

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

**ORIGINAL APPLICATION NO. 408 OF 2018
CONNECTED WITH**

**ORIGINAL APPLICATION NO.409 OF 2018
AND
ORIGINAL APPLICATION NO. 478 OF 2018.**

Date Of Decision:- 5th September, 2018.

**CORAM:HON'BLE SHRI. R. VIJAYKUMAR, MEMBER (A).
HON'BLE SHRI. R.N. SINGH, MEMBER (J).**

OA No. 408/2018

1. Shri. Yogeshkumar Chhagan Solanki

Age 33 yrs

S/o. Chhagan Solanki

Working as Upper Primary Teacher (SSA)

Govt. Middle School, Saudwadi,
Vanakbara, Diu.

R/at:- House No. 2582, Near
Ramdev Temple, Kharwada street,
Vanakbara, Diu 362570.

2. Smt. Pooja Atul Anjani

Age 31 yrs

W/o. Atul Anjani

Working as Upper Primary Teacher (SSA)

Govt. Middle Boys School, Vanakbara,
Diu. R/at:- Govt. Quarters, C/4, Behind,
Bus Stand, Ghogla, Diu 362520.

...Applicants

(Applicants by Advocate Shri. S.V. Marne)

Versus

1. Union of India,

Through the Administrator,
U/T Administration of Daman & Diu,
Moti Daman 396220.

2. Secretary (Education)

U/T Administration of Daman & Diu,
Moti Daman 396220.

3. The Assistant Director of Education

Cum Member Secretary (SSA)

U/T of Daman & Diu,
 Dist Panchayat,
 Daman 396220.

....Respondents

(Respondents by Advocate Shri. V.S. Masurkar)

Connected with
OA No.409/2018

1. Hetalben Amrutbhai Patel,

Age 30 years, Working as Upper Teacher,
 Govt. Upper Primary School, Kachigam,
 Nani Daman 396210, R/at:- At Village
 Kachigam, Nani Daman 396210.

2. Manisha Kantilal Patel

Age 30 years, Working as Primary Teacher,
 Govt. Upper Primary School, Kachigam,
 Nani Daman 396210, R/at:- Ajram Falia,
 Kachigam, Nani Daman 396210.

3. Dayaben Narayan Talekar

Age 37 years, Working as Upper Primary Teacher,
 Govt. Upper Primary School, Near ITI college, Ringamwada
 Nani Daman 346210, R/at: 2/176,
 Jain Street, Nani Daman 396210.

4. Zankhana Pravinbhai Solanki

Age 30 years, Working as Upper Primary Teacher,
 Model School, New Daman,
 Near Vegetable Market, New Daman,
 R/at: 65/2, Talav Fabia, Village Bhamti,
 Moti Daman, Daman 396220.

5. Hemali Kantibhai Patel,

Age 29 years, Working as Upper Primary Teacher,
 Govt. Upper Primary School, Kachigam,
 Nani Daman 396210, R/at: 185/1, Bandh Faliar, Opp. Maharaja
 Complex, Kori Kadaiya, Daman 396210.

6. Chiragi Gajanand Tandel

Age 33 years, Working as Primary Teacher,
 Govt. Upper Primary School, Dunetha
 Nani Daman 396210, R/at: 321, Kadariya Macchiwad,
 Nani Daman, Daman 396210.

7. Mayuriben Narayankumar Gajare

Age 31 years, Working as Primary Teacher,
Govt. Upper Primary School,
Nani Daman 396210, R/at: Ajrani 158,
Datt Sagare, Daman 396210.

8. Jyotiben Ramanbhai Patel,

Age 30 years, Working as Primary Teacher,
Govt. Upper Primary School, Nani Daman,
Vegetable Market, 396210, R/at: 68,
Moti, Vankud, School Faliya, Nani Daman,
Daman 396210.

9. Twinklekumar Rameshchandra Patel

Age 30 years, Working as Primary Teacher,
Ringanwada, Near ITI Bus Stop, Ringwada,
Nani Daman 396210, R/at: 99/A, Kumbhar Falia,
Dabhel, Nani Daman, Daman 396210.

10. Shubabem Vinodbhai Patel,

Age 27 years, Working as Primary Teacher,
Govt. Upper Primary School, Bhimpore,
Nani Daman 396210, R/at: Village Moti Vankad,
Sura Faliya, Nani Daman, Daman 396210.

11. Sweta Narendrabhai Mahyawanshi

Age 29 years, Working as Primary Teacher,
Govt. Upper Primary School, Dalawada,
Nani Daman 346210, R/at: 144, Char Rasta, Bhimpore,
Daman 396210.

12. Meenakshi Dilipbhai Damankar

Age 37 years, Working as Primary Teacher,
Govt. Upper Primary School, Dabhel, Amaliya,
Nani Daman 396210, R/at: 524, Mota falia, Varkund,
Nani Daman, 396210.

13. Sunilkumar Jayantilal Solanki

Age 34 years, Working as Primary Teacher,
Govt. Middle School, Div 362520, R/at: 216/A,
Bhoiwada, Diu., U/T of Div & Daman 362520.

14. Haresh Magan Vala,

Age 33 years, Working as Upper Primary Teacher,
Govt. Boyas Ghoghila, Main Road,

Ghoghila, Daman 362520,
R/at: 799, Nanchichmahdi, Dagachi,
Bucharwada, Diu, Daman & Diu 362570.

15. Pragati Meghji Baria

Age 31 years, Working as Primary Teacher,
Govt. Upper Primary School, Saydwadum Diu,
R/at: Home No.2204,
Mithiwadi, Vanakbara,
Daman & Diu 362570.

16. Bhavitha Gulabbhai Patel

Age 28 years, Working as Primary Teacher,
Govt. Upper Primary School, Devka Taiwad
Nani Daman 396210, R/at: 41, Aamram Failiya, Dumetha,
Nani Daman 396210.

17. Kapil Ishwarlal Pandya,

Age 35 years, Working as Primary Teacher,
Govt. Primary School, Dagachi, Diu,
R/at: 8/648, Panchayat Chowk, Sai Temple,
Ghoghla, Daman & Diu 362540.

18. Abhishek Ramshbhai Solanki

Age 28 years, Working as Primary Teacher,
Govt. Upper Primary School No.2, Vamakbara,
Vamakbara Diu 362570,
R/at: Kandariwada, Una, Gir Somnath, 362560.

19. Jashmin Mohd. Sarif kasmani

Age 27 years, Working as Primary Teacher,
Govt. Upper Primary School, Vamakbara, Vamakbara Diu 362570,
R/at: Flat No. 303/3, Main Road,
Ghoghla, Diu, Daman & Diu 362520.

20. Dilipkumar Kanji Solanki

Age 33 years, Working as Upper Primary Teacher,
Govt. Middle School (Boys), Vamakbara, Diu,
R/at: 3093, Khazuriya street, Vamakbara, Daman & Diu 362570.

21. Bharati Ugubhai Unewal

Age 35 years, Working as Primary Teacher,
Govt. Upper Primary School, Saudwadi, Diu R/at B/4, Govt. Qtrs.
Diu, Daman & Diu 362520.

(Applicants by Advocate Shri. Vicky Nagrani)

....Applicants

Versus

1. Union of India, through The Administrator,

Union Territory of Diu,
Daman & Dadra & Nagar Haveli,
Secretariat, Moti Daman, Pin code 396220.

2. The Secretary Education,

UT Administration of Daman & Diu,
Secretariat Building, Fort, Moti Daman,
Daman (UT), Moti Daman 396220.

3. Director Education,

UT Administration of Daman & Diu,
Secretariat Building, Fort, Moti Daman,
Daman (UT), Moti Daman 396220.

4. Dy. Director of Education,

UT Administration of Daman & Diu,
Secretariat Building, Fort, Moti Daman,
Daman (UT), Moti Daman 396220.

5. Chief Executive Officer,

Office of Assistant, Director of Education,
District Panchayat UT Administration of Daman & Diu,
Moti Daman, Daman (UT), Moti Daman 396220.
(Respondents by Advocate Shri. V.S. Masurkar)

Connected with OA No.478/2018

1. Shri. Manisha Thakorbbhai Patel,

Age 34 years, Working as Primary/Upper Primary Teacher,
Residing at C-890, Amran Falia (Near Patel Falia)
Dunetha, Daman, Daman & Diu 396210.

2. Priyesh Thakor Patel,

Age 27 years, Working as Primary/Upper Primary Teacher,
Residing at 46/1, Patel Falia, Marwad,
Nani Daman, Daman, Daman & Diu 396210.

3. Jaysukh Dirubhai Patel

Age 34 years, Working as Primary/Upper Primary Teacher,
Residing at 97, Patel Falia, Moti Daman, Magarwada,
Daman, Daman & Diu 396210.

4. Taruna Ishwarbbhai Patel,

Age 27 years, Working as Primary/Upper Primary Teacher,
 Residing at 44, Patel Falia, Bhimpore,
 Daman, Daman & Diu 396210.

5. Purnimaben Natubhai Halpati

Age 31 years, Working as Primary/Upper Primary Teacher,
 Residing at Dmc 1/342/S-2 Harijyot Complex,
 Wadi Faliya, Nani Daman.
 Daman, Daman & Diu 396210.

6. Sikutariya Hemlata Punja

Age 29 years, Working as Primary/Upper Primary Teacher,
 Residing at 3049, Vadla Sheri, Diu, Diu 362570.
(Applicants by Advocate Shri. Vicky Nagrani)

Versus

1. Union of India, through The Administrator,
 Union Territory of Diu,
 Daman & Dadra & Nagar Haveli,
 Secretariat, Moti Daman, Pin code 396220.

2. The Secretary Education,
 UT Administration of Daman & Diu,
 Secretariat Building, Fort, Moti Daman,
 Daman (UT), Moti Daman 396220.

3. Director of Education,
 UT Administration of Daman & Diu,
 Secretariat Building, Fort, Moti Daman,
 Daman (UT), Moti Daman 396220.

4. Dy. Director of Education,
 UT Administration of Daman & Diu,
 Secretariat Building, Fort, Moti Daman,
 Daman (UT), Moti Daman 396220.

5. Chief Executive Officer,
 Office of Assistant, Director of Education,
 District Panchayat UT Administration of Daman & Diu,
 Moti Daman, Daman (UT), Moti Daman 396220. **..Respondents**
(Respondents by Advocate Shri. V.S. Masurkar)

Reserved On : 07.08.2018.

Pronounced on: _____.

ORDER

PER:- SHRI. R. VIJAYKUMAR, MEMBER (A).

By this common order, we propose to dispose of OA Nos.408/2018, 409/2018 and 478/2018 as they involve a common advertisement and common issue of law although some factual elements differ between applicants.

2. These are a batch of three OA Nos. 408/2018 & 409/2018 filed on 08.06.2018 and OA No.478/2018 filed on 06.07.2018 by applicants under Section 19 of the Administrative Tribunals Act, 1985. The applicants have urged that they have been appointed on contractual basis as Primary or Upper Primary Teachers on Short Term Contract (STC) basis under respondents and in the Sarva Shiksha Abhiyan (SSA) but an advertisement have been issued on 17.05.2018 by Respondent No.3 seeking applicants for appointment on contract on the same STC basis and in the SSA under the respondents in their schools for teaching in the medium of Gujarati and also for teaching in English medium. The SSA represents the Sarva Shiksha Abhiyan stated to have been renamed as Samagra Shiksha Abhiyan and functions under the control of the respective Government, in this case, the Union Territory and the staff appointed are posted at various places in Daman & Diu within

the Union Territory. The aspect of their applications that is common is that they challenge the attempt of respondents to replace them with contractual appointees for which purpose, they have challenged the impugned Advt. No.ADE/DP/STC &SSA/Trs.Rectt/18-19/186 dated 17.05.2018 which invited applicants for the post of primary and upper primary teachers for 11 months purely on contract basis on a consolidated monthly remuneration of Rs.24,000/- only for the following posts:-

Number of Posts:

Teachers on STC

Category	Medium wise & Subject-wise	Category wise
Primary Teachers (STC)	Gujarati Medium-10 English Medium-40 <hr/> Total: 50	UR-33 OBC-10 PH(OBC)-01 SC-05 ST-01 <hr/> Total: 50
Upper Primary Teachers (STC)	English Medium Language (Guj, Eng, Hin, San) – 8, Math/ Sci-8 Soc. Sci – 8 <hr/> Total - 24	UR-13 OBC-10 SC-01 <hr/> Total 24

Teachers on SSA

Category	Subject-wise	Category wise
Primary Teachers (SSA)	English Medium-02 <hr/>	UR-01 OBC-01 <hr/> Total: 02

Upper Primary Teachers (SSA)	English Medium Language (Guj, Hin, Eng) –05	UR-09
	Math/ Sci-09	OBC-08
	Soc. Sci – 01	SC-02
		ST-01
	Total - 15	Total 20
	Gujarati Medium Math/Sci-03	
	Soc. Sci -02	
	Total - 05	

3. The qualifications required include graduate degree described of various types in the advertisement and based on the Teachers Eligibility Test (TET) conducted by the appropriate Government as per guidelines of NCTE. Further, candidates for the post under the English Medium were required to have studied in the English Medium upto the 10th standard and have English as one of the subjects in the 11th and 12th standard. Age limit prescribed was 30 years and relaxation was given for existing primary and upper primary teachers working as STC and SSA in Daman & Diu. The advertisement also sets out selection criteria as below:-

Particular	Weightage of Marks
Weightage to marks obtained in TET	80.00%
Weightage to Domicile Candidates of Daman & Diu	20.00%
Total	100.00%

4. The applicants in OA No.408/2018 have sought following reliefs:-

“8(a). This Hon'ble Tribunal may graciously be pleased to call for all the records of the case from the respondents and after examining the same, quash and set aside the advertisement dated 17.05.2018 to the limited extent it seeks to fill up the post of upper primary teachers in GMS Saudwadi and GMS (Boys) Vanakbara Schools where the applicants are working.

(b). This Hon'ble Tribunal may further be pleased to hold and declare that the services of the Applicants cannot be replaced by fresh contract teachers selected in pursuance of advertisement dated 17.05.2018.

(c). This Hon'ble Tribunal may further be pleased to direct the Respondents to continue the services of the Applicants beyond 01.05.2018 on the same terms and conditions as has been done previously.

(d). Costs of the application be provided for.

(e). Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed.”

5. The two applicants in OA No.408/2018 were appointed and joined subsequent to the appointment orders dated 14.06.2010 appointing them as primary teachers under the SSA until 30.04.2011. The order states that their appointments are purely on temporary posts on contractual basis for limited time span, and they will not have any right to claim for

permanent post in future. There is no mention of the medium and last date of contract, but it appears that the applicants come under Gujarati medium. Their last engagement order is dated 02.11.2017 covering the period from 03.05.2017 to 30.04.2018 mentioning their job as “Teacher”.

6. The applicants in OA No.409/2018 have sought following reliefs:-

“8(a). This Hon'ble Tribunal may graciously be pleased to call for all the records of the case from the respondents and after examining the same, quash and set aside the advertisement dated 17.05.2018 to the limited extent it seeks to fill up the post of held by the applicants.

(b). This Hon'ble Tribunal may further be pleased to hold and declare that the services of the Applicants cannot be replaced by fresh contract teachers selected in pursuance of advertisement dated 17.05.2018.

(c). This Hon'ble Tribunal may further be pleased to direct the Respondents to continue the services of the Applicants beyond 01.05.2018 on the same terms and conditions as has been done previously.

(d). This Hon'ble Tribunal may further be pleased to direct the Respondents to grant Same Work Same Pay from the date of initial appointment of the applicant as shown in the chart annexed as Annexure A-3 as per the law laid down in the case of Jagjit Singh & Ors. along with interest of 18% p.a. With all consequential benefits.

(e). Costs of the application be provided for.

(f). Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

7. The 21 applicants in OA No.409/2018 are mostly Upper Primary Teachers except Applicant Nos.11 and 12 and are all teaching under the Gujarati medium except for Applicant No.3. They were engaged on 03.01.2013 and 03.01.2014 except for nine teachers engaged on 24.12.2013, one teacher on 15.06.2015, and another on 23.01.2016. All of them were appointed on Short Term Contract basis (STC) in the Education Department for the academic year and the last order is dated 18.02.2017 and is valid upto 30.04.2018. The appointment order confirms that the appointment is for a short term contract basis and shall not confer any right for regular appointment.

8. The applicants in OA No.478/2018 have sought following reliefs:-

"8(a). This Hon'ble Tribunal may graciously be pleased to call for all the records of the case from the respondents and after examining the same, quash and set aside the advertisement dated 17.05.2018 to the limited extent it seeks to fill up the post of held by the applicants.

(b). This Hon'ble Tribunal may further be pleased to hold and declare that the services of the Applicants cannot be replaced by fresh contract

teachers selected in pursuance of advertisement dated 17.05.2018.

(c). This Hon'ble Tribunal may further be pleased to direct the Respondents to continue the services of the Applicants beyond 01.05.2018 on the same terms and conditions as has been done previously.

(d). This Hon'ble Tribunal may further be pleased to direct the Respondents to grant Same Work Same Pay from the date of initial appointment of the applicant as shown in the chart annexed as Annexure A-3 as per the law laid down in the case of Jagjit Singh & Ors. along with interest of 18% p.a. with all consequential benefits.

(e). Costs of the application be provided for.

(f). Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

9. The 06 applicants in OA No. 478/2018 are all Primary Teachers except Applicant No.1 who is an Upper Primary Teacher and were all appointed on 03.01.2014. The last appointment order is dated 02.11.2017 reengaging them for the period, 03.05.2017 to 30.04.2018 and the contract specifies the initial declaration that they did not have any right of regular appointment. Applicant No.5 is working in the SSA Scheme whereas the remaining 05 applicants are employed on STC basis under the Director of Education in the Government. The applicants have claimed that Applicant Nos. 1 & 2 teaching in

English Medium while Applicant Nos. 3 to 6 teaching in Gujarati Medium.

10. At the outset, the respondents have raised two preliminary issues. The first issue is that the Sarva Shiksha Abhiyan is renamed as Samagra Shiksha Abhiyan and as an autonomous society, does not fall within the jurisdiction of this Tribunal. They have also argued that the appointment orders in relation to the SSA have been issued by the Project Director of the SSA but he has not been impleaded as a party in these applications. The applicants have responded in OA No.408/2018 stating that they have been employed by the Assistant Director of Education and he also functions as Member Secretary of SSA and further, the last re-engagement orders were issued by the Project Director of the Sarva Shiksha Abhiyan and therefore, they were not aware of the change in the name of the society. They have contended the basis on which the respondents have renamed or subsumed the SSA scheme to the Samagra Shiksha Abhiyan. They deny that the OA is barred for non-joinder of Project Director of SSA. The learned counsel for applicants also points out that the impugned order has been issued by the Union Territory Administration and was not restricted to SSA alone but

included STC requirements. Therefore, the objections based on jurisdiction, are baseless. During the arguments, the learned counsel for applicants in OA Nos. 408/2018 and 409/2018 has adopted these arguments as his reply. The applicants state that they were initially appointed on contract basis at a lower contract pay and are now drawing Rs. 24,000/- per month as against the regular teachers who are paid salaries of Rs. 35,000 to 40,000/- per month. Their appointments have been continued every year and orders issued 2 to 6 months after they commenced duties in May of the Academic year and these appointments were made valid upto 30th April of the next year. From 2013, all the teachers were compelled to obtain the Teachers Efficiency Test (TET) certificate and which has been done by them in the subsequent years. They claimed that they have been working regularly and performing all the duties as for regular teachers including non-teaching duties and were paid even for the vacation period. They were expecting appointments for the period from May 2018 but were instead served caveats by the respondents on or about 01.06.2018 just after issue of the advertisement on 17.05.2018 and prior to the dates of filing these OAs.

11. In the case of OA No. 409/2018, the position is roughly similar except for the dates of joining and also because they claim that they were appointed against regular sanctioned vacancies. In this OA, the applicants have also questioned the disparity between their contractual wages and the wages paid for regular teachers. They also point out that in comparison with the new appointees, the applicants have experience, in addition to their academic qualifications and therefore, replacing the applicants by untrained teachers would violate the Right of Children to Free and Compulsory Education Act, 2009. The arguments of the applicants are the same in OA No.478/2018 except that the SSA being a special scheme and Applicant No.5 is employed under SSA, there are clearly no regular sanctioned posts for these vacancies and this position symbolizes the problem that had arisen in the attempt of applicants to file a joint application when their situation is somewhat dissimilar, although the impugned advertisement covers both the categories.

12. The respondents have stated that the contracts of the applicants in both the STC and SSA expired on 30.04.2018 and the OA was filed by them on 08.06.2018 well after the

completion of contract period. The advertisement was issued after their contractual period had ended and the selection that had to be made had also been completed and engagement letters were issued. In regard to the SSA, they enclose the registration certificate of the society and state that these are not regularly sanctioned posts and only stop gap arrangements had been made in regard to this scheme. They denied that the applicants are working since their contracts ended on 30.04.2018. With regard to the comparison with the regular teachers, they state that the regular teachers have been appointed after due selection process which is not the case for applicants and their salary is much better than before. The claim that they are being transferred does not create any entitlement for the contractual teachers to continue over the years. They assert that many of the schools have been upgraded to English medium, based on public needs. Therefore, they wish to appoint English medium teachers to replace Gujarati Medium teachers. Further, the test of whether the skill and experience of the applicants are of use to the students was left to be decided in the selection list on the basis of marks gained by the candidates in TET but the applicants were not willing to appear in this fresh selection process and

compete in a fair manner so that the best persons could be appointed. They also point out that the teachers working on contract basis including the applicants had been given a fair opportunity to apply against the fresh advertisement as mentioned in the terms and conditions.

13. In respect of the applicants in OA No. 409/2018 who were mostly engaged on STC basis, the respondents have argued that the applicants themselves have mentioned that “Those employees who were working as Primary/Upper Primary School Teacher on contractual basis and have cleared any of the exams held for regular appointment left the contractual post at once.” Therefore, the applicants cannot claim parity since they have failed to get selected in regular appointment in which case, they would have left for the better opportunity. He questioned the claim of the applicants that they were expecting the re-engagement orders which is purely at the discretion of the respondents based on their needs and that the respondents considered that selecting through the advertisement would enable them to find the most suitable and best candidates available for a bright future for newly upgraded English medium schools.

14. In rejoinder filed by the applicants in OA No.408/2018, the applicants emphasize their experiences over the previous years was that the re-engagement orders were issued after a long time and therefore, the applicants used to continue to perform their duties in anticipation of such orders. Therefore, they denied the claim that their contractual period expired on 30.04.2018. They have also elaborated at length on how the respondents are finding it difficult to obtain candidates who have studied in English medium as required in the advertisement. They have also questioned the need for the applicants to go through a fresh selection process. They deny the arguments made by the respondents on the need for parity in wages between contractual teachers and regular teachers. They emphasize that mandates given to them only required them to pass in TET and not high marks which has now been made a condition in the advertisement and they are forced to compete with freshers on the basis of TET marks.

15. In all the OAs, the applicants have contended that the respondents are seeking to replace contractual appointees with new contractual appointees and that the settled law is against such a practice and on that basis, they seek the

intervention of this Tribunal to quash the attempts of the respondents for issue of advertisement and selection to appoint fresh contractual teachers.

16. In these three OAs, the applicants have been appointed on various dates between 2010 and 2014 with initial and subsisting appointments as Primary Teachers and also as Upper Primary Teachers. In some cases, they have been appointed on STC basis in the schools under the Education Department and in some cases, they are working on contractual basis under the SSA society which is a project operated under a Government of India Scheme. Further, some of the applicants appeared to be teaching in English Medium and some in Gujarati Medium, although distinction based on these factors have not been brought out as salient issue for this case. The central issue argued by the applicants is that they are contractual appointees and the respondents are attempting to replace them by other contractual appointees which is not in accordance with the settled law. It is for this reason, that all the three cases have been heard together and decided accordingly.

17. During arguments, the learned counsel for applicants emphasized the length of service of the applicants

until the date of advertisement which was about 08 years in OA No.408/2018 under the SSA, from 02 to 05 years on Short Term Contract basis in OA No.409/2018, and 04 years on SSA/STC in OA No.478/2018. During these years, he emphasized that the applicants had been working sincerely and were given tasks similar to the regular employees and no delinquencies had been found or held against them. Although the last renewed contract expired on 30.04.2018, they were expecting renewal of the contract w.e.f. first week of May 2018 and which were usually issued well into the next academic year. They emphasized that they had fully qualified themselves through the Teachers Eligibility Test (TET) following the directions of the respondents but were previously only required to pass the TET and no specification was made that they had to achieve high marks. Unfortunately, high marks in TET had been made a factor for competition in the selection process adopted for appointing Short Term Contract employees under the STC/SSA under the terms of advertisement issued on 17.05.2018. The learned counsel points out that several posts in the advertisement required persons for teaching in the Gujarati medium which is within the area of competence of the

applicants. In particular, the learned counsel emphasized that the advertisement seeks to replace existing contractual employees by fresh contractual employees which is not in terms of the law as settled by the Hon'ble Supreme Court in various orders for which he cited the following judgments:-

“1. State of Haryana & Ors. V/s. Piara Singh & Ors. (1992) 4 SCC 118.

2. Mohd. Abdul Kadir & Anr. V/s. Director General of Police, Assam. (2009) 6 SCC 611.

3. Anita V/s. State of Haryana & Ors. 2013 SCC OnLine P&H 6614.

4. Abhinav Chaudhary & Ors. V/s. Delhi Technological University & Anr. 2015 SCC OnLine Del 6780.

5. Hargurpratap Singh V/s. State of Punjab & Ors. (2007) 13 SCC 292.”

18. In response, the learned counsel for respondents reiterated the aspects of the SSA being a society and the non-impleadment of the Project Director. He argued that the period of contract, which had not been renewed, had expired on

30.04.2018 and the advertisement was issued on 17.05.2018 after which the applicants had filed these OAs on 08.06.2018 and 06.07.2018 in the three OAs. Therefore, the claim that a contractual appointee had been replaced by any contractual arrangement was not correct and was at variance with facts. He emphasized that the needs of the respondents had changed over the years. There was a greater public demand for better quality education and especially for education in English medium for which many of the schools had been upgraded and therefore, they needed English medium teachers to replace many of the Gujarati medium teachers, previously appointed. He also argued that the applicants have been appointed based on a local advertisement which specified that they were to be appointed purely on Short Term Contract basis on a fixed salary and this salary was earlier Rs. 7000/- in 2010 and had been gradually increased to Rs. 24,000/- when their contract expired. Their appointment orders also specified that they were appointed on Short Term Contract basis and cannot claim any right to regularization or any permanent posts in the future. The learned counsel for respondents also emphasized that the advertisement issued on 17.05.2018 provided for relaxation in age limit for

existing primary and upper primary teacher working on STC/SSA in the Union Territory as may be required. Therefore, no rights of the applicants have been affected and they were at liberty to participate in the fresh selection. With reference to their intention to claim regularization, they have also mentioned that the regular/permanent teachers are appointed after due selection process on regular sanctioned posts whereas the applicants were appointed without written examination. They reiterated that the purpose of the advertisement was to find the most suited and best candidates available for ensuring bright future of the students and also for supporting English Medium schools.

19. We have gone through the OA No.408/2018 alongwith Annexures A-1 to A-10 and Rejoinder alongwith Annexures A-11 to A-13 filed by the applicants. We have also gone through the Reply alongwith Annexures R-1 to R-6, filed by the Respondents and have also carefully examined the various documents annexed in the case.

20. We have gone through the OA No.409/2018 alongwith Annexures A-1 to A-5 and MA for joint petition filed by the applicants. We have also gone through the Reply

alongwith Annexures R-1 to R-8, filed by the Respondents and have also carefully examined the various documents annexed in the case.

21. We have gone through the OA No.478/2018 alongwith Annexures A-1 to A-6 and MA for joint petition filed by the applicants. We have also gone through the Reply alongwith Annexures R-1 to R-10 and Caveat filed by the Respondents and have also carefully examined the various documents annexed in the case.

22. We have heard the learned counsels for the applicants and the learned counsels for the respondents and have carefully considered the facts, circumstances, law points and rival contentions in these cases.

23. On the preliminary issue raised by the respondents, it is apparent that the Sarva Shiksha Abhiyan, now renamed as Samagra Shiksha Abhiyan, is an autonomous society but it is entirely funded and operated by the Government through its Project Director who is also Chief Executive Officer of the Panchayat and holds an official position in the Union Territory. The orders for re-engagement specify that they issue with the approval of the Secretary Education /Chairman SSA. Therefore,

the argument is clearly of a technical nature and cannot be used to deny the jurisdiction of this Tribunal in relation to services under this SSA that are fully funded by grants from the Union Government through the UT Administration. The applicants have impleaded the Assistant Director of Education-Cum-Member Secretary SSA where SSA is involved and the Assistant Director of Education where the STC is involved. Since the Society Secretary is the person to be sued under the Societies Registration Act, there is clearly no defect in impleadment. On the purpose of the advertisement, the respondents have specifically submitted that they are seeking to improve the quality of education at the primary and upper primary levels through raising the bar for selection of teachers and by introducing more schools with English medium in accordance with rising demand for such schools in the Union Territory. Perusal of the advertisement and comparison with the previous advertisements by which the applicants were selected which has been enclosed only along with OA No. 408/2018 shows that whereas in 2009/2010, the selection was based on weightage for final year marks and marks in B.Ed, in the present advertisement, eligible candidates were ranked according to the

marks obtained in the TET. This TET is conducted by the Government in accordance with the guidelines framed by the NCTE. The applicants have also written the TET perhaps in addition to the B.Ed qualification that they had obtained previously and they cannot raise any complaints in that regard. Further, the TET is a uniform test conducted for all persons and the ranking clearly does not suffer from the non-uniformity in the B.Ed degrees obtained in the different universities and colleges across the country. The applicants appeared in the TET by their own admission after 2013, by which time they had acquired substantial experience. They cannot now plead that they had then only attempted to pass the examination and not to score high marks and this cannot be the basis for refusal to participate in the competition and selection that has been detailed in the impugned advertisement for the selection process. The respondents have also provided age relaxation so that their experience could be utilized without any disability because they had become over aged due to their services within the territory. It is also a well known fact that Government of India and the State Government are giving a great deal of emphasis on primary education. The purpose of SSA is to

ensure better quality of primary and upper primary education in order that the quality of students coming to the secondary level is improved. It is also known that there are a variety of indices for literacy and knowledge/skill that have been developed and applied for evaluating the quality of primary education by the Central Government, State Governments and by reputed non-governmental agencies. Therefore, there is an imperative for the State and Union Territory administrations to continuously seek to improve the quality of primary education.

24. In respect of the SSA, an additional factor is that it is a centrally funded project and is supported for a fixed time period which is extended from time to time ever since its inception. Therefore, only stop gap arrangements on Short Term Contract basis are available under the scheme. These arguments do not apply to the regular schools where persons have been employed on Short Term Contract basis but the availability of regular sanctioned posts and the consequent appointments of regular teachers to such posts is a matter for administration to decide and this Tribunal would not like to enter into a consideration of the circumstances under which appointments continued to be made on STC basis.

25. The learned counsel for applicants has strenuously argued that the advertisement proposes to replace contractual appointees by other contractual appointees. In this connection, he cites in support a decision of the Hon'ble Apex Court in State of Haryana & Ors. V/s. Piara Singh & Ors., it is set out at Para 46 of the judgment that “*An ad-hoc or temporary employee should not be replaced by another ad-hoc or temporary employee, he must be replaced only by a regularly selected employee. This is necessary to avoid arbitrary action on the part of the appointing authority.*”

26. This aspect of replacement of ad-hoc employees only by regular incumbent is reiterated in the case of Hargurpratap Singh V/s. State of Punjab & Ors., Anita V/s. State of Haryana & Ors. The same aspect is reiterated in Mohd. Abdul Kadir & Anr. V/s. Director General of Police, Assam. In Abhinav Chaudhary & Ors. V/s. Delhi Technological University & Anr., Assistant Professors appointed since the year 2011 for 09 months' term were sought to be replaced by an advertisement for the same post with the same monetary emoluments for 11 months' terms. Considering the small change in the term of contract as minor and by reference to the ratio and spirit of the

judgments in cases of Piara Singh, Uma Devi and Mohd. Abdul Kadir (All Supra), the Hon'ble High Court of Delhi held that one contractual employee cannot be replaced by other contractual employee, since this showed gross arbitrariness on the part of the respondents. The judgments concludes at para 5 that ***“Of course, this will not dis-entitle the respondents to appoint any additional Assistant Professors with the Respondent No.1 in accordance with its applicable rules or issue fresh advertisements having contractually substantially different terms than what the petitioners are presently working at.”***

27. In so far as these citations are concerned, both Para 46 of the Piara Singh judgment and the orders in Abhinav Chaudhary case (Supra) point out to the need to avoid arbitrary action by the appointing authority. In the present case, however, there is a purpose which has been set out by the respondents in that they wish to improve the quality of primary education in the Union Territory and they are adopting objective standards that can apply across candidates for the purpose of such selection. They have also proposed to replace many of the Gujarati medium schools with English medium schools. Therefore, even if an argument is raised that the respondents gave a fig leaf of

an interregnum of 18 days between end of the previous contract on 30.04.2018 and the advertisement on 17.05.2018, their action is clearly purposive with a public interest objective in mind and not arbitrary or mala fide in character. The grant of age relaxation to serving STC/SSA employees also underscores the thought process that has gone into the finalization and issue of this advertisement for selection of the teachers.

28. Further, arguments can be made that the advertisement purposes to select about 10 Gujarati medium teachers in STC, 05 Gujarati medium teachers in SSA and that, some of the applicants could be considered for these schools. Further, some of these applicants have now given information that they are teaching in the English medium, and such a consideration may also apply to them in regard to the English medium appointments. However, the fact remains that the purposes of the advertisement are different and cannot, by any standard, be considered to be arbitrary or aimed against the applicants or implicitly hold them responsible for any perceived decline in educational achievements in the territory. Therefore, the grounds taken by the applicants that contractual applicants should not be replaced by contractual employees loses its basis

when examined in the context of whether the action was arbitrary or was aimed as serving public purposes.

29. In passing, it is also observed that the impugned advertisement gives weightage to the domicile candidates of the Daman & Diu to the extent of 20% of the total marks awarded for the selection. The definition of domicile has already been settled by the judgments of the Hon'ble Apex Court in **Pradeep Jain V/s. Union of India & Ors. 1984 AIR 1420** at Para 8, which makes it clear that the constitution recognized only one Domicile namely Domicile in India. The judgment also took note of the common misconception of the various State Governments with the term Domicile and observed that, it is not uncommon for the State Government to use the term 'Domicile' when what they actually intend to state is 'Permanent residence'. It is apparent that the advertisement seeks to give 20% weightage in the total marks of 100 to permanent residents of Daman & Diu. However, Daman & Diu is an Union Territory and according to the Constitution, there are only two types of services within the country: Union Services and State Services. The Union Territory of Daman & Diu falls within the category of Union Services and therefore, if there is no distinction or bar

or denial of opportunity for Indian domiciled candidates to seek employment opportunity in the Union Government and its Union Territories, granting weightage to the permanent residents of Daman & Diu may not be in compliance with the constitutional provisions. This aspect has not been challenged in these OAs and we do not wish to take this further at this stage but this is a factor that the respondents will need to consider in order to be in compliance with the Constitution under which they function.

30. In the circumstances, all the three OAs are dismissed as lacking in merits and without any order as to cost.

31. A copy of this order may be placed in all the three respective OAs.

(R.N. Singh)
Member (J)

(R. Vijaykumar)
Member(A)

srp.