

(2010) 12 DEL CK 0074

In the Delhi High Court

Case No : Writ Petition (C) No. 4277 of 2010

Shalu Kataria

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 32
Delhi School Education Rules, 1973 — Rule 123, 96

Citation : (2011) 1 AD 510 : (2011) 121 DRJ 220

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : M.A. Niyazi and Manish Kumar, for the Appellant; Naresh Bakshi and Ankur Chhibber, for the Respondent

Final Decision : Allowed

Judgement

Manmohan Singh, J.—By way of present writ petition, the Petitioner has sought quashing the oral termination order dated 21.06.2010 issued by the Respondent No. 3 to the Petitioner and further issue writ, order or direction directing the Respondent Nos. 2 & 3 to issue appointment letter in favour of the Petitioner for her appointment on the regular post of TGT (English) in Respondent No. 3 School on the basis of combined Screening Board (CSB) exam held on 13.01.2008 and interview in the month of February 2008.

2. The brief facts in nutshell, inter alia, are that the Respondent No. 3 in December 2007 advertised vacancies in different Army Public Schools in Delhi/ NCR for PGT/TGT/PRT in various subjects on the basis of All India Written Test and interview and teaching demonstration (interview and teaching demo for successful candidates of written exam).

3. The Petitioner filled up the form and applied for TGT (English).

4. The Petitioner received the admit card for written examination for TGT English which was to be held on 13.01.2008.

5. The Petitioner qualified the written examination for TGT English and received the score card alongwith interview call letter dated 14.02.2008 for interview of TGT English to be held on 23.02.2008. The Petitioner was selected.

6. As per the Petitioner, her selection as TGT(English) was done by the Respondents in consonance with Rule 96 of the Delhi School Education Rules, 1973 and the selection Committee, in accordance with the procedure applicable for selection, carried out the selection process and selected the Petitioner as TGT(English). The Petitioner qualified the interview and was finally selected as TGT (English). In the last week of July, she was telephonically asked to join the service in Respondent No. 3 school from 01.08.2008. Accordingly, she joined the school on 01.08.2008. She was given the appointment letter dated 14.08.2008 which illegally mentioned that she was appointed as PRT for a specific period from 01.08.2008 to 31.03.2009 as teacher(term Based) in Respondent No. 3 School on a consolidated salary of Rs. 12,423/- per month.

7. According to the Petitioner when she inquired from the Respondent No. 3 regarding her appointment as PRT instead of TGT and tenure of appointment, she was told by the Respondent principal of the School that she would soon be appointed/promoted as TGT(English) and her appointment has been made for a term based/contractual as probation and after completion of the said term/probation, she would be appointed as regular TGT (English).

8. The Petitioner was given appointment letter dated 14.08.2008 for term based teacher for PRT instead of TGT English and for a fixed tenure. Her tenure was from 01.08.2008 till 31.03.2009. The Petitioner was given teaching assignment again from 16.04.2009 till 15.05.2009 when the school closed for summer vacation.

9. After summer vacation she received another appointment letter dated 10.08.2009 wherein it was stated that her term of appointment as PRT was from 08.07.2009 till 31.03.2010. She was again asked to join her assignments from 08.04.2010 till 15.05.2010 when the school was closed for the summer vacation. According to the Petitioner, from the perusal of the aforesaid selection procedure devised by Respondents, it is evident that the CSB selection procedure is for the appointment of TGT/PGT whether through fresh applications or for those who are already employed on ad hoc basis. In the present case, the record produced by the Petitioner shows that she qualified the CSB test and also the interview in the year 2008. Clause 24 of the regulations of the selection of teachers" guideline clearly states that "TG Ts selected through CSB will be on probation for 1 year, which may be extended up to maximum 2 years. Thereafter their appointment will stand confirmed". The Petitioner admittedly worked in the Respondent school from 01.08.2008 to 15.05.2010.

10. The Petitioner further stated that that on the last day of the school before summer vacation i.e. on 15.05.2010 she was told that her status as regular teacher would be confirmed and the same would be intimated to her. With this

impression in mind the Petitioner kept on waiting for the confirmation letter as TGT (English) but on 21.06.2010 she was telephonically informed by Respondent No. 3 that she is no more required in the school from the next session i.e. from 28.06.2010.

11. The Petitioner has stated that in these two years the salaries of the summer vacation was not given to her and she was asked to wait for a suitable decision from the Respondent No. 2 society.

12. According to the Petitioner the period for which she had been kept as a term based/ contractual teacher ought to have been treated by the Respondents 2 & 3 as probation and she ought to have been confirmed as TGT (English).

13. Being aggrieved by the impugned order of the termination dated 21.06.2010, the Petitioner has filed the present writ petition.

14. Learned Counsel for the Petitioner submits that since the Respondents have not passed order of her removal and termination order was issued by the Respondent No. 3 school on telephone, an appeal was therefore not maintainable in the absence of written order. Therefore, the present writ petition is maintainable.

15. The Petitioner placed reliance on the judgment dated 24.09.2007 in W.P. (C) No. 4412/2005 Ms. Swapna Sood v. Director of Education and Ors. It was contented that the facts of the above case are almost similar to her own case and the in this case the Respondent has been directed to issue an appointment letter in favour of the Petitioner by the Court. The order passed in the matter has become final as the order passed in the case of Ms. Swapna Sood was not challenged by the Respondents who are the same in the present case.

16. The Respondent Nos. 2 & 3 in their counter affidavit stated that the service condition of the Petitioner is governed by the Army Welfare Education Society which is a registered body under the society Registration Act XXI of 1860 by Registrar of Societies Delhi vide Certificate No. S/13459 dated 29.04.1983 for the purpose of establishing/ running Army Schools, Army Public School.

17. It is alleged in the counter affidavit that Petitioner was appointed on contractual basis and therefore she cannot seek regularization of her appointment as there is no regular vacancy, further her performance was not good in the teaching demo and therefore she was given PRT instead of TGT, further the Petitioner herself admitted in her letter while seeking extension for services that she was a PRT and on contractual basis. The Respondent Nos. 2 and 3 have admitted that the Petitioner did not make an application for PRT teacher although it is denied that in the application letter, it was mentioned with reference to Petitioner's application for the post of PRT.

18. Respondents No. 2 & 3 placed reliance on the judgment Smt. Seema Maheswari Vs. The Director, Director of Education and Others, in support of their argument, wherein it has been held that DPC of private unaided school are

always free to adopt their own procedure to fill up the vacancy.

19. The Respondent No. 2 & 3 has further placed reliance on the few judgments and contented that the Respondent school is a school run by the society and an employee who was recruited by the society but posted in the school run by the society did not become the employee of the school even though the society had adopted the code of conduct contained in Rule 123 and 124 Samarth Shiksha Samiti and Another Vs. Bir Bahadur Singh Rathour and Others, And also where in the service rule or in the letter of appointment a period of probation is specified and power to extend the same is also confirmed upon the authority without prescribing any maximum period of probation and if the officer is continued beyond the prescribed or extended period, he cannot be deemed to be confirmed.

20. Hence as per Respondent Nos. 2 and 3 there is no bar against termination at any point of time after expiry of the period of probation. The Commissioner of Police, Hubli and Another Vs. R.S. More, . The Respondent Nos. 2& 3 further reliance upon the judgment of the Hon''ble Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others, .

21. The Respondents submits that among the other candidates, the Petitioner was ranked No. 8 and thus she was only recommended for the post of PRT which she gladly accepted. The Respondent further submitted that she worked for 2 years on the post of PRT therefore, the Petitioner can not claim for the regular Post of TGT (Eng).

22. It is also contented that though the Petitioner qualified the written examination and was issued the admit card and Petitioner was directed to conduct a class for duration of 40 minutes for evaluation of teaching skill vide letter dated 14.02.2008 and the Petitioner was found fit for the selection for the post or PRT.

23. The Respondent also referred to the representation of the Petitioner dated 20.02.2009 making a request to continue as PRT admitted that she was selected by the board of officers for the post of PRT in Army Public School/Respondent No. 3.

24. In this regard Petitioner in her rejoinder stated that had the contention of the Respondents been correct and assuming that the Petitioner was on contractual appointment, then there was no occasion for the Respondents to throw the Petitioner during the summer vacation by oral termination when there was no complaint/dissatisfaction of her performance and at the same time to appoint 4 new teachers for PRT.

25. The Petitioner stated that the Respondents can not take any advantage of the representation dated 20.02.2009, which the Petitioner was made to write at the instance of the Respondents on the format given by the Respondent school itself.

26. The Petitioner further stated that she duly qualified the written exam as well as interview and as per the provisions of the Rule 96 of Delhi School Education

Act and Rules 1973 and therefore the said letter written by the Petitioner at the instance of the Respondents has no meaning and it is irrelevant for the purpose of adjudication of the issues involved in the present case which is that the Petitioner who qualified and selected for the TGT (English) regular post is entitled for the said regular post and was illegally given the contractual appointment that too in PRT which was accepted by the Petitioner in view of the assurance of the Respondent No. 3.

27. In view of the above said position, the precise question to be answered by this Court is as to whether the Petitioner was lawfully and validly selected in term of selection procedure/ schemes/regulations or not?

28. I have considered the submissions made by the learned Counsel for the parties at the bar and have also carefully perused pleadings and documents filed by the parties.

29. The guidelines/standing operating procedure circular No. 006/school/2004 and rule book of Respondent No. 2 school for the selection of teachers through CSB and LSB are reproduced below:

Conduct of Combined SCREENING BOARD

(CSB) & LOCAL SCREENING BOARD (LSB)

? CSB is conducted once every year for the following categories:

? For fresh applicants of PG Ts, TG Ts & PR Ts.

? For PG Ts/TG Ts/PR Ts appointed earlier on ad hoc basis.

? For teachers seeking higher grade i.e. PRT to TGT and TGT to PGT.

(PG Ts stand for the post graduate teachers, TGT for trained graduate teachers and PRT for primary teachers)

LSB (LOCAL SCREENING BOARD)

LSB is conducted every year for the following categories:

PR Ts (Primary Teacher)

Adhoc teachers employed as TG Ts or PG Ts (those who could not be screened through CSB)

Activity Teachers-through LSB without written test.

Procedure in Outline

? CSB and LSB is conducted in three stages as under:

Written Test (200 Marks). Interview (200 Marks)Teaching Skills (200 Marks)- for short listed candidates after interview

Written Test

Qualifying in the written test only makes you eligible for a panel interview.

(a)Part A

(common for PGT/TGT/PRT)

To qualify you must score 50% in Each part "A" and "B" (PGT & TGT and part A ONLY(PRT).

PGT/ TGT Qualifying in part A entitles you for a PRT "Score Card.

The CSB and LSB procedure are further defined in the guidelines and the same are also reproduced as under:

12. Category. CSB will be for following category of teachers:

(a) For PG Ts/TG Ts who were earlier employed an Adhoc basis.

(b) For fresh applications of PG Ts/TG Ts.

(c) For up gradation of PR Ts in TG Ts and TG Ts in PG Ts.

13. CSB (interviews) will be conducted from 15-21 feb. This will consist of two or more Boards per Command making clutters at sub area/Area/Div/Corps level. If a School is located in distant and isolated place, Comd. HQ may have a separate board exclusively for that School, eg. Srinagar, Dinjan.

14. Convening of CSB. HQ Commands will be responsible for convening requisite no of CS Bs based on their cluster of Schools.

15. Composition (CSB).

Presiding officer- Brig

Members- All Principals, Eminent Educationalist, Subject Expert and

Psychologist (desirable).

Notes:

1. All principals of the cluster will be members, however, only two will sit in for any interviews; Out of these two, one Principal must be of the school for which the particular candidate is being interviewed.

2. For CSB having only one school i.e. only one principal the second Principal will be invited from any local school.

16. Interview. Each CSB will conduct the interview in one location. In the interview following aspects should be evaluated:

(a) Confidence and ability to communicate.

(b) Knowledge and clarity of concept (c) Ability to Contribute to extra circular activities.

- (d) General Awareness.
- (e) Computer literacy
- (f) Experience
- (g) Attitude
- (h) Whether teacher has the requisite QR.
- (i) Emotional balance and stability.

17. Merit List & Weightages

- (a) Written Test- 200 marks
- (b) Interview- 200 marks

18. A candidate must score 50% marks in written test (Aggregate of two papers) to qualify for interview. In interview also minimum qualifying percentage is 50. A candidate qualifying both in written test and interview will be approved. Merit list will be made taking both the written test and interview in consideration. Appointment will be made based on the merit list. Those approved but not in merit will be kept in the reserve panel. In case an approved candidate does not join or a vacancy occurs in mid session, candidates from this panel may be appointed. The reserve panel will remain effective for current academic session only.

19. Format for preparing Merit Sheet as per Appx "B".

20. Appointing Selected Teachers. Presiding officer of CSB will send Bd proceeding to reach HQ Comds and respective Chairman by 05 Mar. HQ Comd will confirm the proceeding by 15 Mar. Chairman may issue appointment letters w.e.f. 20 Mar even if confirmation from HQ Comd has not been received.

LSB.

21. LSB will be for following category of teachers:

- (b) Primary Teachers (PR Ts).
- (c) Adhoc Teachers employed as TG Ts or PG Ts (those who could not be screened through CSB).
- (d) Activity Teachers- through LSB without written test.

22. It will be conducted and composed similar to CSB, except Presiding Officer who may be of the rank of colonel if necessary. Written paper will be prepared by SMC.

23. LSB will be conducted in the period May- Jul, after CSB has been completed. Screening will be organized by School Mgt. Committee. The procedure will consist of local advt., short listing written test, interview and appointment of teachers.

Other Instructions

24. TG Ts selected through CSB will be on probation for 1 year, which may be extended up to maximum 2 years. Thereafter their appointment will stand confirmed.

25. A TGT, if qualified, may be upgraded to PGT after screening through a CSB for PGT selection (i.e. incl. written test).

26. Similarly a PRT, if qualified may be upgraded to TGT after screening through a CSB or TGT selection (i.e. incl. written test).

27. A candidate who has been found fit by CSB will not have to appear for written test again if he/ she applies for another school. However, they will be put through interview to finalize the inter se merit. In such cases their merit position new School will be decided based on the marks of the marks of interview.

28. If a candidate has worked as a TGT/ PGT in a Kendriya Vidyalaya/ Navyug Vidyalayas for three years, he/she can be considered for direct enrolment without going through CSB. This discretion rests with SMC.

29. For those who are initially employed as Adhoc teachers after LSB and are subsequently selected by CSB, the Adhoc period will be considered as on probation. Even in such cases they will be under probation for a minimum period of 6 months as regular teacher.

30. From the perusal of the abovementioned procedure/ regulations of selection of the teachers, the score-card and admit card indicates that the selection of the Petitioner as TGT (English) was conducted by the Respondent as per the provisions of Delhi School Education Act and rules as well as through CSB written and interview and the period for which Petitioner kept as term based/contractual ought to have been treated by the Respondents as probation and she ought to have been confirmed as TGT (English).

31. In case of unaided school following category of members constitutes a selection Committee:

96 (3)(b) in the case of an appointment of a teacher (other than the head of the school):

(a) The chairman of the managing committee or a member of the managing committee nominated by the chairman;

(ii) The head of the school.

(iii) In the case of a primary school, a female educationist having experience of school education;

(iv) In case of an aided school, one educationist to be nominated by the Director, and one representative of the Director;

(v) In the case of appointment of a teacher for any class in the middle stage of any class in the higher secondary stage, an expert on the subject in relation to which the teacher is proposed to be appointed, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the director.

32. The Respondent Nos. 2 and 3 had brought records of the selection process in the Court on 29.7.2010. It appears that there was one vacancy i.e. for appointment of TGT English and not for PRT. As per records all the officials/selection committee who were present in the selection of teachers and the said selection committee was in consonance and conformity of Rule 96 of the Delhi School Education Act and Rules 1973. The record of the said selection documents nowhere mentions that the said selection was for contractual appointment.

33. The counsel for the Respondent Nos. 2 and 3 on specific query by this Court admitted that for selection of contractual/term based/adhoc teachers, the selection process which was adopted in the case of the Petitioner was not adopted and there is different procedure to appoint the teacher for selection of any contractual/term based/adhoc teachers as the same appointments are made by the Principal of the school without the presence of other members of selection committee.

34. As per record made available by the Respondents of the selection process, the Petitioner was duly selected in CSB written as well as interview for the regular vacancy of TGT (English). The composition of selection committee was in consonance and conformity of Rule 96 of the Delhi School Education Act and Rules 1973. The learned Counsel for the Respondent Nos. 2 and 3 has not denied the fact that the selection process which the Petitioner had undergone is not the same for the appointment of contractual/ adhoc/term based teachers.

35. The Clause 30 of the selection procedure of teachers through CSB and LSB reads as under:

Contract Teachers

30. If a suitable teacher is not available after CSB/LSB or a vacancy has been created in mid academic session which must be filled immediately, SMC should appoint teachers on contract till the completion of academic session. For such teachers SMC can fix a pay scale, not more than what is applicable to regular teachers.

36. In view of the above, it is evident that the selection of the Petitioner was done for regular appointment of TGT (English) but it appears from the record provided by the Respondent No. 2 and 3 that later on the Respondents had changed their mind and put the Petitioner in contractual appointment in PRT which is accepted by the Petitioner may be under compulsion or on the basis of alleged assurance given by the Respondent Nos. 2 and 3 but the fact remains that the Respondent Nos. 2 and 3 had adopted same selection process which the

Petitioner had undergone is not same for the appointment of contractual and term based teachers as per Clause 30 but the same was in consonance with Rule 96 of Delhi School Education Act and Rules for regular teachers.

37. As in the selection which was carried out for CSB/LSB all the members as envisaged under Rule 96 were present. I am of the view that the selection of the Petitioner on the said post fulfills the entire essential requirement for the selection against the regular post of TGT (English).

38. In the case of Smt. Promila Dixit v. Govt. of NCT of Delhi and Ors. in WP (C) No. 1234/2010 passed on 26.11.2010 this Court held as under:

32. There is no res integra to the proposition that when the provision enacts the fiction in the given circumstances and if the same are satisfied, the necessary consequences flow from the said fiction must be given full effect as if the said things are real. It is, as noted above, a deeming provision. Such a provision creates a legal fiction. As was stated by James, L.J. in *Levy, Re, ex p Walton*, 1881 (17) Ch.D 746:

when a statute enacts that something shall be deemed to have been done, which in fact and in truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to. After ascertaining the purpose full effect must be given to the statutory fiction and it should be carried to its logical conclusion and to that end it would be proper and even necessary to assume all those facts on which alone the fiction can operate.

33. When a thing is to be "deemed" something else, it is to be treated as that something else with the attendant consequences, but it is not that something else per *Cave, J.R. v. Norfolk County Court* 1891 (60) LJ QB 379.

34. When a statute gives a definition and then adds that certain things shall be "deemed" to be covered by the definition, it matters not whether without that addition the definition would have covered them or not.

35. It is also equally trite that when the things are prescribed to be performed in a particular manner, then the said things must be performed in the manner prescribed to the exclusion of the others.

39. This Court does find force in the arguments of the counsel of the Respondents that the Petitioner who accepted the appointment in 2008 on contractual term now cannot claim the contrary as TGT (English). Thus, none of the decisions referred by the learned Counsel for the Respondent Nos. 2 and 3 are applicable in the facts and circumstances of the present case as the Petitioner's selection cannot be considered as on probation. It is immaterial even if the Petitioner later on in her letter had made the admission about her appointment as contractual at the time of getting her an extension. The said admission of the Petitioner cannot bind the Petitioner for the same as the court has to examine the procedure of the selection which was carried out under Rule

96. In case the post is filled as per rule and essential requirement for the selection then later on the contention cannot be accepted that the appointment was on contract.

40. Further, it is pertinent to mention that earlier to the present petition, on similar facts Smt. Swapna Sood filed a Writ Petition in this Court being W.P. (C) No. 4412/2005 against the same Respondents. The facts are almost identical. The said writ petition was allowed. In the said judgment, the learned Judge has also discussed the same objections raised by the Respondents in the present petition in detail. I have been informed by the parties that the said judgment has attained its finality as no appeal was filed. Relevant portion of the referred judgment passed in earlier W.P. (C) No. 4412/2005 reads as under:

There is no doubt that Respondent No. 3 School is being run by Respondent No. 2 society, which is a society registered under the Societies Registration Act. It is also not in dispute that the Respondent school although unaided, but is a duly recognized school, recognized by the Directorate of Education, Govt. of NCT of Delhi and provisions of Delhi School Education Act and the Rules frames there under are fully applicable to Respondents No. 2 and 3. It is also not in dispute that the appointment of any teacher be it regular or ad hoc has to take place through the Selection Committee duly constituted in accordance with Rule 96 of the Delhi School Education Rules and unless the mandate of Rule 96 is followed in the selection of the Petitioner, the appointment of the Petitioner cannot be considered to be legal and valid on the said regular post of PGT (Chemistry). It also cannot be in dispute that the Petitioner has no vested right of appointment or of regularization and the only right she has, is to be considered for an appointment on the regular post by the Selection Committee duly constituted under Rule 96 of the Delhi School Education Rules. In view of the said position, the precise question to be answered by this Court is as to whether the Petitioner was lawfully and validly selected interms of Rule 96 of the Delhi School Education Rules or not. Before advertng to Rule 96 of the Delhi School Education Rules, it may be pointed out that Respondent No. 2 has evolved an elaborate selection procedure for the appointment of teachers through the process of conducting Combined Screening Board (in short referred to as CSB) and Local Screening Board (in short referred to as LSB). The candidates who qualify the written test either LSB or CSB are given authenticated "score cards". This score card, issued by the Respondents, gives details as to when the candidate has qualified a particular written test and for which post, including the percentage scored by the candidate in part A and b exams

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I also do not find any force in the arguments of the counsel for Respondent No. 2 that Respondents No. 2 and 3 being not the State, the writ petition under Article 226 of the Constitution of India is not maintainable. Admittedly, Respondents No. 2 and 3 are discharging important public functions, namely, imparting education to the children, therefore, to that extent the Respondents are performing the

functions of the State and recruitment of teachers to achieve the said object is also in discharge of the public function by Respondents No. 2 and 3. The teachers who impart education have an element of public interest in the performance of their duties and in view of the settled legal position as authoritatively pronounced by the Supreme Court at *Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others*, the present writ petition is maintainable. It will be relevant to reproduce the following paragraphs from the judgment:

31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is any violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always adjust remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32.

32. This Court in the case of *Andy Mute Sad guru Shreve mutate Vandals Swami Saran jeans Mahatma Smirk Trust v. V.R. Rumania* has held:

Article 226 confers wide powers on the High Courts to issue writs in the nature of prerogative writs. This is a striking departure from the English law. Under Article 226, writs can be issued to "any person or authority". The term "authority" used in the context, must receive a liberal meaning unlike the term in Article 12 which is relevant only for the purpose of enforcement of fundamental rights under Article 32. Article 226 confers power on the High Courts to issue writs for enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or body performing public duty. The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

33. Thus, it is clear that when a private body exercises its public functions even if it is not a State, the aggrieved person has a remedy not only under the ordinary law but also under the Constitution, by way of a writ petition under Article 226. Therefore, merely because a non-governmental body exercises some public duty, that by itself would not suffice to make such body a State for the purpose of Article 12. In the instant case the activities of the Board do not come under the guidelines laid down by this Court in *Pradeep Kumar Biswas* case hence there is

force in the contention of Mr. Venugopal that this petition under Article 32 of the Constitution is not maintainable.

I also do not find any merit in the arguments of the counsel for the Respondent that the Petitioner has acquiesced and waived her right to claim the relief of appointment on the post of PGT (Chemistry) by accepting her contractual and ad hoc employment w.e.f. 1.7.2004 to 30.6.2005. The Petitioner has duly clarified in the petition under what circumstances she was kept under a belief that she would be interviewed for CSB for her final selection on the regular post of PGT(Chemistry). The letter dated 16.2.2005 issued by the Petitioner was due to her bona fide belief and, therefore, it cannot be said that by writing the said letter the Petitioner can be debarred from claiming the relief of appointment on the post of PGT (Chemistry) in case of such a relief is otherwise legally available to her. Doctrine of estoppel does not come in the way of the present facts and circumstances of the case.

41. In the light of the aforesaid discussions, the writ petition is allowed. The Respondents No. 2 and 3 are directed to issue an appointment letter in favour of the Petitioner for her appointment on the regular post TGT (English) in Army Public School, Dhaula Kuan, New Delhi, pursuant to her selection by the Selection Board who selected her on 23.2.2008 within two weeks from today.

42. The writ petition is disposed of. No costs.