

(2010) 08 RAJ CK 0074
In the Rajasthan High Court

Mooli Devi Choudhary and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 15(3), 21, 21A
Rajasthan (Regulation of Appointments to Public Services and Rationalisation of Staff) Act, 1999 — Section 10, 2, 29, 4, 6
Rajasthan High Court of Judicature Rules, 1952 — Rule 277A, 375, 375(4)
Rajasthan Panchayati Raj Act, 1994 — Section 89

Citation : (2010) 4 RLW 3714

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—Xkq:H;ks ue% "Salute the Teachers", used to be Indian ethos and culture in olden times. Sounds hollow now? Yes ! If the controversy thrown up for consideration in the present set of cases raised by impugned action of ? State? is to be taken as a prism or audio meter to look or chant again the aforesaid beautiful Sanskrit Shlok.

2. ?Sarva Shiksha Abhiyan?, S.S.A. an ambitious and flagship Project launched by the Government of India for achievement of Universalization of Elementary Education (UEE) within the time frame as mandated by the 86th Amendment to the Constitution making free and compulsory education to the children of 6-14 years of age group a fundamental right under the Constitution of India. The said Project SSA is being implemented in partnership with the State Governments of the Country to address the need of about 192 million children and the programme seeks to open new schools for those habitants, who do not have school facilities and strengthen the present school system through provisions of rooms, toilets, drinking water, maintenance, improvement in the existing schools with inadequate teacher strength are to be provided with additional teachers adding capacity to the existing teachers and the capacity of teaching method is

being strengthened by extensive training. The said Project of SSA seeks to provide quality elementary education with special focus to girls education and children with special needs.

3. "Kastoorba Gandhi Balika Vidhyalaya" (KGBV for short) is a Scheme launched in July 2004 for setting up residential schools at Upper Primary School for girls belonging predominantly to the Scheduled Caste, Scheduled Tribe, OBC and minority communities. The Scheme is being implemented in educationally backward blocks of the Country where the female rural literacy is below the national average and gender gap in literacy is above the national average. The Scheme provides for minimum reservation of 75% of the seats for girls belonging to Scheduled Caste and Scheduled Tribes, OBCs and Minority Communities and priority for the remaining 25% is accorded to girls from families below poverty line. The said Scheme is being implemented by the funds provided by the Government of India in 27 States and Union Territories of the Country and Rajasthan is one of them. The said KGBV Scheme was merged with the SSA under the 11th Plan.

4. The petitioners in the batch of writ petitions, vide details given in the Schedule, and large number of them in joint writ petitions before this Court are the teachers, who were appointed as such under fixed term contract of service through private placement agencies on various dates in the year 2007 to 2010 and these teachers have approached this Court against the threatened termination of their contract of service, though the Project of SSA including KGBV continues, because of change of placement agencies to be appointed by the respondent State Government, who are so appointed after inviting tenders on yearly basis.

5. These petitioner-teachers, who have worked as teachers in the said Project of SSA for one year or more either appointed through the same placement agency or if they were lucky enough even through the second placement agency, which got such contract in the next year, thus some of the petitioners have even continued for more than two years in such service and now again with the fresh tenders invited to change the placement agency, the petitioners apprehending their termination of service by the previous placement agency have filed the present writ petitions.

6. Reply to the writ petitions have also been filed in some of the petitions and some contempt petitions have also been filed by some of the petitioners against the alleged violation of interim protection order granted to some of the petitioners by this Court against their apprehended termination from service and by this common order the Court proposes to dispose of these writ petitions as well as contempt petitions.

7. The arguments were heard at length on both the sides and counsels were also permitted to file written arguments and supply case laws relied upon by them, which they have done and such written arguments and case laws have been

considered by this Court.

Facts of the Case

8. The facts of lead case SBCWP No. 6568/2010 (Mooli Devi Choudhary and Ors. v. State of Rajasthan and Ors.) are briefly discussed for ready reference.

9. The petitioners in the said writ petition have stated in para 3 of the writ petition that they are aggrieved of the action of respondents, whereby, every now and then, the placement agencies are changed, whereas, instead of such contractual appointments there should have been a regular process of selection of teachers since the programme of education under the SSA is a continuing education programme and cannot be said to be a fixed term Project. The petitioners further stated in said para that initially from 1.4.2007 to 31/3/2009 the placement agency M/s Maa Vaishnav Devi Security Services was so appointed, whereas, from 1.4.2010 till September 2010 M/s Rajasthan Rojgar Paramarsh Centre, Sirohi was appointed as placement agency, which even made payment to the petitioners of the fixed honorarium from July 2009 till September, 2009. The grievance of the petitioners is that every time new placement agency is appointed by the State Government upon tenders being issued and such placement agency issued fresh advertisement inviting applications from the aspirants seeking appointment as teachers and petitioners have to again compete every year with the candidates seeking such appointments and this process has not only made their appointment for fixed terms an ever hanging Damocles' sword on their head with no assurance of continuity of employment and is also hoax and fraud played by the respondent State on the said prestigious Project SSA itself because the need of continuity of teachers in the Programme cannot be over emphasized and the experience gained by such petitioner-teachers in a year or two goes wastes if such petitioner-teachers are not reappointed by the new placement agency for whatever reason and the new incumbents who are so appointed again have to undergo fresh training & experience and in the process the entire education system created for poor children is bound to suffer serious setback and the very mandate of Constitutional guarantee of education to the younger generation of the Country is bound to suffer, if this process of employment through private placement agency is to be continued.

Contentions on Behalf of Petitioners

10. Mr. R.S. Saluja and other learned Counsels for the petitioners relied upon various judgments of Supreme Court and this Court and vehemently submitted that the practice of providing appointment to the teachers like the present petitioners through private placement agencies is itself a practice which deserves to be deprecated and quashed since there are no guidelines or Rules framed either by the Central Government or the State Government as to on what criteria or basis such placement agencies would be selected. They urged that giving such appointment through private placement agencies is not only abrogation or

delegation of sovereign function of the State but in the absence of any experience with the ever changing placement agencies, entire selection process of such teachers is rendered totally arbitrary and at the mercy of such private placement agencies. They urged that there is no guideline from the State Government in this regard and persons so selecting and appointing teachers themselves may be highly uneducated and inexperienced persons as there are no requirement laid down for the persons so making selection of the teachers that they should possess any minimum qualification like Graduation etc., nor any Govt. officials have any role to play in the selection process of the teachers and thus it is clearly at the mercy of the placement agency where large scale corrupt activities also cannot be ruled out in such process of mass employment being provided through the medium of private placement agencies.

11. Learned Counsels for the petitioners also drew the attention of the Court towards the Notice Inviting Tender No. 2/2010 dated 10/5/2010 issued by the office of the District Coordinator, SSA, Jodhpur inviting tenders from the registered placement agencies for giving contract to them for employing persons for 149 posts for the work of teachers, Computer Operators, LDCs, Cooks, Helpers, Chowkidars and Assistants etc. for a contract worth Rs. 95 lacs to be given by the State Government to such successful bidder placement agency. Another order Annex.4 dated 11/5/2010 issued by the Commissioner of SSA, Shiksha Sankul, Jaipur in which the guidelines for deciding the eligibility of the teachers to be appointed by such placement agencies for the academic session 2010-11 were laid down by the said Commissioner of SSA which gives the outline for educational qualification required for the post of Warden teachers, work experience, nature of work for full time residential Wardens in such school/hostel for girls and monthly honorarium payable to the extent of Rs. 9000/- to be employed by such placement agencies. Likewise, educational qualification for other posts are also narrated in the said order of Commissioner.

12. Learned Counsels for the petitioners also submitted that the said guidelines in the order dated 11/5/2010 of the Commissioner also laid down the Calender or time schedule to be adopted by the placement agencies so that such teachers appointed by them can start new session from July 2010 and certain guidelines for marks to be awarded by the placement agencies for preparing the merit of candidates seeking such appointment were also laid down in the said order Annex.4 dated 11/5/2010. From the perusal of the said part of the order dated 11/5/2010, it appears that while 90% marks were allocated for educational qualification of the candidates, 10 % marks only were allocated for the previous experience in the KGBV for such teachers. For 10th Class passed candidates 10 marks are allocated, for 12th class passed candidates 15 marks are allocated, for Graduate candidates 25 marks, for Post Graduate 10 marks, for B.Ed. Candidates 20 marks and for BSTC course 10 marks. Thus, for different stages of qualifications, separate marks were allocated. Further, within the particular qualification, marks were further required to be distributed depending upon the percentage of marks secured by the candidates in such qualification-

examination, for example if 10th class passed candidate had secured 50% marks ? 2 marks for that, if marks were between 51%-60% then 6 marks, for percentage of marks between 60%-75% - 8 marks and above 75% -10 marks. Similarly, for experience in KGBV school, if the concerned candidate has been teaching in the KGBV for full session (Maximum 5 sessions) then 2 marks, if experience is of six months or more then 01 mark and if experience is of three to six months then ? mark and for experience for less than three months ? Nil marks.

13. Learned Counsels for the petitioners also drew the attention of the Court towards the terms and conditions of the notice inviting tenders from such placement agencies and condition No. 9 clearly stipulated that for the persons so employed by that placement agency, the placement agency will be responsible for complying with the provisions of Industrial Disputes Act, 1947 and similarly, the placement agency vide condition No. 8 would be also bound to comply with the provisions of Contractual Employment (Prohibition) Act, 1970. Learned Counsels urged that this would amount to teachers so appointed to be treated as industrial workmen which the teachers are simply not and it is also contrary to the Supreme Court decision in the case of Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, in which it was clearly laid down by the Hon"ble Supreme Court that provisions of Industrial Disputes Act, 1947 do not apply to teachers as they cannot be treated as workmen.

14. Learned Counsel for the petitioners also vehemently urged that the provisions of Rajasthan (Regulation of Appointment to Public Services and Rationalization of Staff) Act, 1999 ('RAPSARS Act", for short) clearly prohibits appointment in public service on daily wages and even urgent temporary appointments without the prior permission of the competent authority under the said Act.

15. Drawing the attention of the Court towards the definition of 'daily wages employees" as defined in Section 2(ii) of the said Act and Section 4 containing prohibition against such appointment and regulation of temporary appointment, which provisions are reproduced hereunder for ready reference, learned Counsels argued that the definition of 'daily wages employees" is wide enough to cover even the fixed term contracted teachers employed by the placement agency in the present cases and, therefore, such appointments are hit by the provisions of Section 4 of RAPSARS said Act 1999 and, therefore, cannot be allowed to be made much less they can be encouraged to be so made by the State Government or placement agencies acting at the behest of respondent State.

2(ii) ?daily wage employee? means any person who is employed in any public service on the basis of payment of daily wages and includes a person employed, on the basis of nominal muster roll or consolidated pay either on full time or part time or piece rate basis, or as a workcharged employees, and also includes any other similar category of employees, by whatever designation called, other than, those who are selected and appointed on a sanctioned post in accordance with

the relevant rules on a regular basis.

4. Prohibition of daily wage appointments and regulation of temporary appointments. ? (1) The appointment of any person in any public service to any post, in any class, category or grade as a daily wage employee shall be prohibited.

(2) No urgent temporary appointment shall be made in any public service to any post, in any class, category or grade without the prior permission of the competent authority and such appointments shall also be consistent with such conditions as may be imposed by the competent authority.

16. Thus all employments in public service by whatever name called on a consolidated pay other than on a sanctioned post made on regular basis is prohibited by this Act.

17. The arguments of the learned Counsels for the petitioners can be thus summarized as under:

(a) The petitioners were appointed on the dates mentioned in Schedule of the writ petition between the year 2007 to 2009 & they are continuing from the sessions and the dates specified in the schedule in the SSA project as teachers.

(b) That in the first place, they were appointed by M/s Maa Vaishno Devi Security Services. This agency was then replaced by M/s Rajasthan Rojgar Parmarsh Center, Sirohi and recently this has been replaced by yet another placement agency. Every time, a new placement agency has come. It has subjected the petitioners to a fresh process of selection and granted an appointment. It is submitted that as per own showing of the respondents, there is no employer ? employee relationship between the petitioners and the respondents. The petitioners are appointed by the placement agency, they are being paid through the placement agency, but in the process, after such appointment being granted, the work of the petitioners is rendered the State run schools. They have to work as per the instructions issued from time to time by the authorities of the State. Every time a new placement agency is selected by the State, the petitioners have to face a fresh process of selection. It is submitted that the petitioners who have higher merit are fortunate to be successful every time so far, but the fact remains that there is every likelihood of petitioners being replaced by another set of candidates on any given date and this situation will clearly result in one set of temporary employees being replaced by another. This is hit by Article 14 of the Constitution of India. The reliance in this behalf is being placed on the following decisions:

(i) 2009 WLC (Raj.) UC 498 ? Devendra Kumar & 502 Ors. v. State of Raj. and Ors.

(ii) Sri Rabinarayan Mohapartra Vs. State of Orissa and others,

(iii) 1991 WLR 124

(iv) Bijoe Emmanuel and Others Vs. State of Kerala and Others,

(v) Rattan Lal and Others Vs. State of Haryana and Others,

(vi) (1988) SCC Supp. 428 ? Rajbinder Singh v. State of Punjab and Ors.

(c) That the job of providing appointment to the petitioners could not be given to the placement agencies. It is right from the date, the petitioners have been appointed on the respective dates, the placement agencies have been changed and in the process, the guidelines for appointments have been laid down, but at no stage, any of the petitioners' work has been found to be lacking in any manner. The placement agencies alone have been changed on account of coordination of such placement agencies not being reached with the State or new NITs being issued by the State. Thus, it is due to the fault of the placement agencies and the respondent-State that the petitioners are again and again forced to face a fresh process of selection, although the posts on which they have been appointed are continuing and the work of the petitioners-teachers is perennial and permanent nature, as the SSA project cannot be termed as a fixed term project.

(d) That guideline for selection of the employees are laid down, but there is no guarantee that placement agencies will act in accordance with these guidelines. It is submitted that very simple manner adopted by the placement agencies of ousting the meritorious candidates was seen at Nagaur Center wherein the placement agencies refused to even accept the application forms from the candidates in service. It was only on account of stay being granted by this Court that the placement agencies have ultimately accepted the application forms from such candidates. Thus, in this view of the matter, if at all fair selections are to be made, i.e., possible only when some Government officers are attached with the process of selection.

(e) That so far as placement agencies are concerned, they have no guidelines as to who will be the person, with what qualification, he will be heading the process of selection. At any rate, there is no reason to appoint fresh Class-IV employees like cook and Chokidar etc. every time by a different placement agency. The very concept of entrusting the work to the placement agencies is illegal. It is submitted that through Sarva Siksha Abiyan, the State Government on receiving funds from the Central Government is discharging the duties conferred on it by Article 21A of the Constitution of India. Article 21A of the Constitution of India contemplates that right to education to the children has to be provided in accordance with law as laid down whereas no such law has been enacted so far providing that the source of recruitment for teachers will be the placement agencies. In the submission of the petitioners, the sovereign function is discharged by the State Government while providing right to education and such a sovereign function cannot be alienated or delegated to the private placement agencies.

(f) That at any rate, the concept of providing work to the placement agencies is

prohibited by Rajasthan (Regulation of Appointments to Public Services and Rationalisation of Staff) Act, 1999. Section 4 of the aforesaid Act, as quoted above, provides for prohibition of daily wage appointments and regulation on temporary appointments.

(g) The Sarva Shiksha Abhiyan is a society registered under the Societies Registration Act as per the reply of the respondents. Thus, as per clause 2(v), this is a public service, wherein no daily wage employee could be employed. The term 'daily wage employee' is defined by Sub-section (ii) of Section 2 of the Act of 1999, as quoted above.

(h) That the post of Teacher Grade-III falls within the purview of RPSC in the State of Rajasthan. Thus, the selection has to be made according to Section 7 of the aforesaid Act either by the Public Service Commission or at any rate by the Selection Committee as contemplated by Sub-section (b) of Section 7 in accordance with the orders issued in this behalf. It has not been shown anywhere that such recruitment has been permitted by the State Government to be made through placement agency. Thus, the action providing appointment through placement agency is illegal.

18. Learned Counsels for the petitioners summed up submitting that the petitioners-teachers are to be treated as employees of the placement agencies only even though they work for the SSA Project of the State and State only gives funds to the placement agencies for payment of their salaries but by adopting the indirect and circuitous method of providing employment through placement agencies, State has adopted an unfair labour practice and State somehow wants to keep away the 'burden' of giving continued benefit of service and employment to the teachers by 'disowning' them, as if petitioners-teachers were their 'unwanted babies'. This was a design to avoid payment of other welfare benefits like Provident Fund, Gratuity, Pension etc. & end up by paying only fixed monthly honorarium through private placement agencies and that is why a perennially required & operative Educational Plan like SSA is also deliberately termed as a fixed term project like construction of dam or roads. They submitted that poor petitioners in search of employment for making their both ends meet, have hardly any choice in the matter and are taking up and accepting the employment on such fixed term contracts, whatever is given to them on the thesis of 'beggars cannot be choosers'.

19. But the learned Counsels raised this question, which has moved the conscience of this Court and a deep rooted question arises as to the very justification for existence of these private placement agencies, who will 'employ' these teachers for State SSA Project.

Contentions on Behalf of Respondents

20. Per contra, learned Counsel for the respondents Mr. P.R. Singh & Mr. Hemant Choudhary argued that:

(i) That the `Sarva Shiksha Abhiyan" is a project run by the Rajasthan Council for Elementary Education and the same is registered under the Society Registration Act, 1958. Since the Council is a society, therefore, the same does not come within the ambit of Article 12 of the Constitution of India and as such the writ petitions" deserve to be dismissed on this count alone.

(ii) It is relevant to mention that, this Court way back on 30/7/1997 observed in the case of Babu Lal and Ors. v. State of Rajasthan and Ors. that the writ petition against the Rajasthan Council for Elementary Education is not maintainable. The above said judgment was challenged before the Division Bench of the Hon''ble High Court and the Division Bench of the Hon''ble High Court and the Division Bench vide its order dated 27/8/21998 upheld the judgment dated 30/7/1997 passed by the Single Bench. Another writ petition was preferred by one Zebunissa and the Single Bench of this Court while relying upon the judgment delivered by this Court bearing SBCWP No. 4762/89 decided on 5/5/1993 Kailash Verma and Ors. v. State of Rajasthan which was pertaining to a project known as Shiksha Karmi Board dismissed the writ petition observing there in that the Lok Jumbish Parishad run by the Rajasthan Council for Elementary Education does not fall within the ambit of Article 12 of the Constitution of India. Against the order dated 21/5/1998 the writ petitioner preferred special appeal before the Division Bench of this High Court and the Division Bench while taking the contrary view, allowed the special appeal observing therein that the Lok Jumbish Parishad is a State within the meaning of Article 12 of the Constitution of India. However, the said judgment was challenged before the Hon''ble Supreme Court by the Rajasthan Council of Elementary Education by way of filing Special Leave to Appeal (Civil) CC 8403/2006 and the Hon''ble Supreme Court after having heard the parties stayed the operation of the order dated 24/11/2005 delivered in the case of Zebunissa and as such as on today the order passed by the earlier Division Bench on 27/8/1998 in the case of Jagdish Singh is a good law. Not only this in another case relying upon the judgment delivered by the subsequent Division Bench, the Single Bench of this Court in the case of Mohan Lal and Ors. held that the Sarva Shiksha Abhiyan run by the Rajasthan Council for Elementary Education is a State within the ambit of Article 12 of the Constitution of India vide order dated 28/3/2007 rendered in S.B.Civil Writ Petition No. 4945/2004. The above said judgment was challenged before the Division Bench of this Hon''ble High Court and is still under consideration. However, the Division Bench after having gone through the entire material observing that the objects of the Rajasthan Council for Elementary Education are similar to that of Lok Jumbhish Parishad. The Division Bench more specifically observed that even the elementary education sought to be imparted through the Rajasthan Council of Elementary Education is similar to that of Lok Jumbish Parishad. As such in the light of the averments made hereinabove the present writ petition is not maintainable and therefore deserves to be dismissed.

(iii) That the `Sarva Shiksha Abhiyan" is a project to be continued upto the year 2012 which earlier was supposed to end by the year 2010, however, the

extension has been granted upto the above said period, as such it is abundantly clear that this project is for a limited period. The 'Sarva Shiksha Abhiyan' is of Govt. of India and the State Government funded project with the aim of achievement of universalization of elementary education in a time mandated programme by 86th amendment to the Constitution of India, making available free education to the children of 6-14 years of age group. The Abhiyan is being implemented in partnership with State Government and Union of India and addresses the needs of 192 million children.

Education of girls has been a high priority with the Govt. of India reaching out the girl child, is central to the efforts to universalize elementary education, 'Sarva Shiksha Abhiyan' Programme recognizes that ensuring girls education requires changes not only in the education system but also in societal norms and attitude. A two pronged gender strategy has there for been adopted to make the education system responsive to the needs of the girls through targeted interventions which serves as a full factor to enhance access and retention of girls in school and on the other hand to generate a community demand for girls education through training and mobilizations with a view to achieve this object Scheme of Kasturba Gandhi Balika Vidhyalaya was launched for setting up residential school at Upper Primary Level for girls belonging to down trodden communities.

(iv) That the funding made to the 'Sarva Shiksha Abhiyan' to run the project by the Central Government and the State from the support of various non-governmental agencies or organizations, for example in the District of Tonk and Udaipur non-governmental organization 'Sandhan' five KGBVs are strengthened by the aid received from UNICEF likewise in Alwar District non-governmental organization 'Bodh' is supporting. The UNICEF is supporting the activities convened for girls education and KGBVs and with the help of the same the gender cell has separately been constituted in the Council. Thus, the fund is being provided to SSA and KGBVs to run the time bound project. It is reiterated that the project SSA shall continue only up to 2012 and therefore, only the Council has decided to take the services through the placement agencies on the fixed honorarium. It is more pertinent to mention here that the placement agencies are under obligation to follow the norms and criteria circulated to all concerned. This has been done with a view to achieve the aims and objects of the SSA and thus, by no stretch of imagination it can be said that any of the person has been subjected to any bias or arbitrariness of the authorities of the Council or the concerned placement agencies.

(v) The KGBVs are run under the SSA Scheme and once it is established that the SSA is a Scheme, then there exists no indefinite rights in favour of the petitioners. More particularly SSA is a Project to be continued upto the year 2012, which earlier was supposed to end by the year 2010. However, the extension has been granted after the above said period and, therefore, in obtaining the services through the placement agencies, no wrong has been

committed by the respondents and, therefore, also these writ petitions deserve to be dismissed. A letter dated 2nd July, 2010 written by the Office of the Ministry of Human Resource Development, Department of School Education and Literacy, New Delhi received by the Rajasthan Council for Primary Education which inter alia provides that the closing date for original credit and the additional credit is September 30, 2012 is reproduced hereunder:

Anita Kaul Government of India

Additional Secretary (SE & L) Ministry of Human Resource Development Tel. No. 2338 3226 Department of School Education &

e.mail: anitakaul.edu@nic.in Literacy, Shastri Bhawan,

New Delhi ? 110115

No.15/3/2004-SSA(PR) 2nd July 2010

Dear Ms.Veenu,

Please refer to this Ministry's letter of even number 17th September, 2008, forwarding to you the external funding documents relating to the Second Elementary Education Project (SSA-II). A copy of the same was again sent to you along with the revised Manual on Financial and Procurement vide this Ministry's letter number 15/5/2003-SSA (PR) dated 9th February, 2010.

Government of India has re-negotiated the external funding for the Second Elementary Education Project (SSA-II) with World Bank's International Development Association (IDA) for additional financing of SDR 482.600 million. Accordingly, the amendment to the Bank's Financing Agreement dated August 14, 2008 (IDA Credit No. 4417-IN) was signed on May 7, 2010, and Additional Credit No. 4700-IN has been assigned to this additional credit. A copy of the Amendment to the Financing Agreement is enclosed for taking further necessary action at your end. The closing date for the original credit and the additional credit is September 30, 2012.

The disbursement and procurement procedures, financial ceiling for each method of procurement prescribed earlier in the Annexure to this Ministry's letter of even number dated 17th September, 2008 shall be applicable to the additional credit also, and the same needs to be followed strictly.

The process of signing the Exchange of Letter with other Development Partners of DFID and EC for the grant portion of the additional financial assistance to SSA-II is still in progress.

With regards.

Yours sincerely,

(Anita Kaul)

Ms. Veenu Gupta, IAS
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Rajasthan Council for Primary Education,
Dr. S. Radhakrishnan Shiksha Sankul,
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Jawahar Lal Nehru Marg,
Jaipur, Rajasthan.

(vi) The present writ petition is not maintainable on yet another count, that the petitioners with open eyes rendered the services to the SSA through the placement agency after having accepted the condition of a fixed period contract of service. Not only this, the incumbents are rendering the services to the SSA on the fixed honorarium as per the norms and criteria fixed by the SSA to run the project of KGBV & thus the petitioners, who were rendering the services through the placement agencies for a fixed term, have got no right to challenge their norms of selection in the subsequent academic session, even still the petitioners are ready to serve the KGBVs through the placement agencies for a fixed term which is apparent by the averments made by them in almost all the writ petitions and, therefore, they all took part in the selection process convened by the various placement agencies after having applied in response to the questioned notification and on being not selected due to the reasons that some of the similarly situated persons stood higher in the merit, were selected by the placement agencies and some of the persons could not be selected due to lesser marks in the merit position and thus the petitioners having already taken chance, are estopped from challenging the selection process. The Hon"ble Supreme Court in the case of Amlan Jyoti Borooah Vs. State of Assam and Others, & Dhananjay Malik and Others Vs. State of Uttaranchal and Others, & Dr. M.C. Mehta v. State of Rajasthan and Ors. ILR 22 Raj 711 has held that the incumbents after having taken part in the selection process and appeared in the interview so as to get the selection, cannot challenge the process of the selection after having been declared unsuccessful and as such in view of this submission also, the writ petitions deserve to be dismissed.

(vii) That for all the posts of KGBVs which are to be selected by the agencies, criteria and norms have been fixed by the Council. The marks for selection have been allocated in accordance with the notification dated 11.5.2010, 31.5.2010 and 29.6.2010. It is pertinent to mention here that vide these circulars all concerned and the placement agencies were informed in regard to the minimum educational qualification, working experience, other conditions, working hours and monthly honorarium. The bare perusal of the above mentioned notifications makes it crystal clear that for every post the minimum qualification, other service conditions along with the monthly honorarium has been shown thus, by no mean the placement agency can deviate from the conditions shown in the notification.

Thus, the criteria for selection through the placement agency is uniform, meaning thereby for one and all, no one can be selected by-passing the criteria laid down in the circular dated 11.5.2010, 31.5.2010 and 29.6.2010. As such nobody can be said to be prejudiced by any action of the respondents and placement agency, so far as the selections are made in accordance with the above mentioned Circulars. That apart it is also pertinent to note that nobody has challenged the criteria laid down by the Council through these Circulars.

(viii) That the minimum qualification for being the Warden-cum-Teacher or Teacher has been fixed as per the norms of National Council for Teacher Education and so far as the experience clause is concerned, since the KGBVs are residential schools. Not only this in order to get the best possible services through the placement agency, the allocation of marks to the tune of 90 marks have been prescribed for the purpose of preparing the merit list which are allocated for Class 10th to Post Graduation and Professional Qualification have been prescribed. It is much relevant to mention here that the incumbents rendering the services to the KGBVs have been given preference over the other incumbents by awarding 10 maximum marks for their experience of teaching in KGBVs. These 10 maximum marks are allocated for maximum five academic sessions thus, for teaching of one complete academic session two marks have been allocated. Further for every part of services of six month, one mark has been allocated, not only this, incumbents who rendered services for more than three months have also been accorded half mark on their part period of the experience of teaching, thus by no mean it can be said that the aspirants already rendering services and desirous to render the services further more to the KGBV are not given the preferential treatment or rather a special weightage has been given to their candidature. The selection of the incumbents is to be made through the open advertisement to be published in widely circulated newspapers.

(ix) That no action of the respondents is illegal, violative of any fundamental right, discriminatory or arbitrary. The Council has prescribed the norms for selection of the man power after thorough deliberation with the experts in the field and following the guidelines issued by the National Council for Teacher Education, a policy decision was taken. The Hon"ble Supreme Court and this Hon"ble High Court has observed in various dictums that in the matters of experts in the field and policy, the court should refrain from interfering, so far the action of the respondents is not in violation of fair play based on malafide or biasness, so also in absence of strong reasons like contravention of law or statutory regulation. In the present matter also, the man power is being selected by the placement agency strictly in accordance with the criteria laid down in the Circulars issued by the council and as such the writ petitions preferred by the petitioners deserve to be dismissed.

(x) That the services are being taken from the placement agencies because as submitted hereinabove the `Sarva Shiksha Abhiyan" is a project which is running on the basis of fund provided by the Govt. of India, received from various

International Agencies and which now is supposed to end by the year 2012. These placement agencies are normally not changed. However, in case of complaint against the placement agencies or not functioning properly or due to much difference in service charges, the placement agency can be changed. It is made clear that the placement agencies too are selected in accordance with the norms and criteria fixed by the Council. The criteria has been fixed in order to get the best possible services and with a view to achieve the aims and object of the SSA.

(xi) That without prejudice to the above submissions, it is submitted that various joint writ petitions have been submitted and the same are not maintainable on account of mis-joinder of parties, mis-joinder of causes of action and mis-joinder of petition too as in some of the cases, number of the petitioners have been selected by the placement agencies and they joined and some of the candidates could not be selected due to standing at lower pedestal in merit position of the district concerned. Thus, such joint writ petitions are not maintainable and same deserve to be dismissed.

(xii) That on behalf of the respondents it is further submitted that no provision of the Rajasthan (Regulation of Appointment to Public Service and Rationalization of Staff) Act, 1999 is applicable in the present context, since the very object of the Act is to regulate the appointments and prohibits irregular appointments in offices and establishment under the control of State Govt. Local Authorities, Public Corporation and Universities etc. and matters connected there with and incidental thereto and in order to avoid any such irregular appointment, the services are being taken from the placement agencies as the SSA is a time bound programme which is supposed to end by the year 2012. It is further submitted that the intention of the Legislature was very clear otherwise the Legislature itself could have inserted the condition that no person can be engaged on contract basis too, which is not present in the entire Act and the courts are not supposed to interpret the Legislation by adding or subtracting any word and thus the Legislature itself did not incorporate the condition in regard to the contract employees, then there exists no question of the application of the Act of 1999. Reference in this regard has been made to P.K. Unni Vs. Nirmala Industries and others [OVERRULED],

Questions or Issues for Determination:

21. On the basis of aforesaid rival contentions on which detailed arguments were heard by this Court, the following questions emerge for consideration by this Court:

(i) Whether the employment of teachers for SSA or KGBV is a part of sovereign function of imparting education by the State Government and if so whether such sovereign State function could be delegated to the private placement agencies by the State Government?

(ii) Whether the State Government has laid down any guidelines and criteria for

appointment of private placement agencies by the process of inviting tenders or by private negotiations and whether such employees or teachers employed by the private placement agencies will remain employees of private placement agencies or of the State Government for the Project of SSA funded by Central Government?

(iii) Whether the Project SSA or KGBV is a Project of limited tenure or period and whether the non-availability of finance or funds from the Central Government can be a ground to discontinue the said Project of SSA?

(iv) Whether the mandate of Article 21 and The Right of Children to Free and Compulsory Education Act, 2009 is of supervening importance and, therefore, the State Government deserves to be directed to adopt a uniform employment policy for teachers and other staff under the said SSA with assured continuity of employment?

(v) Whether the teachers are workmen so as to subject to provisions of Industrial Disputes Act, 1947?

(vi) Whether the fixed term contract of service for the teachers in SSA Project on year to year basis by different placement agencies without any assured continuity in employment is justified or not?

Reasons & Findings:

21. In my opinion, the impact of education on the young children and youth of the country is so great & important for the country and they are the real future assets of the country that it is of utmost importance that the teachers, who teach such younger generation of the country are themselves so well equipped, educated and trained that they can imbibe true value education and build national character in the younger generation of the country besides giving subject knowledge to the students and Project like 'Sarva Shiksha Abhiyan', an ambitious and good educational programme cannot lose sight of importance of this facet of education.

In an Article on 'Child Education & Poverty' authored by me in the year 2006, I wrote:

In a newspaper Article on 'Planning for Cities of the future', a quotation attracted me very much and it was like this. 'We must make the children love the city, because if they grow up hating the city, they will do everything to destroy it.' The same applies for the children qua the nation. To develop the love for the nation, I am strongly of the opinion that training in military should be made a necessary and integral part of school and college education for the age group of 15 to 20 for all boys and girls irrespective of their position in the society. Remaining with soldiers at fronts and other defence organizations during summer and winter vacations and may be some part of school/college days also, should be made compulsory for all students. This is not only likely to make our youth more disciplined and healthy by regular work outs, but special session for

national character building will make our youth more united irrespective of their caste, colour or creed. While it would be good for character building and will develop love for the nation, it can also facilitate and encourage more willing entries in our armed forces, as it will be a prelude to them for that life. Defence organization is another institution besides Judiciary which still maintains high degree of confidence for inculcating discipline, dedication and character. The movements like scouting and NCC which appear to have withered away in recent past are required to be revived and reinvigorated to supplement the aforesaid part of education.

I understand that similar is the practice in countries like USA, UK and other European countries and recently China has also made learning of their traditional art like Kung Fu compulsory for all the students.

To this, the then President of the Country His Excellency A.P.J. Abdul Kalam responded in the following terms:

Dear Dr. Kothari

Thank you for your letter of 27th November 2006 with which you have forwarded the copy of your paper 'Child Education and Poverty'. The issues raised by you are of importance. The inclusion of specialized training for national character building is indeed an important aspect.

With regards,

Yours sincerely,

sd/-

(A.P.J. Abdul Kalam)

In my humble but firm opinion the education system of our country needs to incorporate such value education & national character building, so that we can really achieve the goal of a dream India which Constitution framers talked in the Preamble to the Constitution of India.

23. Imparting of Education is a 'sovereign function' of the State and this was so observed by the Apex Court in State of Bihar and Others Vs. Project Uchcha Vidya, Sikshak Sangh and Others, while dealing with a Bihar case for 'Project School' Scheme under which certain private schools were taken over by the State & dispute arose about that as under:

Imparting of education is a sovereign function of the State. The State framed the Scheme in question having the constitutional goal in mind. Imparting education is the primary duty of the State. Although establishment of High Schools may not be constitutional function in the sense that citizens of India above 14 years might not have any fundamental right in relation thereto, but education as a part of human development, indisputably is a human right. The framers while providing for the equality clause under the constitutional scheme had in their mind that

women and children require special treatment and only in that view of the matter, protective discrimination and affirmative action were contemplated in terms of Article 15(3) of the Constitution.

Allowing the State to modify or withdraw its Policy decision to fall in line with the Constitutional provisions and also directing the State to make regular recruitment of teachers, the Supreme Court further observed in para Nos. 77, 82, 90 & 91 as under:

77. ...It is now well known, the rule of estoppel has no application where contention as regards a constitutional provision or a statute is raised. The right of the State to raise a question as regards its action being invalid under the constitutional scheme of India is now well recognised. If by reason of a constitutional provision, its action cannot be supported or the State intends to withdraw or modify a policy decision, no exception thereto can be taken. It is, however, one thing to say that such an action is required to be judged having regard to the fundamental rights of a citizen but it is another thing to say that by applying the rule of estoppel, the State would not be permitted to raise the said question at all. So far as the impugned circular dated 18/2/1989 is concerned, the State has, in our opinion, a right to support the validity thereof in terms of the constitutional framework.

82. In the event it is found that teachers have been appointed on ad hoc basis, the Vidyalaya Sewa Board shall be directed to make regular recruitment strictly in accordance with law.

90. As regards minimum age of the teaching and non-teaching staff, indisputably the same should be 18 years.

91. So far as educational qualification of the teaching staff is concerned, we are of the opinion that having regard to the fact that a limited number of teachers were to be appointed with a view to accomplish a constitutional goal of spreading literacy in the villages, particularly amongst girls, the standard adopted in Zila Schools or government schools constituted in urban areas may not be insisted upon, as was observed by the High Court, but keeping in view the fact that it is essentially a government function, the question as to whether some teachers having BT training or training in Physical Education would be allowed to continue in the said Project Schools or not is left to the State, wherefor a decision in accordance with law may be taken.

24. While drawing the distinction between "sovereign functions" of a Government & an "industry" run by a Government established Corporation, the Hon'ble Supreme Court in Agricultural Produce Market Committee Vs. Shri Ashok Harikuni and Another Etc., held as under:

Whether a particular power relates to sovereign functions depends on the nature of the power and the manner of its exercise. What the Supreme Court has held to be "sovereign" is defence of the country, raising armed forces, making peace

or war, foreign affairs, power to acquire and retain territory. These are not amenable to jurisdiction of ordinary civil courts. The other functions of the State including welfare activity of the State could not be construed as 'sovereign' exercise of power. Hence, every governmental function need not be 'sovereign'. State activities are multifarious, from the primal sovereign power, which exclusively inalienably could be exercised by the sovereign alone, which is not subject to challenge in any civil court, to all the welfare activities, which would be undertaken by any private person. So the mere fact that one is an employee of statutory bodies would not take it outside the Central Act. Even if a statute confers on any statutory body, any function which could be construed to be 'sovereign' in nature that would not mean every other functions under the same statute to be also sovereign. The court should examine the statute to sever one from the other by comprehensively examining various provisions of that statute. In interpreting any statute to find if it is 'industry' or not the court has to find its pith and substance. The Central Act is enacted to maintain harmony between employer and employee which brings peace and amity in its functioning. This peace and amity should be the objective in the functioning of all enterprises. This is to the benefit of both the employer and employee. Misuse of rights and obligations by either or stretching it beyond permissible limits have to be dealt with within the framework of the law but endeavor should not be in all circumstances to exclude any enterprise from its ambit. That is why courts have been defining 'industry' in the widest permissible limits and 'sovereign' functioning within its limited orbit.

The Court further held :

It is true various functionaries under the State Act are creatures of statute. But creation as such, by itself, cannot confer on it the status of performing inalienable functions of the State. The main controlling functions and power is conferred on the market committee whose constitution itself reveals that except one or two, the rest are all elected members representing some or the other class from the public. In fact, all governmental functions cannot be construed to be either primary or inalienable sovereign functions. Hence even if some of the functionaries under the State Act could be said to be performing sovereign functions of the State Government that by itself would not make the dominant object to be sovereign in nature or take the aforesaid Act out of the purview of the Central Act.

Thus merely an enterprise being a statutory corporation, a creature under a statute, would not take it outside the ambit of 'industry' as defined under the Central Act. The present case does not fall under any of the exceptions laid down in the Bangalore Sewerage Board case.

25. In the case of State of U.P. Vs. Jai Bir Singh, by which the Hon'ble Supreme Court referred the decision in the case of Bangalore Water Supply Case delineating the parameters for the definition of 'industry' for the purpose of Industrial Disputes Act, 1947 to a larger bench, observed that public welfare

activities under taken by Government in discharge of its constitutional obligations like the 'Education', in the present case, would fall within the ambit and scope of the term 'Sovereign functions'. To quote from Headnote

A caveat has to be entered on confining 'sovereign functions' to the traditional so described as 'inalienable functions' comparable to those performed by a monarch, a ruler or a non-democratic government. The learned Judges in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, seem to have confined only such sovereign functions outside the purview of 'industry' which can be termed strictly as constitutional functions of the three wings of the State i.e. Executive, legislature and judiciary. The concept of sovereignty in a constitutional democracy is different from the traditional concept of sovereignty which is confined to 'law and order', 'defence', 'law-making' and 'justice dispensation'. In a democracy governed by the Constitution the sovereignty vests in the people and the State is obliged to discharge its constitutional obligations contained in the directive principles of State Policy in Part IV of the Constitution of India. From that point of view, wherever the Government undertakes public welfare activities in discharge of its constitutional obligations, as provided in Part IV of the Constitution, such activities should be treated as activities in discharge of sovereign functions falling outside the purview of 'industry'. Whether employees employed in such welfare activities of the Government require protection, apart from the constitutional rights conferred on them, may be a subject of separate legislation but for that reason, such governmental activities cannot be brought within the fold of industrial law by giving an undue expansive and wide meaning to the words used in the definition of industry.

26. Holding that Teachers are not 'workmen' even though schools in which they work may fall within the definition of 'industry', the Hon'ble Apex Court in Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others, held as under:

A teacher employed in a school does not fall within the definition of expression "workman" though the school is an industry in view of the definition of "workman" as it now stands. Therefore, when service of teacher is terminated it cannot be referred u/s 10 of the Act.

The teachers employed by educational institutions whether the said institutions are imparting primary, secondary, graduate or post graduate education cannot be called as "workmen" within the meaning of Section 2(s) of the Act. Imparting of education which is the main function of teachers cannot be considered as skilled or unskilled manual work or supervisory work or technical work or clerical work. Imparting of education is in the nature of a mission or a noble vocation. A teacher educates children, he moulds their character, builds up their personality and makes them fit to become responsible citizens. Children grow under the care of teachers. The clerical work, if any they may do is only incidental to their principal work of teaching.

Further in para 11 of the said judgment, the Apex Court held as under:

11. We may at this stage observe that teachers as a class cannot be denied the benefits of social justice. We are aware of the several methods adopted by unscrupulous managements to exploit them by imposing on them unjust conditions of service. In order to do justice to them it is necessary to provide for an appropriate machinery so that teachers may secure what is rightly due to them. In a number of States in India laws have been passed for enquiring into the validity of illegal and unjust terminations of services of teachers by providing for appointment of judicial tribunals to decide such cases. We are told that in the State of Goa there is no such Act in force. If it is so, it is time that the State of Goa takes necessary steps to bring into force an appropriate legislation providing for adjudication of disputes between teachers and the Managements of the educational institutions. We hope that this lacuna in the legislative area will be filled up soon.

27. Article 21-A of the Constitution as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides as under:

21A. Right to education.- The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

28. In order to achieve the object of Article 21A of the Constitution, Parliament has recently enacted the law and the Statement of Objects and Reasons of 'The Right of Children to Free and Compulsory Education Act, 2009' reads as under:

Statement of Objects and Reasons:- The crucial role of universal elementary education for strengthening the social fabric of democracy through provision of equal opportunities to all has been accepted since inception of our Republic. The Directive Principles of State Policy enumerated in our Constitution lays down that the State shall provide free and compulsory education to all children up to the age of fourteen years. Over the years there has been significant spatial and numerical expansion of elementary schools in the country, yet the goal of universal elementary education continues to elude us. The number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. Moreover, the quality of learning achievement is not always entirely satisfactory even in the case of children who complete elementary education.

2. Article 21-A, as inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, provides for free and compulsory education of all children in the age group of six to fourteen years as a Fundamental Right in such manner as the State may, by law, determine.

3. Consequently, the Right of Children to Free and Compulsory Education Bill, 2008, is proposed to be enacted which seeks to provide,-

(a) that every child has a right to be provided full time elementary education of

satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards;

(b) 'compulsory education' casts an obligation on the appropriate Government to provide and ensure admission, attendance and completion of elementary education;

(c) 'free education' means that no child, other than a child who has been admitted by his or her parents to a school which is not supported by the appropriate Government, shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education;

(d) the duties and responsibilities of the appropriate Government, local authorities, parents, schools and teachers in providing free and compulsory education; and

(e) a system for protection of the right of children and a decentralized grievance redressal mechanism.

4. The proposed legislation is anchored in the belief that the values of equality, social justice and democracy and the creation of a justice and humane society can be achieved only through provision of inclusive elementary education to all. Provision of free and compulsory education of satisfactory quality to children from disadvantaged and weaker sections is, therefore, not merely the responsibility of schools run or supported by the appropriate Governments, but also of schools which are not dependent on Government funds.

5. It is, therefore, expedient and necessary to enact a suitable legislation as envisaged in article 21-A of the Constitution of India.

29. The relevant provisions of this Act of 2009 brought into force w.e.f. 1.4.2010 to the extent they are found to be relevant are also reproduced hereunder:

Chapter III

Duties of Appropriate Government,

Local Authority and Parents

7. Sharing of financial and other responsibilities - (1) The Central Government and the State Government shall have concurrent responsibility for providing funds for carrying out the provisions of this Act.

(2) The Central Government shall prepare the estimates of capital and recurring expenditure for the implementation of the provisions of the Act.

(3) The Central Government shall provide to the State Governments, as grants-in-aid of revenues, such percentage of expenditure referred to in Sub-section (2) as it may determine, from time to time, in consultation with the State Governments.

(4) The Central Government may make a request to the President to make a reference to the Finance Commission under sub-clause (d) of clause (3) of Article 280 to examine the need for additional resources to be provided to any State Government so that the said State Government may provide its share of funds for carrying out the provisions of the Act.

(5) Notwithstanding anything contained in Sub-section (4), the State Government shall, taking into consideration the sums provided by the Central Government to a State Government under Sub-section (3), and its other resources, be responsible to provide funds for implementation of the provisions of the Act.

(6) The Central Government shall?

(a) develop a framework of national curriculum with the help of academic authority specified u/s 29;

(b) develop and enforce standards for training of teachers;

(c) provide technical support and resources to the State Government for promoting innovations, researches, planning and capacity building.

8. Duties of appropriate Government - The appropriate Government shall -

(a) provide free and compulsory elementary education to every child:

Provided that where a child is admitted by his or her parents or guardian, as the case may be, in a school other than a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or a local authority, such child or his or her parents or guardian, as the case may be, shall not be entitled to make a claim for reimbursement of expenditure incurred on elementary education of the child in such other school.

Explanation.?The term "compulsory education" means obligation of the appropriate Government to?

(i) provide free elementary education to every child of the age of six to fourteen years; and

(ii) ensure compulsory admission, attendance and completion of elementary education by every child of the age of six to fourteen years;

(b) ensure availability of a neighbourhood school as specified in Section 6;

(c) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds;

(d) provide infrastructure including school building, teaching staff and learning equipment;

(e) provide special training facility specified in Section 4;

- (f) ensure and monitor admission, attendance and completion of elementary education by every child;
- (g) ensure good quality elementary education conforming to the standards and norms specified in the Schedule;
- (h) ensure timely prescribing of curriculum and courses of study for elementary education; and
- (i) provide training facility for teachers.

Chapter IV

Responsibilities of Schools and Teachers

13. No capitation fee and screening procedure for admission - (1) No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure.

(2) Any school or person, if in contravention of the provisions of Sub-section (1), -

(a) receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged;

(b) subjects a child to screening procedure, shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty thousand rupees for each subsequent contraventions.

23. Qualifications for appointment and terms and conditions of service of teachers - (1) Any person possessing such minimum qualifications, as laid down by an academic authority, authorised by the Central Government, by notification, shall be eligible for appointment as a teacher.

(2) Where a State does not have adequate institutions offering courses or training in teacher education, or teachers possessing minimum qualifications as laid down under Sub-section (1) are not available in sufficient numbers, the Central Government may, if it deems necessary, by notification, relax the minimum qualifications required for appointment as a teacher, for such period, not exceeding five years, as may be specified in that notification;

Provided that a teacher who, at the commencement of this Act, does not possess minimum qualifications as laid down under Sub-section (1), shall acquire such minimum qualifications within a period of five years.

(3) The salary and allowances payable to, and the terms and conditions of service of, teachers shall be such as may be prescribed.

26. Filling up vacancies of teachers: The appointing authority, in relation to a school established, owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government or by a local authority, shall

ensure that vacancy of teacher in a school under its control shall not exceed ten per cent of the total sanctioned strength.

27. Prohibition of deployment of teachers for non-educational purposes - No teacher shall be deployed for any non-educational purposes other than the decennial population census, disaster relief duties or duties relating to elections to the local authority of the State Legislatures or Parliament, as the case may be.

28. Prohibition of private tuition by teacher - No teacher shall engage himself or himself in private tuition or private teaching activity.

30. The Right of Children to Free and Compulsory Education Rules 2010 have also been notified vide G.S.R.301(E) Dt: 8/4/2010 published in Gazette of India Ex.Pt II S3(i) dt: 9/4/2010.

31. With the aforesaid spectrum of education in our country, one cannot but hold that projects like 'Sarva Shiksha Abhiyan' which serves the object of Article 21A of the Constitution of India and provisions of the Act No. 35 of 2009, cannot be a project of limited duration as contended by the respondents. The same has to be deemed to be project of perennial nature and continuous length of period. Change of names of projects and designation of officials deputed to implement such projects, change in source of finance, be it Central Government or State Governments or even NGOs or even Charitable Endowments or organizations does not change the basic character of this discharge of constitutional obligation by the State. Even though projects like SSA or KGBV were not started after commencement of Act No. 35 of 2009 but the fact remains that these projects cater entirely to these constitutional obligations and objectives of the said enactment and, therefore, the contention of respondents that the said project is to end in 2012 is liable to be rejected and is hereby rejected. Even the letter dt:2nd July, 2010 of Addl. Secretary (SE & L) of Govt. of India reproduced above, which was relied upon by respondents' counsels, to say so, does not bear the said contention. The said letter only extends a particular credit extended by Central Govt. upto 30/9/2012. But there is no final end of project of SSA or KGBV envisaged in this letter of Central Government, which towards its end also indicates that Central Government is making further efforts to obtain additional financial assistance to SSA-II. This Court is further of the view that manner of arrangement of funds for these projects by any of the Appropriate Governments cannot limit the life of such projects and it is the constitutional obligation of the Appropriate Governments to continuously and perennially provide necessary finances for these projects of education, which is of prime most importance of our country and education being life blood of any country, no doctor or blood bank (Governments) are allowed to deny such supply of life blood.

32. The objective of SSA as delineated above is to achieve Universalization of Elementary Education (UEE) as per the mandate of 86th amendment to the Constitution of India incorporated as Article 21A into it and, therefore, this is bound to be a continuous and everlasting project. As already observed, neither

India has achieved 100% literacy nor the forthcoming generations of younger children specially in backward classes is going to end in foreseeable future. The Parliament while enacting the aforesaid Act No. 35 of 2009, in the Statement of Objects and Reasons quoted above, admits of this position that the goal of universal elementary education continues to elude us and the number of children, particularly children from disadvantaged groups and weaker sections, who drop out of school before completing elementary education, remains very large. That is why Scheme like CTS (Children Tracking Scheme) has also been introduced by the State for encouraging and inducing, rather forcing the younger generation and children to necessarily undergo the educational programme launched by the State Governments or the Central Government, as the case may be. In view of this, this Court is firmly of the view that projects like SSA or KGBV for which the petitioners teachers have been working for last 2-3 years cannot be said to be a programme which would end in a particular time frame and it cannot be said that the services of the present petitioners-teachers would no longer be required.

33. Now coming to the question of fixed term contract of services rendered by the petitioners-teachers, who were employed through annually changing private placement agencies. Though Article 311 of the Constitution of India does not apply to such petitioners-teachers appointed on fixed term contract basis, as they cannot be described as regular civil servants, nonetheless, the fact remains that their nature of job is long & continuing and, therefore, the assured continuity of employment to such teachers is of utmost necessity and the benefits derived to the children of such educational programmes itself by teachers continuity, experience and sense of dedication developed over a period of time while they work in such programmes, cannot be lost sight of. While the Parliament has scrupulously guarded the assured employment of workmen in the Industry by enacting various laws like Industrial Disputes Act, Contract Labour (Prohibition) Act, 1970, RAPSARS Act, 1999, Factories Act, ESI Act, Workmen Compensation Act etc., unfortunately nothing much seems to have been done by the Appropriate Governments for protection of such rights of teachers' community. The teachers deserve the most respectful place in the society but unfortunately, get the least of it. The result and the damage on account of such lack of forceful policies by the State is for all of us to see. Even after 64 years of Independence, a long period, the Parliament has to enact the law for free and compulsory education observing that this goal still eludes us. Somebody, in satirical tone, pointed out the contradictions in our national priorities & working in these terms:

Incredible India ?

A nation, where Pizza reaches home faster than Ambulance & Police;

Where you get car loan @ 7% but Education loan @ 12%.

Where Rice is Rs. 40/- per kg but SIM Card is free.

Where people worship Goddess Durga but want to kill their girl child.

Where Olympic Shooter wins, Govt. gives Rs. 3 Crores, another Shooter dies fighting with terrorists, Govt. pays Rs. 1 lac.

Really! Incredible India.

In this view of the matter, it is well, nay, necessary that the teachers like the present petitioners, who are given yearly contract of service by the private placement agencies are assured continuous service in the educational projects and programmes which are perennial in nature.

34. This Court closely examined the scheme of issuing tenders for inviting private placement agencies, who are supposed to employ such teachers every year to work in such Government projects, like SSA or KGBV, and this Court is at loss to really understand and appreciate the necessity of appointing such teachers by the private placement agencies only for a year, and such private placement agencies have been directed by the Government to follow & abide by the laws like Industrial Disputes Act, as if teachers are workmen. From such terms of contract, it is clear that the Appropriate Government just wants to wash their hands off these petitioner-teachers even though they are continuously required for such educational programme and such fast turn over of teachers with fresh employment every year through private placement agencies causes incalculable loss to the education programmes which are launched and are required to be financed by the State Government or the Central Government, as the case may. The role of private placement agencies to the extent of making available such candidates after due screening of their applications, compiling the same in order of merit could have been understood and tolerated if appropriate `justification note? was recorded for the same, as that could only be taken as an outsourcing a part of exercise by the Appropriate Government but to keep away such teachers from "employer-employee relationship" with the State Government is nothing but a sham exercise in futility. With such petitioners-teachers to be treated as workmen or employees of private placement agencies only even though they worked as teachers in the Government schools or Government aided schools, there is no reason why the `employer-employee relationship? between the State Government and these teachers should not be treated as established & why State Govt. itself should not be treated as the Principal Employer of such teachers (employees) employed through the contractors (private placement agencies). This Court surprisingly found that some of the private placement agencies are even not properly manned so as to select teachers and even security agencies like M/s Maa Vaishnav Security Services Ltd. were assigned this job to recruit teachers for such projects as if they were to recruit `security guards? and not the teachers. This Court also noticed from the various averments made in the writ petitions by the present petitioners that large scale corrupt practices like charging high fees for application forms, paying less than monthly honorarium fixed, pick and choose in selections, selecting persons with lower merit or taking only local persons to the exclusion of other etc. are

prevalent in such agencies.

35. As it is India is blamed for a bloated bureaucracy. Over staffing in the Government departments is a phenomenon of the day. The Budget for salary and allowances for any Government department is around 70-80% of the entire allocation of the Budget for such departments. This Court though not possessed with the complete relevant data in this regard, is unable to understand why such Departments or Employment Exchanges of Government or RPSC and the large number of staff available with them cannot undertake this job which has been assigned to the private placement agencies in the educational programmes like SSA or KGBV. While on one hand the State Government continues to pay high salary bills, the out put of such staff is negligible. No body has so far even cared to undertake such cost benefit analysis of these Government departments. The phenomenon of giving away the contracts by the State Government in various departments like check posts for collection of mining royalty, sales tax or even toll tax to private contractors and work of development or construction being given to private contractors for Development Authorities or PWD Departments is also widely prevalent concept in our country. The ill famous nexus of contractors and engineers resulting in bad quality of construction of roads, buildings or dams etc. is not a fact of which this Court cannot take judicial cognizance. In this perspective, the assignment of job of recruitment of teachers to the private placement agencies, that too with the stipulation in the contract that such teachers will remain employees of the private placement agencies only during the period of such annual contract cannot be sustained by this Court. While freedom to enter into contract even by the Government is a legally recognized practice and the Courts respect it, but at the same time for the projects like the one in hand, namely, SSA or KGBV, where employment of teachers is the gravamen of the contract, this Court simply cannot sustain it as the same has not only been entered into with ulterior/unconstitutional objectives, but the practice and implementation of these contracts have established this view of the Court more firmly than anything else. Giving of the annual extension to the teachers with ever hanging 'Damocles' sword? on their head appears to this Court to be like giving of bread to a beggar and then snatch it away before it is swallowed down. Such an insulting treatment of teachers' community cannot be tolerated by this Court at all. While the Apex Court has propounded that imparting education is a "sovereign function" and this Court reiterates the same view with all humility and firmness at its command, the assignment of job of employing teachers and other related staff for projects like SSA or KGBV cannot be upheld by this Court and, therefore, the Court issues a Writ of Prohibition against the State Government and other related agencies not to assign this job of employing teachers and other related staff for projects like SSA or KGBV to private placement agencies. The Notices Inviting Tenders for this purpose in all such cases within the State of Rajasthan are accordingly quashed.

36. The State Government also amended Rajasthan Panchayati Raj Act, 1994 by Act No. 8 of 2004 and inserted Sub-section (6A) in Section 89 and also by

amending corresponding Rules and inserting Rule 277A, the State Govt. has withdrawn the power of selection of teachers in Primary and Upper Primary Schools even from the Panchayat Samitis and vested the said power in the State Govt. itself and such appointments will be made by Panchayat Samitis or Zila Parishads only on the recommendation of RPSC. This amendment was made in order to do away with the ad hoc appointment by the Panchayat Samitis and various corrupt practices revealed therein & the State Govt. shifted this power of selecting the teachers from Panchayat Samitis to State Govt. itself. Thus, the State Government being conscious of the need of regular selection of teachers for various schools working in rural areas in Panchayat Samitis has done this and thus, streamlined the appointments of teachers in such rural schools and there appears to be no justification for making discrimination in this regard and allowing the appointments of teachers for SSA or KGBV Project to be made through private placement agencies and, therefore, prohibiting the private placement agencies from making such appointments of teachers on yearly basis and directing the State Government to make regular selection in this regard would be only in consonance with the aforesaid streamlining procedures incorporated in Panchayat Law and this would be in consonance with the letter and spirit of the provisions of the new Act No. 35 of 2009 and Article 21A of the Constitution of India also.

37. This Court is further strengthened in its view that such teachers cannot be employed on fixed term contract basis by private placement agencies by virtue of prohibition contained in RAPSARS Act, 1999. The contention of learned Counsels for the petitioners-teachers is found to be with considerable force that if such teachers were to be treated employees of private placement agencies, then they would be covered within the definition of 'daily wages employee' u/s 2(ii) of the said Act and also would be hit by provisions of Section 4 of the said Act, which in clear terms negates and prohibits appointment of persons in public service to any post, in any class, category or grade as a daily wage employee. Since the term 'daily wages employee' covers and includes such persons employed on consolidated pay either on full time or part time by whatever designation called, such teachers employed on monthly fixed honorarium through private placement agencies would be clearly covered by the said definition and it is least expected from the State Government or the Central Government itself to violate the provisions of the law enacted by themselves.

38. That as far as preliminary objection of respondents about maintainability of writ petition against the Society (SSA) is concerned, the same is overruled, for the reasons given in a judgment already rendered by a Coordinate Bench recently in the case of Veerbhadra Singh Sisodia and Ors. v. Rajasthan Council of Primary Education and Anr. (2007) 3 WLC 451, which is respectfully followed by this Court. The relevant extract of the said judgment is given below for ready reference:

17. The statement of the Minister in most open terms declares the SSA as a ?

national agenda? and emphasis for its implementation by putting all best efforts. It also make it clear that every citizen of the country is contributing for mass literacy by bearing Education Cess.

18. According to the framework for implementation relating to the SSA declared by Ministry of Human Resource Development, Department of Education and Literacy, the assistance under the programme will be on 85:15 sharing arrangement during 9th plan, 75:25 sharing arrangement during 10th plan and 50:50 sharing thereafter between the Central Government and the State Governments. The State Governments are under obligation to maintain the level of investment in elementary education as it was in 1999-2000. The Government of India for implementing the SSA is releasing its funds direct to the State Implementation Society, i.e. the respondent Council in the present case. No fund other than the assistance given by the Government is available to the respondent society.

19. The management structure of the Council as well as the SSA is having absolute control of the Government. Relevant to note here that a separate department of the elementary education and literacy has been created by the Government of India for implementing the SSA and other programmes of similar nature. In order to facilitate convergence and a holistic prospective a single bureau of education is also constituted. A general council of the SSA, at national level is headed by Hon"ble Prime Minister with the Union Minister for Department of Human Resource Development, as its Vice Chairman. The Secretary, Department of Elementary Education and Literacy is the Vice Chairperson of the executive committee and the Joint Secretary (Elementary Education) is Director General of the national mission of the SSA. The under Secretaries and the Section Officers in the Elementary Education Bureau along-with the office staff are part of the national mission.

20. The State mission authority i.e. The respondent Council is headed by the Chief Minister and its executive committee by Chief Secretary of the State. The other members are also nominated by the Government and are the representatives of the executive. The administrative nature of the respondent Council, therefore is absolutely governmental. From the narration above, it can safely be concluded that:

(1) the SSA and all other projects undertaken by the Government for universalisation of elementary education are part of ?national agenda? for nation building, thus, the Council is having a responsibility to implement a national policy that is effecting not only the public at large but also the future of the nation. The service rendered by the respondent i.e. universalisation of the elementary education, is a constitutional obligation of the State;

(2) the Central and the State Government are the sole funding source of the Council and the State have complete check and supervision on that;

(3) the administrative set up of the Council is created by Government and that is

having deep and pervasive State control as the entire governing body being manned by the ex-officio members including the Chief Minister of the State and founded by the State Government; and

(4) the total control of the Council and the projects undertaken by it is in the hands of the State executive and the persons nominated by it.

21. The Council, thus, qualifies the tests to be considered as 'State' under Article 12 of the Constitution of India, as such is amenable to writ jurisdiction.

Beside the above, two other preliminary objections are also raised and those are:

(1) the petitioners being engaged under different orders, on different dates, in different Districts with different Clusters have no common cause of action and, therefore, a common writ petition on their behalf could not be filed in view of the provisions of Rule 375 of the Rajasthan High Court Rules;

(2) the petitions for writ deserve to be thrown at the threshold as the petitioners made a false statement in the petitions for writ that substantial part of aid given by the Government of India shall be consumed in payment of salary whereas the expenditure of management cost including the salary is not more than 6% of the total budget allocation.

22. It is urged by learned Counsel for the respondent Council that under Rule 375(4) of the Rajasthan High Court Rules, a writ petition on behalf of more than one person can be filed, if, the relief is founded on same cause of action and in the instant matters the petitioners may have a common cause of action but not the same cause of action, as such these common petitions for writ cannot be maintained.

23. I am not at all impressed with the contention so raised, as from the facts stated in succeeding paras it will reveal that the cause of the petitioners is the discrimination arose due to illusory classification made by the respondents among the persons belonging to same class. The High Court while exercising its extra ordinary jurisdiction have ample power to meet little differences of facts of different petitioners while granting relief and that even by moulding the relief. Beside that, the authority of this Court injected by Article 226 of the Constitution of India to issue prerogative writs, orders and directions cannot be calm down by the force of any provision of procedural law. The writ Court, looking to the facts and circumstances of every case, may determine and adopt its own procedure to adjudicate an issue brought before it to ensure and protect fundamental, constitutional and other rights of a citizen.

39. The State Government is duty bound to undertake regular selection process for employment of teachers and other related staff for these projects, which the Court has already held them to be not of limited duration. Till regular selection process is undertaken and appropriate strength of teachers and related staff is determined and filled up by regularly selected candidates, there is no reason that the present petitioners-teachers and other related staff should be thrown out of

their respective jobs and, therefore, it is further directed that till such regular selection process takes place, the present petitioners-teachers and other related staff shall continue in the service in the aforesaid projects as before and they shall be paid their monthly allowances and honorariums as already fixed for them. The State Government can of course employ more teachers and other related staff, if these projects have to be expanded or new schools have to be added in tune with the new Act No. 35 of 2009 for providing free and compulsory education to the children between the age group of 6-14 years, even on urgent temporary basis or by the regular selection process.

40. It would also be appropriate to direct that present petitioners-teachers and other related staff, who have gained experience over this period since when they were initially employed and up to the period when such regular selection process takes place, will be given some preference in such regular selection process and it is left for the State Government best to decide how that criteria would be incorporated in the regular selection process.

41. Therefore, for these reasons, this Court is inclined to allow these writ petitions with aforesaid directions and following answers to the questions framed above.

Conclusions:

(i) Question No. 1 is answered in the manner that employment of teachers for SSA or KGBV is a "sovereign function" of imparting education by the State Government or the Central Government and such "sovereign function" including employment of teachers for imparting education cannot be delegated to private placement agencies by the State Government.

(ii) Question No. 2 is answered like this that since the State Government has not so far enacted any law nor it has laid down any guidelines or parameters for selection of private placement agencies, therefore, practice of giving away such contract by the State Govt. to the private placement agencies is unconstitutional and cannot be sustained and the teachers and other related staff in SSA or KGBV cannot be treated as employees of private placement agencies whether such projects are financed by the Central Government or the State Government or any other agency.

(iii) Question No. 3 is answered in the manner that the object of SSA Or KGBV is not a project of limited tenure or period and the nonavailability of funds cannot be a ground to discontinue the said educational programmes and such programmes even with or without the change of name have to be continued to give effect to the provisions of the Act No. 35 of 2009, namely, Right of Children to Free and Compulsory Education Act, 2009 and Article 21A of the Constitution of India.

(iv) Question No. 4 is answered in the manner that the provision of Article 21A and provisions of Right of Children to Free and Compulsory Education Act, 2009

are of paramount and supervening importance and Appropriate Governments should adopt a uniform employment policy for teachers and other staff under it with assured continuity of employment with all other benefits which are payable to regular civil servants including the teachers employed in Government schools even as of now.

(v) Question No. 5 is answered in the manner that teachers cannot be treated as workmen so as to subject them to the provisions of Industrial Disputes Act, 1947.

(vi) Question No. 6 is answered in negative and it is held that fixed term contract of service for the teachers in SSA or KGBV Projects on year to year basis by different placement agencies with no assured continuity of employment is not justified, nor it is a legally sustainable practice.

42. With the writ petitions allowed by the aforesaid directions to the State Government to continue the services of petitioners till regularly selected candidates are appointed in the respective positions, this Court is not inclined to initiate any contempt action against the respondents at this stage against the alleged violation of interim orders passed by this Court and, therefore, the contempt petitions are dismissed and notices are discharged.

43. The writ petitions are accordingly allowed with no costs.