsel for the petitioner admitted that two of the subjects have not been taught and the chart which has been submitted now for Vidhyabhawan clearly shows that, neither the subjects nor the topics tallies.

26. Mr. S.B. Mathur, referred to the various paras of the decision of the larger bench given in the case of Ram Chandra Swami, and has submitted that in accordance with the said decision, it can not be considered that the candidates

who have obtained the training from Parasramdwara or Vidhya Bhawan, are trained teachers. Mr. K.N. Gupta has submitted that the circular which was given for recognition of Parasramdwara was by the Deputy Director who has not authorised, and the subjects in accordance with the chart submitted of BSTC and STC Certificate given by Parasramdwara and Vidyabhawan differs and the subjects are missing.

27. Mr. Chirania, on behalf of the respondent have referred to the judgment of the Apex Court and have submitted that only age could be relaxed in accordance with the Judgment given in the Shyam Lal Joshi's case, and no other benefit could be given to them.

28. I have considered over the matter. The teachers who are given the training to the primary students are laying down the foundation stone of the country. The building of character, personality and development of the psychology, aptitude, in which at the initial stage is not only for the welfare of the child, but, for the country as a whole, as what is being taught at that stage, is the dream of future. It is for this reason alone that, even the Apex Court has clearly observed that the un-trained teacher can not be the substitute for the trained teacher. In order to find out as to whether the subjects, topics and syllabus of BSTC and Parasuramdware and Vidyabhawan is the same, the chart has been submitted but, on the basis of the chart furnished no finding can be given. As a matter of fact in respect of any academic qualification and equivalence thereof, the expert-body alone could come to a conclusion, as to whether the training imparted in these two institutions namely; Vidya Bhawan and Parasuramdware is equivalent to BSTC or not. The National Policy of education can only give the guide-lines and have not encroached on the legislative field of the State Legislature. The subject and syllabus required for BSTC is not in dispute. Therefore, on the basis of this syllabus and subjects and topics, it is necessary that an expert-body should compare the education imparted from 1985 till date by these two institutions, namely Vidya Bhawan and Parasuramdware, and should compare it with the BSTC Course. Apparently the certificate issued by Vidya Bhawan and Parasuramdware can not be considered to be equivalent to BSTC as the Parasuramdware Institute was run by the Government and they could have easily confirmed the education in that institute recognising it equivalent to BSTC. Both these institutions are informed to have been closed around 1990-91. Therefore, it can not be said that the candidates having the certificate from these two institutions could be considered as equivalent to BSTC. The Director State Institute of Educational Research and Training, Udaipur (SIERT) is a special body which can consider the syllabus and course of BSTC, and these two institutions. The exercise should be completed within a period of one month from today. Information from these two institutions may also be called for if necessary. If the SIERT of the opinion that the training imparted by these institutions is equivalent to BSTC; then the services of the petitioner shall not be terminated. If in both of the cases or in any one of them, it is found that the training imparted is different than BSTC Course, the respondent would be free to proceed in accordance with

law. The candidates having the Certificate in Craft are not eligible, for giving teaching in general subjects. The case of N.T.C., candidates stands on a different footing, because the National Trade Certificate which is issued is only in Craft. So is the position of State Trading Certificate, which is issued by the Government in Craft. The Certificate which has been awarded by Parasuramdwar or Vidyabhawan is said to be School Training Certificate which is alleged to be equivalent to Shikshak Prashikshan Pariksha or not, or is equivalent to the Trading Certificates which are granted by the State Council for Vocational Training or National Council for, Vocational Training is therefore to be determined with reference to the subject taught.

29. The next question which arise, as to whether the services of these confirmed teachers could be terminated by issue of such a circular. I am of the view that the services of a confirmed employee can not be terminated by issue of any circular in the manner as has been done in this case. The minimum requirement of Article-14 of the Constitution of India read with Article-16 of the Constitution of India, was to give a reasonable opportunity of being heard before the services are terminated. The decision of the Apex Court in the case of Delhi Transport Corporation referred to above has settled the law on this point. The requirement of principles of natural justice as well as equity and fair play is that before terminating the services, a permanent employee must be given an opportunity of being heard. No fraud have been played by them. May be that the appointment was given on account of the Judgment of this Court, which has subsequently been reversed by the Apex Court, but, even in that case the petitioners can not be said to be at fault. It has been pointed out that number of the candidates who are having the B.Ed Certificate, their services have also been terminated. If any candidate who has acquired the B.Ed qualification after obtaining the due permission from the respondent, the services of such a candidate can not be terminated. Therefore, there may be such other similar reasons which a candidate may like to explain when a notice is being given. In these circumstances, it is directed that, in case any candidate who is having B.Ed. qualification before appointment as Teacher Grade-III or who has acquired the said qualification after due permission of the respondent, the services of such candidate shall not be terminated. To the rest of the candidates, the respondent could serve a notice before termination of the services and after considering the reply to that may proceed in accordance with law. Any order of termination if already passed will be considered non-est.

30. So far as the objections with regard to the Doctrine of Promissory Estoppel is concerned; it can not be invoked in the present case, because, the appointments have been given in view of the Judgment of this Court and, not on the basis of any assurance or promise given by the respondent. In case the SIERT comes to the conclusion that the education imparted by Vidyabhawan and Parasuramdwar is lacking from that, which is required for trained teacher, a condensed/abridged course shall be proposed by the SIERT, which should be of six months training. The candidates who are not trained teacher in view of the SIERT will be required

to undergo such training. On successful completion of the training the said teacher would be considered equivalent to BSTC and appropriate orders would be passed by the Director Primary and Secondary Education to consider such teachers as trained teacher. The candidate would be informed of the institution from-where they will obtain the training. The training would be given on the basis of the seniority of these candidates. Even after giving the opportunity the services of any candidate is terminated as discussed above, then the said candidate after obtaining the training shall be taken-back in service and the period during which the services remain terminated including the period of training shall be considered as extra ordinary leave which the respondent would grant to them. There would be no age restriction or bar in the way of such candidates. The training has to be obtained by all the candidates within a maximum period of three years as directed by the Apex Court in the case of State of Rajasthan v. Shri Shyamlal Joshi (Civil Appeal No. 7031/93) decided on 16.11.1993. All the writ petitions are disposed of accordingly.