

Tilok Singh and ors Vs. State of Raj. and ors

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Court : Rajasthan Jodhpur

Decided On : Oct-21-2013

Appellant : Tilok Singh and ors

Respondent : State of Raj. and ors

Judgement :

TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

1 TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12)

2. NATHULAL BAMANIYA & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION No.9435/13)

3. VIMLESH PALIWAL & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.11058/13)

4. BABU SINGH VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.11796/13)

5. HITESH PARIHAR VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.6968/13)

6. RAM NARAYAN GURJAR & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.2870/11)
7. DEEPAK SINGH CHARAN VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10106/13)
8. RAJESH KHATIK & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.2945/13)
9. MAHAVEER PRASAD PUROHIT & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.230/13)
10. GOPAL LAL VYAS & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.7320/11)
11. SHEORAJ & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.11395/09)
12. NARAYAN SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10439/13) TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 2
13. RAM SUKH MIRDHA VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.8180/09)
14. MANOHAR SINGH VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.1953/13)
15. RAMDEVA RAM & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.92/13)
16. SANGITA PRAJAPAT & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.2030/13)
17. NAND BHANWAR SINGH VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.3659/13)

18. ARJUN SINGH JODHA & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10079/13)
19. SURAJMAL & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.8055/10)
20. AMBA LAL & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10268/10)
21. LALIT KUMAR MEGHWAL & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.11804/10)
22. PRADEEP KUMAR & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.8729/10)
23. VINOD KUMAR VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.11153/10)
24. URMILA UPADHYAY VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.11624/10)
25. DHANNA RAM SIYAG VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.6925/11)
26. DILAWAR KHAN & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10950/12)
27. UDAI SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 3 (S.B.CIVIL WRIT PETITION NO.11061/12)
28. KAILASH CHANDRA SHARMA & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.11132/12)
29. KAMLENDRA SINGH MEENA & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.11801/12)

30. SURESH KUMAR GARG & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.13062/12)
31. SARITA SHARMA & ANR. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.7235/10)
32. PRAKASH LAL GARG & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.8960/09)
33. JITENDRA KUMAR VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10275/09)
34. RAJENDRA SINGH SARANGDEWAT & ANR. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10820/09)
35. CHANDRA PAL SINGH VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.9212/09)
36. SURYAKANT BHATI & ANR. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.9234/09)
37. MAHENDRA REWAD VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10195/09)
38. RAKESH BISHNOI & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.11803/09)
39. RUSTAM SAYYEDVS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.5127/10)
40. JITENDRA SINGH VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10334/10) TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 4
41. PREM KANWAR & ANR. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.5432/13)

42. KALU SINGH JAITAWAT & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.5434/13)
43. RAFIQ MOHD. TELI & ANR. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.6436/13)
44. NIRMALA VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10729/13)
45. MANGU SINGH VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10730/13)
46. RAMNIWAS VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10851/13)
47. LAXMI NARAYAN SUTHAR & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.11959/10)
48. KAMLESH KUMAR SONI & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.1896/11)
49. CHHAGAN LAL & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.6897/11)
50. SURESH CHANDRA AAMETA & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.6522/11)
51. GOPI LAL KUMAWAT & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.2071/11)
52. DILIP KUMAR CHOUHAN & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.2147/11)
53. MANILAL NINAMA & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.8972/11) TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 5

54. HARI RAM MEGHWAL & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.7380/11)
55. MANOJ KUMAR & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.6432/11)
56. HANUMAN RAM & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.6608/11)
57. MOHAMMED ILIYAS KHAN & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.6658/11)
58. BANSI LAL & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.7180/11)
59. RAJEDNRA PRAJAPAT & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.7372/11)
60. BHEEM SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.11988/10)
61. RAKESH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.12393/11)
62. RAMAKISHAN & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION No.2769/11)
63. JAGDISH KUMAR CHANDEL & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.7260/10)
64. ALKA TAILOR VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.9058/10)
65. SMT. MEENA VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.6911/12)
66. SUNIL SHARMA VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.8917/13)

67. JABBAR TELI & ANR. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.5264/13)
68. ROOP SINGH SINDHAL & ORS. VS. STATE OF RAJASTHAN TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 6 & ORS. (S.B.CIVIL WRIT PETITION No.6101/13)
69. CHOTU KHAN & ANR.VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.6422/13)
70. RAMAVTAR MEENA VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION No.12131/11)
71. MADHU RAM SEERVI VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.2940/13)
72. SMT. MEENA & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.8907/11)
73. DEEPAK SABNANI & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.8923/11)
74. MOHAMMED ALI VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION No.12991/12)
75. TEJA RAM & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.90/13)
76. VIDITA JOSHI & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.7787/11)
77. NARAYAN LAL & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.7729/11)
78. BALWANT DAN VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.7503/11)

79. PRAKASH KUMAR MEENA & ORS. VS. STATE OF RAJASTHAN & ORS.
(S.B.CIVIL WRIT PETITION No.7307/11)
80. MANISH KUMAR PAREEK & ORS. VS. STATE OF RAJASTHAN & ORS.
(S.B.CIVIL WRIT PETITION NO.7077/11)
81. KAILASH CHANDRA SARAN & ORS. VS. STATE OF RAJASTHAN & ORS.
(S.B.CIVIL WRIT PETITION NO.6962/11)
82. CHANDRA PRAKASH JOSHI & ORS. VS. STATE OF TILOK SINGH & ORS.
VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12)
& 89 connected matters. 7 RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION
NO.6931/11)
83. SHRICHAND PATIR VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT
PETITION NO.6878/11)
84. GANESH LAL SHARMA & ORS. VS. STATE OF RAJASTHAN & ORS.
(S.B.CIVIL WRIT PETITION NO.6843/11)
85. KISHORI LAL & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT
PETITION NO.6826/11)
86. LAXMAN SINGH RAO & ANR. VS. STATE OF RAJASTHAN & ORS.
(S.B.CIVIL WRIT PETITION NO.6724/11)
87. TARA SINGH VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT
PETITION No.1917/11)
88. GANGA SINGH & ANR. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL
WRIT PETITION NO.10868/10)
89. KISHAN LAL KHATIK & ORS. VS. STATE OF RAJASTHAN & ORS.
(S.B.CIVIL WRIT PETITION NO.9244/09)
90. GHANSHYAM SINGH RAJPUT & ORS. VS. STATE OF RAJASTHAN & ORS.
(S.B.CIVIL WRIT PETITION NO.8154/10) Dated:- 21st October, 2013. HON'BLE

MR. JUSTICE SANGEET LODHA Mr. R.S.Saluja } Dr. Pushpendra Singh Bhati }
Dr. Nupur Bhati } Miss Pintu Pareek } Mr. Amit Dave } Mr. Rajendra Kataria } Mr.
T.S.Rathore, } Mr. H.S. Sindhu } Mr. R.S. Choudhary } Mr. Arjun Purohit } TILOK
SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION
NO.10339/12) & 89 connected matters. 8 Mr. J.S. Bhalaria } Mr. A.K.Choudhary }
Mr. M.S. Godara } Mr. V.R.Choudhary } Mr. S.S.Gour } Mr. Gopal Acharya } Mr.
Narpat Singh } Mr. P.S. Chundawat } Mr. Shreekant Verma } Mr. Ramesh Purohit }
Mr. A.R. Godara } Mr. Sabir Khan } Mr. R.K. Bhardwaj } Mr. Mohit Vyas } Mr. P.R.
Mehta } Mr. K.L. Chouhan } Mr. Sunil Ranwha } Mr. Bharat Singh } Mr. Sukhesh
Bhati } Mr. Vinit Sanadhya } Mr. Ramdev Potalia } Mr. Ravindra Singh } Mr.
Deepak Nehra } Mr. Bharat Devasi } Mr. G.S. Rathore } Mr. RDSS Kharlia } Mr.
K.C. Choudhary } Mr. H.R. Chawala } Mr. R.C. Joshi } Mr. Rakesh Matoria } Mr.
R.P. Singaria } Mr. N.R. Budania } Mr. Surendra Bagmalani } Mr. Balvindra Singh }
Mr. Rameshwar Dave } Mr. Dinesh Bishnoi } Mr. Awar Dan Ujjawal } Mr.
Bhupendra Singh } Mr. Bhanwar Singh } Mr. A.D.Charan } Mr. R.P.Singaria } Mr.
Mahaveer Bishnoi } Mr. Sudhir Saruparia } for the petitioners. Mr. O.P.Kumawat }
Mr. A.S.Rathore } TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS.
(S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 9 Mr.
R.L.Jangid, AAG assisted by Mr. Rishabh Tayal } Dr. G.R.Kalla, with Ms. Meenu
Purohit } for the respondents. Mr. D.K.Joshi, AGC } Reportable

1. These writ petitions (except the writ petition No.8154/10) are preferred by the petitioners, who were employed as Vidhyarthi Mitra under Vidhyarthi Mitra Scheme (for short the Scheme.) framed by the State Government and were posted to discharge the duties of the post of Teachers in various Government Schools till the availability of regularly selected candidates, aggrieved by the action of the respondents in terminating their services or refusing to continue them in service or against non consideration of their candidature for re- employment against the vacant posts or against the action of the State Government in insisting upon them for execution of the fresh agreement and/or denying the payment of salary for the period they had worked on the posts.

2. The writ petition No.8154/10 has been preferred by the petitioners who are holding the requisite qualification for recruitment to the posts of Teachers,

assailing the validity of the Scheme introduced by the State Government and the action of the Government in not filling in the posts of Teachers lying vacant for years together in various Schools run by the State Government, by way of regular selection in accordance with the TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 10 relevant recruitment Rules and instead continuing Vidhyarthi Mitra in service against the vacant posts of Teachers in different grades dehors the relevant recruitment Rules.

3. Since the Scheme framed by the Government for engagement of Vidhyarthi Mitra on fixed honorarium till the availability of regularly selected Teachers itself is questioned before this court, therefore, all these matters were heard together and are being disposed of by this common order.

4. The relevant facts are that keeping in view the possible delay in duly selected candidates being made available by Rajasthan Public Service Commission (RPSC) for filling in large number of vacancies of the posts of School Lecturers and Senior Teachers, the State Government vide order dated 7.9.06 floated the Scheme for engaging Vidhyarthi Mitra on contract basis for a fixed term and on fixed honorarium, till the availability of duly selected Teachers. As per the Scheme, the persons to be engaged as Vidhyarthi Mitra against 1407 posts of School Lecturers were to be paid fixed honorarium Rs.4,000/- whereas, the persons to be engaged against the vacant posts of Senior Teachers were to be paid fixed honorarium Rs.3,000/- per month. Later, the Scheme framed as aforesaid was extended for engaging Vidhyarthi Mitra against the vacant posts of Teacher Gr.III as well. It was specified that the persons possessing the requisite educational qualification and training shall be given TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 11 preference, however, in case of non availability the persons holding the requisite educational qualification may also be engaged as Vidhyarthi Mitra till 28.2.07. Vide yet another order dated 30.11.06, it was directed that in case of non availability of qualified candidates for teaching the students of classes of Secondary and Senior Secondary, the degree holder can be engaged as Vidhyarthi Mitra against the posts of Lecturers/Senior Teachers and the persons

holding the qualification of Senior Secondary against the posts of Teachers Gr.III. The Scheme was framed by the State Government by issuing just an executive fiat and does not have any statutory force.

5. The arrangements made for engagement of Vidhyarthi Mitra for short duration till the availability of duly selected candidates continued for years together and thus, persons even not holding the requisite qualification for recruitment to the post of School Lecturers, Senior Teachers and Teachers Gr.III continue to teach the children of tender age studying in the State run schools and the regular vacancies in the cadre were not filled in by way of regular recruitment process.

6. Later when, the the services of Vidhyarthi Mitras engaged on contractual basis as aforesaid, were terminated, a number of writ petitions assailing the termination and claiming continuance in service were preferred by the aggrieved persons before this TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 12 court. A bunch of writ petitions (S.B.C.Writ Petition No.4652/09 and connected 362 writ petitions) was decided by the Jaipur Bench of this court vide order dated 8.5.09 with the following directions:

36. Accordingly, the writ petitions are disposed of as under:- I. During continuation of the work, as detailed out hereinabove, the invocation of the last extension is arbitrary and illegal; and the consequential automatic termination orders of the petitioners are set aside. II. The RPSC/DPC selected candidates/employees are still not available and next academic sessions is about to start; even urgent temporary appointments under Rule 28 of the Rules of 1971 are not possible due to short span of one month and a half left to start with the process of admission and academic session, therefore, as per the aims and objects of the Scheme, respondents are directed to consider the cases of the petitioners for continuation in service till regularly selected candidates from RPSC/persons selected and recommended by the DPC for promotion are made available in the light of the above observations; III. Even in case of appropriate order of continuation in service till regularly selected candidates from RPSC/DPC selected persons are available, the petitioners are not entitled for wages of the vacations, in other

words, when the schools are closed. IV. In case the regularly selected candidates from RPSC/persons selected and recommended by the RPSC for promotion are made available, then the respondents can terminate services of the petitioners after preparation of the seniority list on the State level as per their date of appointment and merit assigned to them, by following the principle of 'last come first go' to the extent of availability of the selected candidates and while doing so, the respondents will keep the interest of the present students and prospective students in view.. 7. The aforesaid decision of the Jaipur Bench was followed by this Court in the matter of 'Devendra Kumar & Ors. Vs. State of TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 13 Rajasthan' (SB Civil Writ Petition No.2579/2009) and other 502 connected petitions, decided vide order dated 15.5.09.

8. The order dated 8.5.09 *ibid*, passed by the Jaipur Bench of this Court was appealed against by the writ petitioners as well as the State Government. The Division Bench of this court while issuing notices on the Special Appeals preferred by the State Government, dismissed the Special Appeals preferred on behalf of the writ petitioners therein, vide judgment dated 17.9.09 rendered in the matter of Rajendra Kumar Saini & Ors. vs. State of Rajasthan, reported in 2010(1) WLC171 9. Similar controversy having been arisen before this court in the matter of 'Pralhad Kumar Sharma vs. State of Rajasthan & Ors.' [2010(3) WLC, 619]., this court disposed of the petition with the following directions:

6. In view of aforesaid, these writ petitions are also disposed of in view of earlier decision of this Court by Single Bench as well as Division Bench and aforesaid quoted decisions of the State Government vide letter dtd. 4.6.2010 and 26.6.2010 and the respondents shall continue the contract of employment of present Vidhyarthi Mitras-petitioners who have worked for Academic Sessions 2009-2010 till the end of Academic Sessions 2010-2011 and shall also consider the case of present petitioners-Vidhyarthi Mitras for transfer and absorptioin under the Rationalisation and Equalisation Policy also in other Blocks/Tehsil and Districts as required by the Director, Elementary Education, Bikaner vide letter dtd. 26.6.2010 to the Principal Secretary, School and Sanskrit Education, Jaipur vide Annex.4

dtd. 26.6.2010. The decision shall not confer any right on the petitioners-Vidhyarthi Mitras to continue in said position after the end of Academic Sessions 2010-2011 unless State Government itself takes a decision otherwise in this TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 14 regard.

7. These directions will apply to the present petitioners and all other similarly situated Vidhyarthi Mitras who have worked for Academic Session 2009-2010, even if they have not approached this Court by way of a writ petition and the respondents will be bound to give similar treatment to all other similarly situated person without requiring them to approach this Court by way of fresh writ petition.

8. Those Vidhyarthi Mitras who worked for the Academic Session 2008-2009 or prior to that but did not work as such for the Academic Session 2009-2010, are not entitled to the aforesaid relief as such. However, if such Vidhyarthi Mitras make any representation and vacancies are still available with the State Government for Academic Session 2010-2011, their cases may be considered for reemployment. If however, it is not found appropriate to re-employ such Vidhyarthi Mitras, the Principal Secretary may pass one common order for such Vidhyarthi Mitras employed for Academic Session 2008-2009 or prior to that and it will not be necessary for all respective District Education Officers or any other authority to pass separate orders on such representations.. 10. It is to be noticed that apprehending termination of services, the Vidhyarthi Mitras engaged as aforesaid, started agitation and raised the demand before the State Government for their continuance in service. In these circumstances, the State Government took a decision that on account of availability of duly selected candidates by RPSC, if any Vidhyarthi Mitra already working, is affected then instead of terminating his service, he will be adjusted in other nearby school in the District on the equivalent post lying vacant.

11. In the meantime, the process for regular recruitment to the various posts of Teachers was initiated by the State Government and number of vacancies have already been filled TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 15 in,

however a large number of posts are still lying vacant and process for regular recruitment continues.

12. The petitioners are aggrieved by termination of their services and refusal to continue them in service in defiance of the directions issued by this court from time to time and the policy decision taken by the State Government for adjusting the surplus Vidhyarthi Mitra on equivalent posts lying vacant in other schools while preparing the seniority list at District level and applying the principle of 'last come first go'.

13. Indisputably, the question with regard to legality of the Scheme framed by the State Government for engagement of Vidhyarthi Mitra on contract basis against the sanctioned post of Teachers in the different services/cadres did not come for consideration of this Court in the matters already decided as aforesaid. As noticed above, the writ petitioners-Ghanshyam Singh and others (S.B.C.Writ Petition No.8154/10) have questioned the legality of the Scheme introduced by the State Government providing for engagement of Vidhyarthi Mitra against the posts of School Lecturers, Senior Teachers and Teachers Gr.III as also against the continuance of Scheme for an indefinite period and not filling in the posts of Teachers in various cadres by way of regular recruitment process in accordance with the Rules, expeditiously.

14. Ms. Pintu Pareek, learned counsel appearing for the TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 16 petitioners-Ghanshyam Singh & Ors. submitted that the regular posts of the Teachers in various services/cadres are required to be filled in by way of regular selection in accordance with the procedure laid down under the relevant recruitment Rules and the State Government cannot be permitted to appoint unqualified persons on contractual basis against the sanctioned posts in the cadre dehors the relevant recruitment Rules. Learned counsel would submit that the eligibility qualification for recruitment to the posts of Senior Teachers is governed by the provisions of Rajasthan Educational Subordinate Services Rules, 1971 ('Rules of 1971') and the recruitment to the posts of School Lecturers is governed by the provisions of Rajasthan Educational

Service Rules, 1970 ('Rules of 1970') and the recruitment on the post of Teacher Gr.III is governed by Rajasthan Panchayati Raj Rules, 1996 ('Rules of 1996') and therefore, the State Government has no authority to engage Vidhyarthi Mitra on contractual basis against the regular posts in the different cadres dehors the relevant recruitment Rules by framing a Scheme which is ex facie illegal and unconstitutional. Learned counsel would submit that even in case where it is not possible to fill up the regular vacancies in the cadre by way of regular selection process immediately, there are provisions incorporated for urgent temporary appointment and therefore, instead of resorting to the recruitment process provided under TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 17 the Rules, the action of the respondents in engaging Vidhyarthi Mitra on contractual basis on payment of meagre sum as honorarium is ex facie illegal, arbitrary and without jurisdiction. Learned counsel submitted that the eligibility qualification of the Teachers are now governed by norms laid down by the National Council for Teacher Educations (NCTE) established under the provisions of National Council for Teachers Education Act, 1993 (Act of 1993.), under the NCTE (Determination of Minimum Qualification for Recruitment of Teachers in Schools) Regulations, 2001 (for short the Regulations.) and therefore, no person who is not holding the requisite qualification for recruitment to the posts of School Lecturer, Senior Teacher or Teacher Gr.III could be engaged by the State Government for discharging the duties of the said posts, by framing the Scheme and creating the posts with fictitious designation. Learned counsel submit that the action of the respondents in engaging unqualified persons for discharging the duties of the posts of Teachers is causing great harm and injustice to the children of tender age studying in the schools run by the State Government and as a matter of fact, it is fraud on the Constitution inasmuch as Article 21A inserted vide Constitution (Eighty Sixth Amendment) Act, 2002 casts duty upon the State to provide free and compulsory education to all children of age 6 to 14 years in such manner as States by law provides. In support of TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 18 contention, learned counsel relied upon decisions of the Hon'ble Supreme Court in the matters of 'Andhra Kesri Education Society Vs. Director of School Education'

reported in AIR 1989 SC1983 and of 'L. Muthu Kumar & Another Vs. State of Tamil Nadu and Another' reported in 2000(7) SCC618 Learned counsel submitted that while engaging Vidhyarthi Mitra the competitive claims are not considered and the authorities concerned are making appointments by adopting 'pick and choose' method. Learned counsel submitted that for enforcement of fundamental right conferred upon the citizen by Article 21A of the Constitution, the Parliament has already enacted The Right of Children to Free and Compulsory Education Act, 2009. (Act of 2009.) and therefore, the State Government is under an obligation to provide adequate number of qualified teachers for teaching the children in various schools run by the State and it cannot be permitted to defer the regular recruitment of Teachers against the vacant posts in accordance with the procedure laid down under the relevant recruitment Rules indefinitely, on any ground whatsoever. Learned counsel submitted that qualified teachers in sufficient numbers are available, however, the State Government for the reasons best known to it, is delaying the regular recruitment process and thus the children of tender age are made to suffer the teaching by unqualified persons.

15. Learned Additional Advocate General Mr. R.L.Jangid TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 19 submitted that the Scheme was introduced by the State Government at the relevant time taking into consideration the possibility of delay in regularly selected candidates being made available by the RPSC and therefore, the action of the State Government in framing the Scheme cannot be faulted with. Learned AAG submitted that the Government has no intention to continue the engagement of Vidhyarthi Mitra for an indefinite period and obviously, on availability of the selected Teachers, on the vacancies being filled in, the question of continuing them in service does not arise. Relying upon the decision of the Apex Court in the matter of 'Secretary, State of Karnataka and Others Vs. Uma Devi and Others' 2006(4) SCC1 submitted that to meet the particular situation the State Government is not precluded from framing the Scheme for giving employment but then the contractual employees engaged for a fixed term cannot claim continuance in service for an indefinite period as a matter of right. Learned AAG would submit that engagement of Vidhyarthi Mitra on contractual basis has come to an end and therefore, the question of continuing them in service any

further does not arise. Precisely, learned AAG submitted that number of vacant posts of Teachers in various cadres/services have already been filled in and the recruitment process to fill up the remaining posts has already been initiated and the regular posts of Teachers in the different cadres shall be filled in by way of TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 20 regular recruitment process, expeditiously.

16. Learned counsel appearing for the petitioners who were engaged as Vidhyarthi Mitra under the Scheme submitted that they have served the respondents as Vidhyarthi Mitra for years together and therefore, their services cannot be terminated in perfunctory manner ignoring the fact that number of posts of Teachers in different cadres are still lying vacant. Learned counsel would submit that the action of the State Government in engaging Vidhyarthi Mitras on account of non availability of selected candidates cannot be said to be arbitrary and illegal. Learned counsel submitted that as a matter of fact, the controversy involved in these matters, stands covered by the various decisions of this court whereby the persons engaged on the post of Vidhyarthi Mitra were directed to be continued in service till the availability of the duly selected candidates. Accordingly, learned counsel submitted that the appropriate directions deserve to be issued to the respondents to continue the petitioners in service till the availability of regularly selected candidates and further, not to insist for execution of the fresh contract from time to time. Learned counsel submitted that the persons whose services were terminated, notwithstanding the availability of vacant posts are entitled to be re-employed till the availability of regularly selected candidates. Learned counsel submitted that the appropriate directions also deserve to be TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 21 issued to the respondents for the payment of honorarium to the petitioners for the period they have served the respondents as Vidhyarthi Mitra.

17. Mr. R.S.Saluja, learned counsel submitted that by way of Rajasthan Various Service (Fourth Amendment) Rules, 2008, the Various Service Rules as specified have been amended and a provision has been incorporated in terms that the direct

recruitment to the posts specified in Schedule shall be held atleast once a year unless the Government decides that direct recruitment for any of these posts shall not be held in any particular year and therefore, the State Government cannot shirk from its responsibility to fill up the vacant posts in the cadre by holding the regular recruitment every year. Learned counsel submitted that the State cannot be permitted to withhold the recruitment process for an indefinite period and engage the persons on contractual basis against the regular posts in the cadre. Learned counsel submitted that the persons who are engaged as Vidhyarthi Mitras are made to discharge duties of the post of Teachers, but instead of making payment of salary to them admissible to the respective posts on urgent temporary appointment being made under the relevant recruitment Rules, they are being paid a meagre amount as honorarium which amounts to taking Begar from them in violation of Article 23 of the Constitution of India and also TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 22 violates the principle of equal pay for equal work.. Learned counsel would submit that the engagement of the persons in service by the State on contractual basis against the regular posts in the cadre is prohibited by virtue of provisions of sub- section (2) of Section 4 of the Rajasthan (Regulation of Appointments to Public Services and Rationalisation of Staff) Act, 1999 ('the Act of 1999') and therefore, the State Government is under obligation to fill up the posts in the cadre by way of regular recruitment in accordance with the relevant Rules.

18. I have considered the rival submissions, the decisions cited at the Bar and the material on record.

19. Before proceeding to deal with the rival submissions of the parties, it would be beneficial to have a glimpse at the scheme of recruitment of Teachers at the Primary, Upper Primary, Secondary and Senior Secondary Level in the State of Rajasthan.

20. Initially, the recruitment to the post of Teachers in the Primary school in the rural areas of the State of Rajasthan was governed by the provisions of Rajasthan Panchayat Samiti & Zila Parishad Rules, 1959 and the Rules made thereunder.

After coming into force of the Constitution (Seventy-third Amendment) Act, 1992 w.e.f. 23.4.93 giving constitutional status to Panchayati Raj Institution in India, necessitated to bring the laws relating to Panchayati Raj Institution in conformity with the constitutional amendment and therefore, two Acts TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 23 namely, Rajasthan Panchayat Act, 1953 and (ii) the Panchayat Samiti & Zila Parishad Act, 1959 were repealed and replaced by Rajasthan Panchayati Raj Act, 1994 (for short the Act of 1994.) .

21. Section 89 of the Act of 1994 provides for constitution of Rajasthan Panchayat Samiti & Zila Parishad Service which was originally consisted of inter alia the Primary School teachers. However, clause (iii) of sub-section(2) of Section 89 was amended by Rajasthan Panchayati Raj (Amendment) Act, 2000, whereby clause 3 of sub-section (2) was amended substituting Primary and Upper Primary Schools. in place of Primary Schools. and thus, the Panchayat Samiti & Zila Parishad Service now comprises of inter alia Primary & Upper Primary School Teachers.

22. As per sub-section (6) of Section 89, the appointment by direct recruitment to the various posts in service shall be made by Panchayat Samiti or Zila Parishad, as the case may be, in accordance with the Rules made in this behalf by the State Government from out of the persons selected for the post in a grade or category in the district by the District Establishment Committee referred to in sub-section (1) of Section 90. In exercise of the power conferred by the Act of 1994, the State Government has framed the Rules governing the recruitment and other service conditions of employees of the Panchayati Raj TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 24 Institutions as set out in Chapter XII of the Rules of 1996.

23. It is to be noticed that the NCTE established under the provisions of the Act of 1993 framed Regulations,2001 laying down the minimum qualification for recruitment of teachers in all formal schools established, run or aided or recognized by Central or State Government and other authorities for imparting education at Elementary (Primary & Upper Primary/Middle School), Secondary and Senior Secondary.

24. By way of the Constitution (Eighty Sixth Amendment) Act, 2002, Article 21A was inserted in the Constitution which mandates that the State shall provide free and compulsory education to all children of the age 6 to 14 years in such manner as the State by law provides. Accordingly, for enforcement of the right conferred by Article 21A of the Constitution, the Parliament enacted the Act of 2009. The Chapter-IV A of the Act of 2009 deals with 'Responsibilities of Schools and Teachers'. Section 23 incorporated therein provides for 'Qualification for appointment and terms and conditions of service of teachers'. As per sub-section (1) of Section 23 any person possessing such minimum qualification as laid down by an academic authority authorized by Central Government, by notification shall be eligible for appointment as a Teacher. The NCTE stands authorized by the Central Government as an academic authority to exercise power conferred by sub-section (1) of Section 23 of the Act of 2009. TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 25 Accordingly, in exercise of the power conferred by sub-section (1) of Section 23, NCTE has issued the notification dated 23.8.2010 laying down the minimum qualifications for a person to be eligible for appointment as Teacher in Class-I to VIII in schools referred to in Clause (n) of Section 2 of the Act of 2009. It has been inter alia provided thereunder that one of the essential qualification for a person to be eligible for appointment as Teacher in any of the schools referred to in clause (n) of Section 2 of the Act of 2009 is that he/she should pass the Teachers' Eligibility Test (TET), which will be conducted by the appropriate Government in accordance with the Guidelines framed by the NCTE. Accordingly, the NCTE has already laid down the Guidelines for conducting TET.

25. Keeping in view the notification dated 23.8.2010 *ibid*, issued by the NCTE so as to bring the qualification prescribed under Rule 266 of the Rules of 1996 for recruitment to the post of primary and upper primary School Teachers in conformity with the qualification prescribed by the NCTE as aforesaid, the State Government vide notification dated 11.5.2011 amended Clause (3) of Rule 266 of the Rules of 1996. The substituted Clause (3) of Rule 266 runs as under:- Rule 266. Academic qualification- A recruit must possess minimum qualification as under:- xxxxxxxx (3) Primary and Upper Primary TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89

connected matters. 26 School Teacher(100% by direct recruitment) (a)General Education Level-(i) Classes I to V Qualifications as laid down by National Council for teacher Education(NCTE) under the provisions of sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act,2009 (Central Act No.35 of 2009) from time to time. Level-(ii) Classes VI to VIII Qualifications as laid down by National Council for Teacher Education (NCTE) under the provisions of sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009(Central Act No.35 of 2009) from time to time. (b) Special Education Level-(i) Classes I to V Qualifications as laid down by National Council for Teacher Education (NCTE) under the provisions of sub-section (1) of Section 23 of the Right of Children to Free and Compulsory Education Act, 2009 (Central Act No.35 of 2009) from time to time. Level-(ii)Classes VI to VIII Qualifications as laid down by National Council for Teacher Education (NCTE) under the provisions of sub-section (1) of Section 23 of the TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 27 Right of Children to Free and Compulsory Education Act, 2009 (Central Act No.35 of 2009) from time to time. Provided further that the person who has appeared in the B.Ed./B.S.T.C. Examination shall be eligible to apply for the post of primary and upper primary school teacher but he shall have to submit proof of having acquired the said education qualification to the District Establishment Committee before the declaration of result of the said examination..

26. It is to be noticed that as per Rule 263 of the Rules of 1996, specifically provides that subject to the provisions of the Rules and the directions of the Government, if any, the Panchayat Samiti or Zila Parishad shall determine and intimate the Committee (District Establishment Committee) every year the number of vacancies anticipated under each category during the year and the number of persons likely to be recruited by each method. That apart, Rule 284(1) of the Rules of 1996 mandates that in case no selection has been made or no person selected by the Committee is available at any time for filling a vacancy, appointment may be made by the Appointing Authority on urgent temporary basis for a period not exceeding six months provided that such person shall be appointed only on contract basis with prior approval of the District Establishment Committee in case of Panchayats and approval of the State Government in case

of Panchayat Samiti/Zila Parishad. Besides, as per Rule 284 (2), if it is proposed to fill the vacancy by direct recruitment TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 28 temporarily nearest Employment Exchange may be asked to send names of persons possessing required qualification at least five times the number of vacancies to be so filled and out of those persons, the Appointing Authority shall appoint the persons suitable for the post.

27. The recruitment to the post of Senior Teacher and School Lecturer is governed by the Rules of 1971 and Rules of 1970 respectively, framed by the Governor in exercise of the power conferred by proviso to Article 309 of the Constitution of India. The recruitment to the posts of Senior Teachers and School Lecturers are required to be made by direct recruitment as well as by promotion in the proportion indicated in the Schedule attached to the relevant recruitment Rules. The recruitment Rules specifically provides for yearwise determination of actual number of vacancies occurring belonging to the promotion and direct recruitment quota as on 1st April every year. It is pertinent to note that in exercise of the power conferred by proviso to Article 309 of the Constitution of India, the Governor of Rajasthan vide notification dated 23.9.08, promulgated Rajasthan Various Service (Fourth Amendment) Rules, 2008, which specifically provides that direct recruitment to the post specified in the Schedule shall be held at least once a year unless the Government decides that the direct recruitment for any of these posts shall not be held in any particular year. The TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 29 Rules of 1970 and Rules of 1971 finds mention at serial No.20 and 52 of the Schedule. It is not the case of the respondents that any decision was taken by the Government not to make the recruitment for any of the posts en-cadred under the Rules of 1970 and Rules of 1971. Thus, indisputably, in terms of the relevant recruitment Rules, the State Government is under an obligation to determine the yearwise vacancies and proceed with the recruitment process to fill up the vacancies in the cadre in accordance with the relevant Rules.

28. It is pertinent to note that Rule 27 of the Rules of 1970 and Rule 28 of the Rules of 1971 provides for urgent temporary appointment against the vacancy in

service which cannot be filled in immediately either by direct recruitment or by promotion under the Rules, by appointing in an official capacity the persons eligible for appointment to the post by promotion or by appointing temporarily thereto a person eligible for direct recruitment to the service under the provisions of the Rules. Suffice it to say that under the relevant recruitment Rules, no person lacking eligibility qualification could be appointed on the various posts in the cadre even on urgent temporary basis.

29. In the backdrop of position of law, as aforesaid, adverting to the Scheme, it is significant to note that the appointment of Vidhyarthi Mitra on contractual basis thereunder was sought to be made on the pretext that the regular recruitment process of TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 30 Teachers in various cadres is likely to take a long time. One fails to understand that if regular recruitment in the cadre was likely to take a long time and there was non-availability of the duly selected candidates then what prevented the State Government from resorting to recruitment process under the Rules for urgent temporary appointment against the vacant posts of eligible candidates till the availability of duly selected candidates. Strangely enough under the Scheme framed the requirement of the eligibility of the candidates for the recruitment to the post of Teachers as provided for under the relevant recruitment Rules and by NCTE was also ignored inasmuch as the Scheme permitted even the engagement of persons who are not trained to discharge the duties of the Teachers in various Schools.

30. It is well settled that the regular posts in the cadre are required to be filled in by way of the regular recruitment process under the Rules. Of course, as noticed above, the urgent temporary appointment to the extent permissible under the Rules can be made till the availability of regularly selected candidates but then, the appointment on contractual basis is not envisaged under the relevant recruitment Rules. As a matter of fact, even the urgent temporary appointment in any public service to any post de hors the relevant Rules without permission of the competent authority is prohibited under Section 4 of the Act of 1999. Rather, the appointment in TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT

PETITION NO.10339/12) & 89 connected matters. 31 contravention of the provisions of the Act of 1999 is an offence punishable under the provisions of Section 14 of the Act of 1999.

31. In this view of the matter, the Vidhyarthi Mitra Scheme introduced by the State Government providing for engagement of Vidhyarthi Mitra on contractual basis against the vacant posts of Teachers in various cadres ignoring the eligibility qualification prescribed and the procedure prescribed for the recruitment is ex facie dehors the relevant recruitment Rules. That apart, the recruitment of Teachers lacking eligibility qualification runs contrary to the Regulations, 2001 framed by the NCTE, which have statutory force. As a matter of fact, the NCTE having prescribed the eligibility qualification, the State Government cannot proceed to appoint the persons on the posts of Teachers by giving the fictitious designation i.e. Vidhyarthi Mitra to teach the children who are mandatorily required to be taught by the persons eligible for recruitment to the post as per the eligibility qualification laid down by the NCTE.

32. As noticed above, by way of Constitution (Eighty Sixth Amendment) Act, 2002, Article 21A was inserted in the Constitution which makes right to education, a fundamental right, and provides that State shall provide free and compulsory education all children of 6 to 14 years in such manner as the State by law provides. Indisputably, so as to implement the provisions of Article 21A of the Constitution, the Act of 2009 has TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 32 been enacted by the Parliament which mandates that only the persons possessing minimum qualification as laid down by an academic authority authorised by the Central Government by notification shall be eligible for appointment on the posts of Teachers. As a matter of fact, it is not even disputed before this Court that the academic body, NCTE, under the authorization of the Government has already laid down the eligibility qualification and therefore, any person not possessing the requisite qualification as provided for by the NCTE cannot be appointed on the posts of Teachers in the various schools run by the State or otherwise.

33. It needs to be noticed that besides providing for the eligibility qualification for recruitment to the posts of Teachers, the Act of 2009, Section 6 thereof specifically mandates that for carrying out the provisions of the Act, the appropriate Government and the local authority shall establish within such area or limits of neighborhood as may be prescribed a school where it is not established, within a period of 3 years from the commencement of the Act. As per Section 7 of the Act of 2009, the Central Government and the State Government have concurrent responsibility for providing funds for carrying out the provisions of the Act. As per mandate of Section 8, the appropriate Government is under an obligation to provide infrastructure including school buildings, teaching staffs and TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 33 learning material to ensure good quality elementary education conforming to the standards and norms specified in the Schedule. The emphasis under the Act is on ensuring that all children have access to quality education that enables them to the skills, knowledge, values and attitude necessary to become responsible and active citizens of India. To achieve the intended objects even the Pupil-Teacher Ratio in a school has been specified in the Schedule which is mandated to be maintained in each school by virtue of provisions of Section 25 of the Act. Suffice it to say that right to compulsory education enshrined in Article 21A of the Constitution of India presupposes quality education to the children and therefore, the State is under an obligation to make all efforts to ensure that the children of tender age may not suffer on account of teaching by unqualified teachers. In this view of the matter, the action of the State in continuing with the Vidhyarthi Mitra Scheme and permitting the teaching by the unqualified persons in the schools run by the State is avowedly illegal, arbitrary and falls foul of Article 21A of the Constitution of India.

34. The Hon'ble Supreme Court time and again has emphasized for quality educations in the schools and deprecated the practice of employing unqualified untrained teachers to teach the children of tender age in the schools.

35. In N.M.Nageshwaramma vs. State of A.P., 1986 Supp. SCC TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 34 166, the Hon'ble Supreme Court

observed : The teachers' training institutes are meant to teach children of impressionable age and we cannot let loose on the innocent and unwary children, teachers who have not received proper and adequate training. True they will be required to pass the examination but that may not be enough. Training for a certain minimum period in a properly organized and equipped training institute is probably essential before a teacher may be duly launched.. 36. In *Andhra Kesari Educational Society v. Director of School Education*, (1989) 1 SCC392 the Hon'ble Supreme Court observed: Though teaching is the last choice in the job market, the role of teacher is central to all processes of formal education. The teacher alone could bring out the skills and intellectual capabilities of students. He is the engine. of the education system. He is a principal instrument in awakening the child to cultural values. He needs to be endowed and energised with needed potential to deliver enlightened service expected of him. His quality should be such as would inspire and motivate into action the benefitter (sic benefactor). He must keep himself abreast of ever-changing conditions. He is not to perform in a wooden and unimaginative way. He must eliminate fissiparous tendencies and attitudes and infuse nobler and national ideas in younger minds. His involvement in national integration is more important, indeed indispensable. It is , therefore, needless to state that teachers should be subjected to rigorous training with rigit scrutiny of efficiency. It has greater relevance to the needs of the day. The ill-trained or sub-standard teachers would be detrimental to our educational system; if not a punishment on our children. The Government and the University must, therefore, take care to see that inadequacy in the training of teachers is not compounded by any extraneous consideration.. 37. In the matter of '*State of Rajasthan v. Vikas Sahebrao TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 35 Roundale*', (1992) 4 SCC435 the Hon'ble Supreme Court observed: The teacher plays pivotal role in moulding the career, character fibres and aptitude for educational excellence in impressive young children. The formal educational needs proper equipment by the teachers to meet the challenges of the day to impart lessons with latest techniques to the students on secular, scientific and rational outlook. A well- equipped teacher could bring the needed skills and intellectual capabilities of the students in their pursuits. The teacher is adorned as

gurudevobhava, next after parents, as he is a principal instrument to awakening the child to the cultural ethos, intellectual excellence and discipline. The teachers, therefore, must keep abreast of ever-changing techniques, the needs of the society and to cope with the psychological approach to the aptitudes of the children to perform that pivotal role. In short teachers need to be endowed and energised with needed potential to serve the needs of the society. The qualitative training in the training colleges or schools would inspire and motivate them into action to the benefit of the students. For equipping such trainee students in a school or a college all facilities and equipments are absolutely necessary and institutions bereft thereof have no place to exist nor entitled to recognition. In that behalf compliance with the statutory requirement is insisted upon. Slackening the standard and judicial fiat to control the mode of education and examining system are detrimental to the efficient management of the education.. 38. In the matter of L.Muthukumar and Another vs. State of T.N. & Ors.

., (2000) 7 SCC618 while relying upon earlier decisions noticed above, the Hon'ble Supreme Court opined that before teachers are allowed to teach innocent children, they must receive appropriate and adequate training in a recognized training institutes satisfying the prescribed norms, otherwise the standard of education and careers of children will be jeopardized. TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 36 The court observed that allowing ill-trained teachers coming out of de-recognized or un-recognized institutes or licensing them to teach children of an impressionable age, contrary to the norms prescribed will be detrimental to the interest of the nation itself in the sense that in the process of building a great nation, teachers and educational institutions also play a vital role.

39. In Uma Devi's case (supra) heavily relied upon by the learned Additional Advocate General appearing on behalf of the State the Hon'ble Supreme Court observed :

2. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its

instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of the constitutional scheme.

3. A sovereign Government, considering the economic situation in the country and the work to be got done, is not precluded from making temporary appointments or engaging workers on daily wages. Going by a law newly enacted, the National Rural Employment Guarantee Act, 2005, the object is to give employment to at least one member of a family for hundred days in a year, on paying wages as fixed under that Act. But, a regular process of recruitment or appointment has to be resorted to, when regular vacancies in posts, at a particular point of time, are to be filled up and the filling up of those vacancies cannot be done in a haphazard manner or based on patronage or other considerations. Regular appointment must be the rule.

. (Emphasis added) It is true that the Hon'ble Supreme Court has observed *TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS.* (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 37 that a sovereign Government is not precluded from making temporarily appointments or engaging workers on daily wages basis, taking into consideration the economic situation in the country and work to be got done. But then, the Scheme as framed by the State Government is not an employment Scheme as such but rather it is a Scheme framed bypassing the regular recruitment process, which as observed by the Hon'ble Supreme Court in *Uma Devi's case* (supra) must be a rule. In any case, the sovereign Government has to function within the constitutional limit and cannot be permitted to frame the Scheme in violation of the laws and the constitutional scheme governing the public employment.

40. In view of the discussion above, this Court is firmly of the opinion that the Scheme introduced by the State Government providing for the engagement of even unqualified/untrained persons as Vidhyarthi Mitra for their posting against the posts of Teacher Gr.III, Senior Teacher and School Lecturer de hors the relevant recruitment Rules and the eligibility criteria laid down by the NCTE exercising the

power under the relevant statute, the provisions of the Act of 2009, and against the constitutional scheme of public employment, cannot but be deemed to be illegal, arbitrary and falls foul of Article 14, 21 & 21A of the Constitution of India.

41. Since the Scheme providing for the engagement of TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 38 Vidhyarthi Mitra against the vacant posts of Teachers is found to be unconstitutional, no directions can be issued by this court to permit the continuance in employment of the petitioners and their likes under the said Scheme, which will obviously amount to perpetuating an illegality. Of course, the petitioners who have discharged the duties as Vidhyarthi Mitra but have not been paid the honorarium for the period they have worked are entitled to relief to this extent inasmuch as the State Government cannot be permitted to deny the payment due to them as honorarium for the period they have discharged the duties against the posts of Teachers as Vidhyarthi Mitra in various schools run by the State.

42. In the result, the writ petition No.8154/10 is allowed. The writ petitions preferred by the petitioners assailing their termination from service, claiming continuance/re-employment as Vidhyarthi Mitra and against the insistence of the Government for execution of the fresh contract, are dismissed. The Vidhyarthi Mitra Scheme introduced by the State Government for engagement of 'Vidhyarthi Mitra' on contractual basis on fixed honorarium against the posts of Teachers Gr.III, Senior Teachers and School Lecturers is declared illegal and unconstitutional. The respondents are restrained from engaging the Vidhyarthi Mitra under the Vidhyarthi Mitra Scheme against the posts of Teachers Gr.III, Senior Teachers and School Lecturers. The respondents TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 39 are directed to proceed with the recruitment process to fill in all the vacant posts of Teachers and School Lecturers in various services/cadres forthwith and complete the process as early as possible, in any case, within a period of six months from the date of receipt of certified copy of this order. It is made clear that pending completion of the regular recruitment process, the State shall not be precluded from engaging the eligible persons on the various

posts of Teachers on urgent temporary basis in accordance with the relevant recruitment Rules. The State shall also ensure that henceforth the determination of the vacancies of Teachers in various services/cadres is made every year as mandated by the relevant recruitment Rules and all efforts shall be made to fill up the vacancies preferably before the next academic session starts in the schools run by the State. The petitioners who have not been paid honorarium for the period they had worked with the respondents as Vidhyarthi Mitra, shall be paid the amount due within a period of two months from the date of receipt of certified copy of this order. It is made clear that on account of the Vidhyarthi Mitra Scheme being declared illegal and unconstitutional, the petitioners and their likes who had worked with the respondents as Vidhyarthi Mitra, shall not be deprived of the benefits already accrued to them. No order as to costs. (SANGEET LODHA),J.

TILOK SINGH & ORS. VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.10339/12) & 89 connected matters. 40 All corrections made in the order have been incorporated in the order being emailed. Aditya Joshi, PS

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