

S-1, 3 & 4

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Judgment: 5th October, 2018

+ LPA 540/2018, 38254-38257/2018 & 38261/2018

HEMANT KUMAR ARYA Appellant

versus

SANGEET NATAK AKADEMI & ORS. Respondents

+ LPA 280/2018, C.M.Nos.20476-20480/2018

CHANDRANSHU MEHTA Appellant

versus

SANGEET NATAK AKADEMI & ORS. Respondents

+ W.P.(C) 5645/2018, C.M.Nos.22040/2018, 39391-39393/2018

CHANDRANSHU MEHTA Petitioner

versus

SANGEETA NATAK AKADEMI AND ANR. Respondent

Present: Mr.S.Hari Haran, advocate for the appellant in item no.1.
Mr.Pankaj Mehta, Mr.R.K.Mehta and Ms.Shweta Soni,
advocates for the appellant and petitioner in items no.3 and 4.
Mr.Rajesh Gogna, CGSC along with Ms.Liu Gangmei,
Mr.Akhilesh Kumar and Mr.Upender Sai, Advts. for Ministry
of Culture & Sangeet Natak Akademi in all the matters with
Mr.Subhash Dutta, Consultant, Ministry of Culture and
Mr.Surender Singh Rawat, Senior Clerk, Sangeet Natak
Akademi.
Mr.Naveen Kumar Raheja, Adv. High Court Legal Services
Committee for respondent no.4 in item no.3.
Ms.Saroj Bidawat, advocate for UOI in item no.4.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

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Assistant Page Editor

LPA Nos.540 & 280 of 2018 & W.P.(C) 5645/2018

G.S. SISTANI, J. (ORAL)

C.M.38261/2018 (delay) in LPA 540/2018

1. The present application has been filed by the appellant for condonation of delay in re-filing the present appeal.
2. There is no opposition to the prayer made in the application. Accordingly, the delay of 82 days in re-filing the present appeal is condoned.
3. The application stands disposed of.

C.M.39391/2018 (delay) in W.P.(C) 5645/2018

4. The present application has been filed by the appellant for condonation of delay in filing counter affidavit on behalf of respondent no.1/Sangeet Natak Akademi.
5. There is no opposition to the prayer made in the application. Accordingly, the delay of 27 days in filing the counter affidavit is condoned.
6. The application stands disposed of.

C.M.Nos.38258, 38259 & 38260 of 2018 (exemption) in LPA 540/2018

CM 20480/2018 (exemption) in LPA 280/2018

C.M.39393/2018 (exemption) in W.P.(C) 5645/2018

7. Exemptions allowed, subject to all just exceptions.
8. Applications stand disposed of.

C.M.38255/2018 (impleadment) in LPA 540/2018

C.M.20477/2018 (impleadment) in LPA 280/2018

C.M.38256/2018 (permission) in LPA 540/2018

9. All the applications are allowed subject to all just exceptions.

LPA 540/2018 & C.M.38254/2018 (stay) & C.M.38257/2018 (addl. documents)

LPA 280/2018 & C.M.20476/2018 (stay)
W.P.(C) 5645/2018 & C.M.22040/2018 (stay) & C.M.39392/2018 (addl. documents)

10. Two Letter Patent Appeals being LPA 540/2018 & LPA 280/2018 arising out of a common order dated 20.04.2018 passed by a Single Judge of this Court and a writ petition bearing W.P.(C) No. 5645/2018, in which challenge has been laid to the order dated 20.04.2018, have been heard together. Common arguments have been addressed and thus, the same are being disposed of by a common judgment.
11. It may be noted at the outset, that W.P.(C) 3660/2016 was instituted by one Sh.Manoj Kumar against Sangeet Natak Akademi (hereinafter referred to as 'the Akademi') and others to set aside the result dated 23.05.2015 for the post of Junior Clerk-cum-Typist was allowed. Learned Single Judge by an order dated 20.04.2018 passed the following order:

"In this petition, quashing of Result of 23rd May, 2015 is sought by the petitioner.

Learned counsel for respondent-Akademi submits as under: -

"The Akademi have received a letter from Ministry of Culture about the action taken on the basis of letter dated 16.04.2018, issued by the Ministry of Culture, has reconsidered the stand taken by the Akademi before the Hon'ble High Court of Delhi and has realized that the procedure of appointment was not in consonance with the recruitment rules of the SNA and the presence of the representative of the Ministry of Culture was a prerequisite in the process of appointment. Also, the committee was Chaired by Smt. Helen Acharya, Acting Secretary, whereas as per RRs the committee was supposed to be Headed by

Deputy Secretary (F&A). Moreover, the composition of the Selection Committee was supposed to be chaired by Deputy Secretary (Finance & Accounts) but it was chaired by Smt. Helen Acharya, the then Acting Secretary.”

In view of stand taken as aforesaid, impugned Result of 23rd May, 2015 is declared to be null and void. Needless to say, petitioner would be at liberty to apply afresh and seek age relaxation in case the post in question is sought to be filled by respondent-Academy.

With aforesaid observations, this petition is disposed of.”

12. It may be noted that the appellants being Chandranshu Mehta and Hemant Kumar Arya, who were the successful candidates, were not impleaded as a party in the writ petition filed by Manoj Kumar/respondent no.4 in the LPA 280/2018 and R-3 in LPA 540/2018, who was also a departmental candidate but was declared unsuccessful. The basic ground urged by Manoj Kumar was that the process of selection was bad in law and against the recruitment rules for the reason that a nominee of the Ministry of Culture (hereinafter referred to as ‘the Ministry’) was not present at the time of selection and interview. During the pendency of the writ petition, the Akademi received a letter from the Ministry that the procedure for appointment of Junior Clerk-cum-Typist was not in consonance with the recruitment rules of the Akademi and the presence of the representative of the Ministry was a pre-requisite in the process of appointment of Junior Clerk-cum-Typist. The order dated 20.04.2018 had a direct impact on the rights of the two successful candidates who have filed the present inter-court appeals besides Manoj Kumar who

- has also filed a separate writ petition. The necessary facts which are required to be noticed for disposal of all the three matters are as under.
13. The respondent no.1 had published an advertisement on 06.12.2014 for filling up two posts of Junior Clerk-cum-Typist. The appellants made an application for the same. They received letters from the respondent no.1 on 07.05.2015, calling upon them to appear in the written test/typing test/interview on 23.05.2015. Both the appellants had appeared in the written test, typing test and interview conducted by the Akademi on 23.05.2015. Both the appellants were offered the post of Junior Clerk-cum-Typist by a communication dated 03.06.2015 and received an appointment letter from the Akademi on 25.08.2015. Pursuant to the appointment letters, they continued to work at the designated post upto April, 2018 when the impugned order was passed. Meanwhile, on 05.02.2016, W.P.(C) 3660/2016 was filed by Manoj Kumar, who has been arrayed as respondent no.4 in LPA 280/2018 and R-3 in LPA 540/2018. During the pendency of the writ petition, simultaneously, the appellants successfully completed their training in accounts matters, passed the Hindi typewriting examination organized by the Central Hindi Training Institute, completed beginner Tibetan Language Course from Tibet House, passed the Induction Training Course conducted by Central Translation Bureau (CTB) and passed the Comprehensive test on RTI Act conducted by the Administrative Reforms Department, Government of NCT of Delhi. By an order dated 20.04.2018, the learned Single Judge of this Court declared the result dated 23.05.2015 as null and void. Thereafter, the appellants received termination letters on 09.05.2018. Counsels for

the appellants have submitted that the appellants had made applications pursuant to the advertisement published. They had appeared for the written test, typing test and interview on 23.05.2015. They were issued appointment letters. They successfully completed their training and worked at the Akademi diligently and to their best ability. Counsels have further contended that the appellants cannot be made to suffer on account of any irregularity, which may have been taken place in the selection process neither they can be blamed as this is not a case where the candidates had either concealed any information or relied on any document which was forged or fabricated. It is further contended that they had no hand in the selection process and merely because a representative of the Ministry was not present that alone cannot be a ground to declare their appointment to be null and void. Counsels further submit that any internal arrangement between the Akademi and Ministry cannot stand in the way of the appointment of the appellants, more particularly, when the appellants have continued to work for three years and in case, their appointments are declared null and void, they would suffer irreparable loss and their rights would be adversely affected. It is also contended that the impartiality of the selection committee is not in doubt and most of the candidates who participated in the selection process were from out of town. It is also contended that the Akademi had informed the Ministry about the date of the interview and as per the stand of the Akademi, upon verbal instructions received the Akademi conducted the interviews in the absence of any representation of the Ministry. Moreover, the Minutes of the Meeting, copy whereof has been placed

on record, would show that all the members of the selection committee had signed the Minutes and endorsed the result. Learned counsels for the appellants have also strongly urged before this Court that merely because a representative from the Ministry was not present, it cannot be held to be fatal as the presence of the representative was not in the form of a subject expert and therefore, cannot be said that there was any illegality or irregularity in the selection process. At best, it can be said that the manner of selection was improper. There is nothing on record to suggest that the candidates were ineligible or did not otherwise meet the eligibility criteria and thus, in order to balance the equities and to mould the relief, the order of the learned Single Judge is required to be set aside. In support of their submissions, counsels for the appellants have relied upon *Tridip Kumar Dingal & Ors. vs. State of West Bengal & Ors* reported in (2009) 1 SCC 768, more particularly, paras 31, 36, 41, 44 & 49, which read as under:

31. It was stated that several vacancies are still there in the cadre of Medical Technologists and almost all the appellants can be accommodated by the State authorities. It was, therefore, submitted that the appeals deserve to be allowed by issuing consequential directions.

36. The learned counsel for the State stated that 66 persons have been retained who were selected and appointed. Initially, they were not made parties and were continued in service. By now they have completed about ten years. He fairly stated that in the circumstances, this Court may direct the authorities that those candidates who are similarly situated to 66 persons who are protected and who are in the merit list above those 66 candidates may be ordered to be appointed inasmuch as there are several vacancies. He, however, submitted that the said benefit may be extended only to those candidates who have approached the Court by filing original applications, writ

petitions and by making grievance before this Court. The candidates who had not approached the Tribunal, the High Court and this Court have no right to make any grievance. Hence, the applicants who have sought impleadment in the present proceedings for the first time cannot claim the benefit which the appellants herein have claimed. It was, therefore, submitted that an appropriate direction may be issued so that no prejudice will be caused to those employees who were vigilant of their rights and who are otherwise qualified and eligible on the basis of protection granted to 66 employees.

41. Regarding protection granted to 66 candidates, from the record it is clear that their names were sponsored by the employment exchange and they were selected and appointed in 1998-1999. The candidates who were unable to get themselves selected and who raised a grievance and made a complaint before the Tribunal by filing applications ought to have joined them (selected candidates) as respondents in the original application, which was not done. In any case, some of them ought to have been arrayed as respondents in a "representative capacity". That was also not done. The Tribunal was, therefore, wholly right in holding that in absence of selected and appointed candidates and without affording opportunity of hearing to them, their selection could not be set aside.

44. True it is that the High Court, in the first round, directed the Tribunal to reconsider the matter of 66 candidates who were selected and appointed observing that the Tribunal had not assigned any reason for granting protection. With respect, it was not factually correct. The Tribunal had recorded reasons, namely, that they had been selected and appointed, they were working since the date of their appointment; they were not joined as respondents and no opportunity of hearing was afforded to them and in their absence and without observing principles of natural justice and fair play, their appointment could not be set aside.

49. In *Munindra Kumar v. Rajiv Govil* [(1991) 3 SCC 368 : 1991 SCC (L&S) 1052 : (1991) 16 ATC 928] the selection comprised of written test, group discussion and oral interview

The relevant rule fixed 40% of total marks for group discussion and oral interview (20% each). Though this Court held fixation of marks as arbitrary, being on higher side, it refused to set aside selection made on that basis since selection had already been made, persons were selected, appointed and were in service.”

14. Learned counsels for the appellants submit that since the candidates have served for about 3 years, they have gained sufficient experience and are even eligible otherwise. Thus, in this backdrop, their services should not be terminated.
15. While relying on the judgment in the case of *State of Andhra Pradesh & Anr. V. Dr. Mohanjit Singh and Ors.* 1988 (supp) SCC 562 in a case of a University, where the entire selection process had been scheduled and fixed but the same was not adjourned when one of the members of the UGC failed to send a member within time when the interviews were conducted. The decision rendered by a Division Bench of this Court in case of *Kavita Meena & Ors. vs. Government of National Capital Territory of Delhi & Ors.* in W.P.(C) 2674/2012 reported in 2012 (130) DRJ 429 (DB) has been relied upon wherein it was held that the interview cannot be held to be invalid on account of the fact that some of the members were not present.
16. Mr. Gogna, counsel for the Akademi and for the Ministry submits that the entire selection process stands vitiated on account of the fact that a representative of the Ministry was not present at the time of interview. He submits that the Akademi had informed the ministry by a communication dated 20.05.2015 about the interviews and requested for a representative to remain present. Relying on the original record received by him, Mr. Gogna submits that the letter of 20.05.2015 was

placed before the Deputy Secretary on 21.05.2015 and thereafter, before the Joint Secretary on 23.05.2015. The Joint Secretary had made an endorsement that the time was too short to make available a representative. The file was then put up before the Director on 25.05.2015 (23rd and 24th October, 2015 being holidays) who made an endorsement that as to whether the date of the test was over. He also made an endorsement that ordinarily at least 7 days' notice should be given to ensure presence of a representative from the Ministry. Yet another endorsement was made by the Director on the same date enquiring as to whether the interviews had been held and if yes, why was the interview held in the absence of the representative of the Ministry. Another draft letter was prepared on 28.05.2015 by the Ministry and sent to the Akademi on 03.06.2015 seeking an explanation as to why the interviews were conducted in the absence of the representative of the Ministry. Reminders were also issued. Meanwhile, show cause notices were issued on 11.06.2016 to the successful candidates, in response thereto, the candidates asked the respondents to await the decision in the case of Manoj Kumar, which was pending.

17. Mr.Gogna, counsel for the Akademi and Ministry as also Mr.Rañeja, counsel for Manoj Kumar, respondent no.4 have submitted that the entire selection process was not only irregular but also illegal. Reliance is placed on the recruitment rules in support of their submissions that the constitution of the Committee for conducting the interviews comprised of two Deputy Secretaries to be nominated by the Secretary and one representative from the Ministry apart from the

Secretary. Counsels submit that the interviews were conducted and it seems that the sole object and design was to ensure that a representative from the Ministry is not available and the selection is made in their absence. It is contended that once the date of interview was fixed and the candidates were informed, there is no explanation as to why the Ministry was informed merely two days before the interview and a request for presence of a representative was made. Mr.Gogna contends that the main objective of the recruitment rules is to ensure impartiality in the process of selection and the presence of an external representative was a mandatory requirement to dispel any notion of bias or impartiality, besides the recruitment rules could not have been ignored on the premise of retired employee of the Ministry participated in the process of selection who was subsequently employed by the akademi as a consultant. Mr.Gogna also contends that a complete examination of the record smacks of some deep element of irregularity and illegality in the manner of selection. Counsel for Manoj Kumar/respondent no.4 submits that the documents were obtained by him under Right to Information Act (RTI) and the same were handed over in Court, which show that the result was only signed by the officiating Secretary and the result does not bear the signatures of the selection committee members. Learned counsel for the respondents while drawing the attention of the Court to the result so compiled to show that for the post of Junior Clerk-cum-Typist even those persons who had secured 0 marks in the typing test were interviewed. Counsel for Manoj Kumar/respondent no.4 further submits that the calculation sheets obtained by him under RTI also

show the same to be incomplete as the total number of marks secured by each candidate was not filled up. It is, thus, contended that the Ministry was fully justified in declaring the entire process to be null and void. Mr. Gogna submits that the judgments sought to be relied upon by learned counsel for the appellants do not apply to the facts of the present case as the underlying principle laid down in the judgment is that the external representative was duly informed about the date fixed for the interview and sufficient notice was given which is a condition, not fulfilled in the present case for the interview to be conducted on 23.05.2015.

18. The Ministry was informed by a communication dated 20.05.2015, which would have been received by the Ministry in the latter half of the day. By the time, the file was put up the very next day i.e. on 21.05.2015 before the Deputy Secretary and on 23.05.2015 before the Joint Secretary by which time without waiting for any response, the interviews were conducted. Learned counsel for the respondents also submit that the entire procedure of conducting of the interview is not beyond suspicion and the process of selection is in doubt which is evident from the fact that the compilation of the result does not bear the signatures of the members of the selection committee. Furthermore, such candidates who had secured 0 marks in the typing examination, were also interviewed, which would show complete non-application of mind as such persons should not have been called for interview and even if they were present they should not have been interviewed.

19. We have heard learned counsel for the parties and carefully examined the record and the submissions made by learned counsels appearing for the parties.
20. The basic facts are not in dispute that an advertisement was published for the post of Junior Clerk-cum-Typist by the Sangeet Natak Akademi on 06.12.2014; the appellants appeared for the written test, typing test and interview; they were selected and they joined the post. It is also not in dispute that as per the recruitment rules, the selection committee was to comprise of (1) Deputy Secretary (F&A) SNA. (2) two Deputy Secretaries (to be nominated by the Secretary) and (3) a representative from the department of Culture.
21. It is also not in dispute that the Akademi requested the ministry for providing a nominee by a communication dated 20.05.2015 for the interview to be held on 23.05.2015. The original file shows that the Deputy Secretary made an endorsement on 21.05.2015; Joint Secretary made an endorsement on 23.05.2015 and the Director made an endorsement on 25.05.2015. The stand taken by the Akademi and by the officiating Director who has been impleaded as a party in person was that she had taken approval from the Joint Secretary verbally. An impression was also created as if the ministry agreed with the Akademy conducting interviews without a representative and only upon filing of writ petition by Manoj Kumar, the ministry issued the communication declaring the process to be null and void. To examine this aspect of the matter, we had called the original record, which shows that the ministry was not happy with the manner the akademi conducted the selection for the post of Junior Clerk-cum-

SO (Akad)

US (Akad)

Dir (Akad)

What was the level of MoC's representative for similar selection Committee meetings held in the past? This may be put on the existing file for such requests from SNA.

2. Do the RRs for the above post specify the composition of the Selection Committee?

Pl. add a copy

Sd./-
21.5.2015

US (Akad)

SO (Akad)

Ref.Dir (Akad) note on pre-page

It has been confirmed from SO (Admn.), SNA that an Under Secretary from the Ministry used to attend similar Selection Committee Meetings held in SNA in the past.

The RRs for the said post have been called for from SNA and a copy is placed below. The composition of the Selection Committee (Col.12) indicates as under:

'A representative from the Department of Culture'
Dir (Akad) may please see:

(C N Malhotra)
Consultant

SO (Akad)

US (Akad)

Submitted to me today. Date of test - 23.5.2015 is already over. May be treated as closed unless and until a further communication in the matter is revived. So and centers (illegible) have to be more cautious in future. They have to be proactive.

Dir (Akad)

Sd./-
25.05.2015

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emphasis added

Typist. The original communication dated 20.05.2015 bears the endorsement of the Deputy Secretary. There are continuous notings in the file i.e. three notings dated 21.05.2015, and two notings dated 25.05.2015, which we reproduced below:

"No.F.4/10/2015-Akad
Government of India
Ministry of Culture

Sub.: Selection to the post of Jr.Clerk-cum-Typist in Sangeet Natak Akademi.

PUC.....p.1/c

Sangeet Natak Akademi has informed this Ministry that application were invited for filling up of two posts of Jr.Clerk-cum-Typist (Unreserved) through advertisement released in the print media. A Committee comprising of officers of SNA was constituted and it shortlisted 31 eligible candidates for the said posts. SNA has informed that a typing test/written test and interview will be held on 23.05.2015 (Saturday) as per the following details:

<u>Date</u>	<u>Reporting Time</u>	<u>Time of test</u>	<u>Venue</u>
23.5.2015	10.30 AM	11.00 AM	SNA

The SNA has stated that as per Recruitment Rules, there shall be one representative from the Ministry of Culture as one of the members of the Selection Committee. They have requested that an officer from the Ministry of Culture may be nominated for inclusion as a member of the said Selection Committee.

JS (Akad) may please see for nomination of an officer from the Ministry of Culture as a member of the said Selection Committee.

Sd./-
21.5.2015
(CN Malhotra)
Consultant

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Was the interview/test conducted by SNA as scheduled? If yes, why was it done without a representative from MoC? Also SNA must send similar requests sufficiently in advance in future – at least ten working days prior to the scheduled date.

Sd./-
25.05.2015

US (Akad)

SO (Akad)

(emphasis added)

22. On 28.05.2015, a draft letter was prepared to be sent to the akademi. The fair letter was prepared on 01.06.2015. Note of 09.06.2015 is also reproduced below:

“No.F.4/10/2015-Akad

PUC....p.6/c

Shri Srigopal Singh has sent an e-mail to Secy (Culture) stating that selection process for appointment to the posts of Jr. Clerk-cum-Typist in Sangeet Natak Akademi has not been followed as per RRs. He has brought the following to the notice of the Ministry.

- (i) Composition of the Selection Committee is not in accordance with the RRs;
- (ii) Secretary, SNA who was the chairperson of the Selection Committee influenced the other members of the Committee to select candidates of her choice;

It is doubtful that merit list was prepared in addition to other irregularities made at the instance of Secretary, SNA; and This is not the only case. The Secretary, SNA is making promotions and appointments without following the Government rules.

He has further requested that all the records relating to the selection process in r/o the said posts may be called for an examined in the Ministry.

As per remarks of JS (Akad) on the FR, we may ask Secy, SNA to furnish comments in the matter as per DFA put up please.

Sd./-
(C N Malhotra)
Consultant

SO (Akad)

US (Akad)

May be signed at SO level

SO (Akad)

Letter has been signed."

23. Reproducing file of Ministry's notings would show that the Ministry was unhappy in the manner the interviews were conducted in the absence of their representative. There is also nothing on record to show that any oral instructions were given to conduct the interviews in the absence of a representative of the ministry. We also find this submission to be not convincing for the reason that the akademi at no point in response to the queries raised by the ministry took up this plea in their reply. There is also no other explanation on behalf of the akademi as to why the ministry was informed at the last minute about conducting of interviews. The counsels for the appellants have strongly urged before us that a vested right was created in their favour as they successfully completed their training and worked for almost three years and thus, the termination letters should be set aside. Especially, when no fault can be attributed to them. They were neither parties to the constitution of the Committee nor is there anything on record to show that any manipulation was done at their behest.
24. In response to this submission, Mr. Gogna has submitted that once the Ministry had received information that the interviews were conducted

in the absence of any representative from the Department of Culture/Ministry. Show cause notices were issued to the appellants on 11.06.2016. However, they were allowed to continue, as the candidates had responded by stating that the writ petition filed by Manoj Kumar was pending. Thus, it is not a case of delay at the hands of the respondents. The respondents satisfied themselves about the illegality and the irregularity in the selection process and accordingly, issued the show cause notices.

25. Paras G to M of the counter affidavit filed in the W.P.(C) 5645/2018 are reproduced as under:

"G. That vide OM dated 18.10.2016, the answering respondent informed the petitioner that the appointment of Shri Hemant Kumar Arya and Shri Chandranshu Mehta was not in accordance with Recruitment Rules and hence the Letter of Appointment was to be withdrawn by SNA and the fresh process for filling up those two posts was to be undertaken by the SNA by making fresh advertised as per the Recruitment Rules for the said post.

H. That the copy of the OM dated 18.10.2016 was also sent to Shri Hemant Kumar Arya and Shri Chandranshu Mehta, the petitioner and both of them were given liberty to make representation if any in respect of the decision taken by the Ministry of Culture. Copy of the OM dated 18.10.2016, carrying the signature of Shri Chandranshu Mehta, the petitioner in acceptance of the said notice is being placed on record as "Annexure R1-3" appearing on page no.78 to 79.

I. That vide OM dated 05.10.2016, the answering respondent again called upon the petitioner to make representation in respect of the decision of answering respondent to make the selection process as null and void.

The OM dated 05.12.2016 was also duly received by Shri Chandranshu Mehta on 06.12.2016. Copy of the OM dated 05.12.2016, carrying the signature of Shri Chandranshu Mehta, the petitioner in acceptance of the said notice is being placed on record as "Annexure R1-4" appearing on page no.80.

J. That vide letter dated 03.12.2016, the petitioner herein submitted reply to the OM dated 15.11.2016 and stated that as the matter pending disposal in the High Court (W.P. (c) no.3660 of 2016 titled Manoj Kumar Vs. Sangeet Natak Akademi), the OM dated 18.10.2016 and OM dated 05.12.2016 be recalled. The petitioner herein further stated that he should be allowed to continue on the said post and let the Hon'ble High Court decide the writ petition filed by Shri Manoj Kumar.

Copy of the letter dated 03.12.2016 is being placed on record as "Annexure R1-5" appearing on page no.81 to 85.

K. That in the meantime the Hon'ble High Court of Delhi in W.P. no.3660 of 2016 titled Shri Manoj Kumar Vs. Sangeet Natak Akademi directed the answering respondent to seek instructions in respect to letter dated 02.06.2016 whereby the Ministry of Culture had called upon the answering respondent to declare the selection for the post of Junior Clerk-cum-Typist as null and void.

Copy of the order dated 30.01.2018 passed by the Hon'ble High Court of Delhi in W.P. No.3660 of 2016 is being placed on record as "Annexure R1-6" appearing on page no.86.

L. That vide a letter dated 16.04.2018, the Ministry of Culture, referring the letter issued by the Ministry dated 02.06.2016 again called upon the answering respondent to inform to the Ministry of Culture as to whether the answering respondent has taken any action to make the selection process as null and void. The Ministry further called upon the answering respondent the reason for not taking any action.

Copy of the letter dated 16.04.2018 is being placed on record as "Annexure R1-7" appearing on page no.87.

M. That the committee comprising of the Secretary, SNA, three Dy. Secretaries, SNA, Section Officer, SNA and other met on 18.04.2018 and realized that the proper procedure was not followed while making the appointment and decided to declare the appointment as null and void. It was further decided that the decision be informed to the Hon'ble Court whereby the subject matter was pending.

26. Mr.Gogna has placed strong reliance on a decision rendered in *National Fertilizers Ltd. and others vs. Somvir Singh* reported in (2006) 5 SCC 493 to highlight his submission that the recruitment should be as per the the Recruitment Rules by following the procedure and any appointment made in violation of the recruitment rules would be a nullity. While relying on para 22 of *National Fertilizers Ltd. (supra)*, Mr.Gogna has submitted that the purpose of an external member was to ensure that the procedure is fair and impartial. Mr.Gogna has also contended that the judgment sought to be relied upon by counsels for the appellants, would not apply to the facts of the present case. Paras 20, 22 and 24 of *National Fertilizers Ltd.'s (supra)* are reproduced as under:

20. The Constitution Bench opined that any appointment made in violation of the Recruitment Rules as also in violation of Articles 14 and 16 of the Constitution would be a nullity. The contention raised on behalf of the employees that those temporary or ad hoc employees who had continued for a fairly long spell, the authorities must consider their cases for regularisation was answered, thus: [*Umadevi (3) case* [(2006) 4 SCC 1 : (2006) 4 Scale 197], SCC p. 29, para 26]

"26. With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments

and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent—the distinction between regularisation and making permanent, was not emphasised here—can only encourage the State, the model employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect, the direction made in para 50 (of SCC) of *Piara Singh* [(1992) 4 SCC 118 : 1992 SCC (L&S) 825 (1992) 21 ATC 403] is to some extent inconsistent with the conclusion in para 45 (of SCC) therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognised in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad hoc, temporary or casual employees engaged without following the regular recruitment procedure should be made permanent.”

XXXX XXXX XXXX
 22. Taking note of some recent decisions of this Court, it was held that the State does not enjoy a power to make appointments in terms of Article 162 of the Constitution. It further quoted [*Umadevi* (3) case, SCC pp. 33-34, para 38] with approval a decision of this Court in *Union Public Service Commission v. Girish Jayanti Lal Vaghela* [(2006) 2 SCC 482 : 2006 SCC (L&S) 339 : (2006) 2 Scale 115] in the following terms: (SCC p. 490, para 12)

“The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to a post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange where eligible candidates get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications

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from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution.”

It was clearly held: [*Umadevi (3) case* (2006) 4 SCC 1 : (2006) 4 Scale 197], SCC p. 35, para 41]

“These binding decisions are clear imperatives that adherence to Articles 14 and 16 of the Constitution is a must in the process of public employment.”

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24. The Constitution Bench thought of directing regularisation of the services only of those employees whose appointments were irregular as explained in *State of Mysore v. S. Narayanappa* [(1967) 1 SCR 128 : AIR 1967 SC 1071], *R.N. Nanjundappa v. T. Thimmiah* [(1972) 1 SCC 409 : (1972) 2 SCR 799] and *B.N. Nagarajan v. State of Karnataka* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] wherein this Court observed: [*Umadevi (3) case* [(2006) 4 SCC 1 : (2006) 4 Scale 197], SCC p. 24, para 16]

“16. In *B.N. Nagarajan v. State of Karnataka* [(1979) 4 SCC 507 : 1980 SCC (L&S) 4 : (1979) 3 SCR 937] this Court clearly held that the words ‘regular’ or ‘regularisation’ do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments.”

27. Mr. Gogna has further contended that the case of *Kavita Meena* (*supra*) was decided on the basis of a judgment rendered by the Apex court in the case of *Ishwar Chandra vs. Satyanarain Sinha & ors.* reported in (1972) 3 SCC 383. He submits that in the aforesaid matter, the nominee who did not attend the meeting was a sitting judge of the High Court. The Supreme Court extracted various communications

between the judge and the vice-chancellor to show that the sufficient opportunity was given to the judge to attend the meeting and accordingly the judgments sought to be relied upon by the counsel for the appellants would not apply to the facts of the present case. It is further pointed out by Mr. Gogna that in the present case the secretary could not have been part of the Selection Committee as per the recruitment rules and only two persons to be nominated by her should have been part of the Committee which is also a ground which shows the illegality in the selection process.

28. Similar facts were dealt by the Apex Court in the case of *People's Union for Civil Liberties vs. Union of India* reported in (2005) 5 SCC 363 which was also relied upon by the Division Bench of this Court in *Kavita Meena (supra)* where despite sufficient notice, the members did not attend the meeting. While counsels for the petitioner and appellants had submitted that the communication was sent on 20.05.2015 and thus, there was a reasonable time for the Ministry to provide a nomination. In our view, this submission is without any force as it is common knowledge that the files do not move at such a quick pace although in this case they did but not fast enough to provide a nominee within two days. The submission of learned counsels for the appellants that the appellants have worked for three years and thus, their appointment should not be cancelled, does seem to be attractive and convincing but, from the record it transpires that the Ministry was unhappy by the fact that the akademi which is fully funded by the ministry of culture, all the salaries are released by the ministry, their representative was not present and show cause notices

were issued on 11.06.2016 and 5.12.2016 but there was no finality as the appellants wanted to await the decision in the case of Manoj Kumar. It has been repeatedly held that any appointment which is against the recruitment rules is illegal and void. We also find that the result, copy of which has been handed over in Court, received under RTI shows that the same does not bear signatures of the Committee Members but only of the officiating secretary. We find it rather strange and unusual that for the post of Junior Clerk-cum-Typist even those persons were interviewed, who had secured 0 marks in the typing test. Even if the written and typing test was conducted on the same day, persons who had secured 0 mark should not be called for interview.

29. Resultantly, we find no merit in the appeals and the writ petition, the same are accordingly dismissed. However, we grant a liberty that in case a fresh examination is held, both the appellants and the petitioner will be given age relaxation of three years. Advertisement for filling up the post shall be published not later than two months from the date of this order.

G.S.SISTANI, J.

SANGITA DEHNGRA SEHGAL, J

OCTOBER 05, 2018

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