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Judgement reserved on 16.10.2023
Judgement delivered on 31.10.2023

Neutral Citation No. - 2023:AHC:207384

Court No. - 35

Case :- WRIT - A No. - 11509 of 2023

Petitioner :- Imtiyaz Ahamad

Respondent :- The State Of U.P. And 4 Others

Counsel for Petitioner :- Shivendu Ojha, Naushad Alam, Sr. Advocate

Counsel for Respondent :- C.S.C., Samarath Singh, Sankalp Narain

Hon'ble Vikas Budhwar, J.

1. Heard Sri Radha Kant Ojha, learned Senior Counsel, assisted by Sri Ratnakar Upadhyay, Sri Naushad Alam, learned counsels for the writ petitioner, Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel, who appears for the State official respondents as well as Sri Sankalp Narain, learned counsel, who appears for the respondent nos.4 and 5.
2. Since a statement has been made by the learned counsel for the rival parties that they do not propose to file any further affidavits thus with their consent the writ petition is being decided at the fresh stage.
3. The case of the writ petitioner is that there is an institution by the name of S.M. National Inter College Machhati, District Ghazipur, fourth respondent, which is a minority institution conferred with certain protection and benefits under Article 30 of the Constitution of India recognised and aided under the provisions of U.P. Intermediate Education Act, 1921 (In short 1921, Act) and the provisions of U.P. Act No.24 of 1971 stands applicable. As per the writ petitioner the said institution has his own approved scheme of administration. The writ petitioner herein claims to be working as Lecturer (Physics) in the institution in question since 1997. It is the case of the writ petitioner that seniority list was published on 3.2.2021 wherein the name of the writ petitioner

found place at serial no.2 as whereas the name of the fifth respondent is at serial no.8.

4. Records reveal that one Sri Subhanullah Khan was appointed as the Principal of the institution in question however six months before his superannuation he proceeded on medical leave resulting to the fact that a vacancy stood arisen and one Smt. Farhat Mirza Khan was handed over the officiating charge of the Principal in question and her signatures were also attested 16.3.2021. One Sri Quamaruddin who claimed himself to be the senior most Lecturer in the seniority list challenged the appointment of Smt. Farhat Mirza Khan as Officiating Principal while filing a Writ-A No.6467 of 2021 which was dismissed on 16.7.2021.

5. It has come on record that Sri Subhanullah Khan superannuated on 31.3.2022. Thereafter, Smt. Farhat Mirza Khan resigned on 6.5.2022, Committee of Management proceeded to resolve to grant the charge as Officiating Principal of the institution in question to the fifth respondent, Shoab Ahamd Khan and he was accorded joining and signatures were attested on 17.6.2022.

6. The writ petitioner herein questioned the officiation of the fifth respondent as a Principal in the institution in question while filing **Writ-A No.13591 of 2022, Imtiyaz Ahamad vs. State of U.P. & 4 others** as whereas the fifth respondent, preferred **Writ-A No.21404 of 2022, Shoeb Ahmad Khan vs. State of U.P. and 3 others** for a mandamus directing the Committee of Management as well as the District Inspector of Schools to accord payment of salary to him in the grade of Principal and not to interfere in his functioning. Both the writ petitions were consolidated together and were decided by a common order on 14.3.2023 which is quoted herein under :-

1. These two connected matters relate to the issue of appointment of respondent no. 5 namely Shoeb Ahmad Khan as an Officiating Principal of an Intermediate College recognized and governed under the Intermediate Education Act, 1921 and so the entitlement of Mr. Khan to salary as admissible to the post of Principal of a recognized and aided institution while Imtiyaz Ahamad, the present petitioner in writ petition being Writ - A No. 13591 of 2022 has questioned the appointment of Mr. Khan as Officiating Principal of the Institution for the reason that he did not possess the requisite

qualification for the post of Principal of a recognized Intermediate College as per the qualification prescribed in Appendix-A of Intermediate Education Act, 1921.

2. Mr. Khan who happens to be the petitioner in connected matter being Writ - A No. 21404 of 2022 has on the other hand prayed for a writ of mandamus directing the Committee of Management as well as District Inspector of Schools to make payment of salary to him in the grade of Principal of a recognized aided Intermediate College as admissible in law as a consequence to his appointment as Officiating Principal of the Institution and his taking charge of the office on 21.05.2022. The signatures of Mr. Khan came to be attested by District Inspector of Schools on 17.06.2022.

3. The facts that emerged from the pleadings of two connected matters can be placed in a narrow compass like this that the Institution that is aided minority institution is managed by a validly elected Committee of Management and the earlier Principal Mr. Subhanullah Khan, who was validly continuing in the Institution and was to retire on 31.03.2022, proceeded on long leave on 30.12.2020 and so the Committee of Management proceeded to appoint one Smt. Farhat Mirza Khan as Officiating Principal of the Institution giving her charge and consequently her signatures came to be attested on 16.03.2021. The challenge was made on the ground that Smt. Farhat Mirza Khan did not possess the requisite qualification for the post of Principal of the Institution vide Writ - A No. 8702 of 2022 by the present petitioner. However, while the petition remained pending, Smt. Farhat Mirza Khan resigned on 06.05.2022.

4. It is also brought to the notice of this Court by Sri Sankalp Narain, learned counsel for the petitioner in connected matter that the senior most teacher of the Institution namely Mr. Qamar Uddin had also challenged the appointment of Smt. Farhat Mirza Khan as Officiating Principal of the Institution and the said petition was dismissed as found to be meritless by a detailed order dated 16.07.2021 passed in Writ - A No. 6467 of 2021. It transpires that after Smt. Farhat Mirza Khan resigned on 06.05.2022 the Committee of Management proceeded to resolve on 20.05.2022 to appoint the respondent no. 5 namely Shueb Ahmad Khan as Officiating Principal of the Institution and so consequently he was appointed and given joining and his signatures came to be attested on 17.06.2022 and it is this order which is under challenge in present writ petition filed by Mr. Imtiyaz Ahamad.

5. It has been argued by Sri R.K. Ojha, learned Senior Advocate appearing for the petitioner that as per Appendix - A of the Intermediate Education Act, 1921 a teacher who is not having B.Ed. qualification to his credit, can be granted exemption from the degree if he completes 10 years of service as an Assistant Teacher in the event he has passed out the Post Graduate degree in 1st / 2nd Division, however, in the event a candidate has passed out in 3rd division then the requisite experience would be of 15 years of service. It is therefore, submitted that respondent no. 5 who was appointed as a Lecturer on 02.07.2012 could have completed 10 years of teaching experience only on 01.07.2022 in order to seek exemption from B. Ed. Degree and therefore, resolution of the Committee to appoint him on 20.05.2022 was de hors the qualification prescribed for and so neither the respondent no. 5 could have been appointed, nor his signatures were to be attested as Officiating Principal of a recognized aided Institution.

6. As a sequel to the above, the argument advanced is that the vacancy having occurred on 01.04.2022 a candidate even to officiate on the position of Principal ought to have requisite qualification as on that date.

7. Sri Sankalp Narain, learned Advocate who is appearing for the petitioner namely Mr. Shoeb Ahmad Khan, the 5th respondent in the connected matter submits that since he has already submitted his joining and officiating Principal as such unless and until the appointment is set aside, he is entitled to function as Officiating Principal of the Institution and so he may be permitted to continue as Officiating Principal and also consequently be paid salary.

8. Having heard learned counsel for the respective parties and their arguments raised across the bar and having examined the relevant provisions as contained in Appendix - A of Intermediate Education Act, 1921, I am of the view that this matter requires examination in the first instance at the state of District Inspector of Schools who happens to have attested the signatures of the 5th respondent.

9. Both the learned Advocate agree that the matter can be directed to be examined and then decision by the District Inspector of Schools after giving opportunity of hearing to both the parties and the appointment and continuation of 5th respondent as Officiating Principal of the Institution should abide by the final decision to be taken by the District Inspector of Schools and so also the question of payment of salary.

10. Learned Standing Counsel also does not have any objection in the event matter is remitted to the District Inspector of Schools for decision afresh strictly in accordance with law in a time bound period.

11. In view of the above, I dispose of both these petitions with a direction to the District Inspector of Schools, Ghazipur to examine the matter qua legality of the appointment of 5th respondent as Officiating Principal of the Institution after giving full opportunity of hearing to both the contesting parties as well as to the Committee of Management of the Institution. The decision shall be taken by the District Inspector of School, Ghazipur within a maximum period of 30 days from the date of presentation of certified copy of this order.

12. Needless to add that the order to be passed by the District Inspector of Schools, Ghazipur shall be reasoned and speaking one. The continuation of the petitioner as Officiating Principal of the Institution and the payment of salary against the post in question as admissible in law would be governed by the decision to be taken by the District Inspector of School, Ghazipur as directed herein above.

13. With the aforesaid observations and directions, both the aforesaid petitions are hereby disposed of.”

7. Post remand, now the District Inspector of Schools, Ghazipur, third respondent has proceeded to pass the order dated 6.6.2023 according approval and benefits to the fifth respondent as an Officiating Principal.

8. Questioning the said order, the writ petitioner has filed present writ petition with the direction to the respondents to permit the writ petitioner to work as Ad hoc/Officiating Principal of the institution in question. The writ petition was entertained by this Court on 16.8.2023 and thereafter dates were

fixed on 28.3.2023 requiring the parties to exchange affidavits and ultimately on **14.9.2023** the following order was passed:-

It has been reported that the lawyers are abstaining from work today. This Court on 16.08.2023 proceeded to pass the following order:- "A neat question arises in the present proceedings as to what would be the date of occurrence of the vacancy which is to be co-related to the qualification which is to be possessed by the respective Lecturer for granting officiation promotion as Principal. Further in para 6 of the writ petition, it has also been averred that the fifth respondent could not have been accorded officiation as Principal in view of the forbidden clauses referable to the relationship norms. The issue which is also engaging attention with regard to the qualification of the fifth respondent.

On the request of the parties, put up this on 23.08.2023 as fresh on which date the parties shall advance their arguments."

Thereafter on 23.08.2023 following order was passed. "This court on 16.08.2023 proceeded to pass the following order: "A neat question arises in the present proceedings as to what would be the date of occurrence of the vacancy which is to be co-related to the qualification which is to be possessed by the respective Lecturer for granting officiation promotion as Principal. Further in para 6 of the writ petition, it has also been averred that the fifth respondent could not have been accorded officiation as Principal in view of the forbidden clauses referable to the relationship norms. The issue which is also engaging attention with regard to the qualification of the fifth respondent.

On the request of the parties, put up this on 23.08.2023 as fresh on which date the parties shall advance their arguments." Today, learned counsel appearing for the respondents have made a statement that they shall be filing counter affidavit. The affidavits, be served upon the learned counsel for the petitioner by 05.09.2023. Rejoinder affidavit may be filed by 12.09.2023. Put up this case on 14.09.2023, as fresh.

It is expected that the respondents shall file their responses so as to enable this Court to give his final verdict."

Learned Standing Counsel who is appearing for the respondents has made a statement at bar that he has written a letter on 26.08.2023 for the purposes of filing of the response. Learned Standing Counsel seeks further time to file its response.

The matter is passed over for the day.

Put up this matter in the list of fresh cases on 05.10.2023 by which date affidavits be exchanged between the parties."

9. A counter affidavit has been filed by the first and second respondent sworn by District Inspector of Schools, Ghazipur, third respondent dated 13.10.2023. Further a response has also been filed by the fourth and fifth respondents sworn by the fifth respondent on 15.9.2023. To the counter affidavit of the respondents no. 4 and 5 a rejoinder affidavit has been filed.

However the learned Senior Counsel for the petitioner submits that he does not propose to file any rejoinder affidavit to the counter affidavit filed by the respondents no. 1 and 2. Thus, with the consent of the parties, the writ petition is being decided at the fresh stage.

10. Sri Ojha, learned Senior Counsel has sought to argue that the order dated 6.6.2023 passed by the District Inspector of Schools, Ghazipur, third respondent cannot be sustained for a single movement particularly in view of the fact that though the fourth respondent is a minority institution and it is a prerogative of the Committee of Management to permit any of the Lecturers to officiate as a Principal of the institution in question however the said right is not a unfettered right as it is subject to the qualifications and the eligibility possessed by an incumbent who seeks officiation. According to him the statutes are clear on the said aspect as 16FF of the U.P. State Universities Act, 1921 itself provides for the procedure and the modalities according to which appointments are to be made on the post in question and Chapter II, Regulation-1 provides for the minimum qualification for appointment as a Head of the institution and Teachers in any recognised institution whether by direct recruitment or otherwise as per Appendix-A.

11. Submission is that the fifth respondent, Sri Shoab Ahmad Khan does not possess the relevant eligibility required for officiating as a Principal of the institution in question as besides the essential qualifications, he does not possess the 10 years of teaching experience in an Intermediate Class of any recognised institution.

12. While inviting attention towards Appendix-A serial no.1 (Item No.2) it is being sought to be contended that for being appointed on the post of Principal/ Head of the Institution for a first or second class post graduate degree holder, the incumbent should possess teaching experience of 10 years in Intermediate Classes of any of the recognised institution or 15 years of a teaching experience in the case of third Class Post Graduate Degree.

13. According to Sri Ojha since the fifth respondent, Sri Shoab Ahmad Khan had joined the post of Lecturer in Economics on 2.7.2012 therefore, on the date

of the occurrence of vacancy on 1.4.2022 consequent to the retirement of Sri Subhanullah Khan on 31.3.2022, the fifth respondent did not possess 10 years experience which was mandatory condition.

14. It is the further submission of Sri Ojha that on even on the date of the resolution of the Committee of Management to accord officiation of the fifth respondent, Sri Shoab Ahmad Khan on 20.5.2022, he did not possess the necessary experience thus by no stretch of imagination he could have been accorded officiation of the post in question.

15. In order to buttress the said submission, Sri Ojha, learned Senior Counsel has relied upon the judgement in the case of **Committee of Management, National Inter College and another vs. State of U.P. and others** reported in **2020 (4) ESC 1312**.

16. Additionally, it has been argued that the fifth respondent, Sri Shoab Ahmad Khan is the son in law of the manager of the institution and also brother in law of the Vice President of the Committee of Management. Relevant averments have been made in paragraph no.16 (H) of the writ petition. While inviting attention towards paragraph no.5 and 6 of the writ petition it is being sought to be argued that as per para 4 of the Approved Scheme of Administration there happens to be a bar that no teacher shall be appointed whether in temporary or clear vacancy in an institution who is related to the member of the Committee of Management and for the purposes of the Regulation the relationship includes the son in law and brother in law.

17. Countering the said submission Sri Sankalp Narayan, has argued that the writ petition preferred at the behest of the writ petitioner is not maintainable and the writ petitioner is not entitled to any relief particularly in view of the fact that here in the present case admittedly the institution is a minority institution thus in view of the law laid down in the case of **Mohd. Ayub Khan vs. State** reported in **2008 (10) ADJ 477**, the Committee of Management of a minority institution is free to appoint a Principal of its choice irrespective of seniority. He further submits that though the writ petitioner may be right to contend that on the date of occurrence of vacancy is 1.4.2022, the fifth respondent was not possessed

with 10 years of experience but at the time of the filing of the writ petition the fifth respondent is qualified and eligible and the institution being a minority institution, a conscious decision has been taken by the Committee of Management to accord officiation to the fifth respondent.

18. It is argued that there are no such provisions contained under the 1921, Act and the Regulations applying in the case of the minority institution that on the date of occurrence of vacancy an incumbent is to possess eligibility and in absence of any such provisions rightly the Committee of Management of the institution in question has accorded officiation to the fifth respondent, Sri Shoab Ahamd Khan. He seeks to rely upon the decision in the case of **Nisar Ahmad vs. Registrar/Inspector of Arabi, Farsi, Madarsas and others** reported in **2006 (62) ALR 919**.

19. Additionally it is being sought to be argued that once a statutory right is conferred upon a litigant and the said right is being defeated or violated then only a writ petition is maintainable and since the said ingredients are virtually lacking in the case of the writ petitioner thus, this Court may not exercise jurisdiction in favour of the writ petitioner. In this regard he seeks to rely upon the decision in the case of **Ashok Kumar Malhotra and others vs. State of U.P. and others** **2018 (8) ADJ 511**.

20. On the issue of the allegations levelled by the writ petitioner that the fifth respondent, Sri Shoab Ahamd Khan is related to Manager of the institution in question being son in law of the Manager and brother in law of Vice President of the Committee of Management is concerned, while relying upon paragraph 6 and 12 of the counter affidavit it is being sought to be contended that the said embargo would come in the way at the stage of initial appointment and not at the stage when the claim of the fifth respondent is for officiation on the post of Principal. He further submits that the fifth respondent is not related to the Manager. Therefore, it is prayed that the writ petition be dismissed.

21. Sri Pradeep Kumar Shahi, learned Additional Chief Standing Counsel has adopted the argument of Sri Sankalp Narayan, however he submits that he has nothing more to add except the fact that once an institution is a minority

institution then it is the right and the choice of the institution to appoint officiating/ad hoc Principal and thus the order of the District Inspector of Schools, Ghazipur is not liable to be interfered with.

22. Before delving into the tenability of the arguments of the rival parties it would be apposite to notice the relevant statutory provisions which are governing the field.

23. To start with the relevant provisions are quoted herein under:-

16-FF. Savings as to minority institutions.-(1) *Notwithstanding anything in sub-section (4) of Section 16-E, and Section 16-F, the Selection Committee for the appointment of a Head of Institution or a teacher of an institution established and administered by a minority referred to in Clause (1) of Article 30 of the Constitution shall consist of five members (including its Chairman) nominated by the Committee of Management :*

Provided that one of the members of the Selection Committee shall-

(a) in the case of appointment of the Head of an institution, be an expert selected by the Committee of Management from a panel of experts prepared by the Director;

(b) in the case of appointment of a teacher, be the Head of the Institution concerned.

(2) The procedure to be followed by the Selection Committee referred to in sub-section (1) shall be such as may be prescribed. (3) No person selected under this section shall be appointed, unless-

(a) in the case of the Head of Institution the proposal of appointment has been approved by the Regional Deputy Director of Education; and

(b) in the case of a teacher such proposal has been approved by the Inspector.

(4) The Regional Deputy Director of Education or the Inspector, as the Case may be, shall not withhold approval for the selection made under this section where the person selected possesses the minimum qualification prescribed and is otherwise eligible.

(5) Where the Regional Deputy Director of Education or the Inspector, as the case may be, does not approve of a candidate selected under this section the Committee of Management may, within three weeks from the date of receipt of such disapproval, make a representation to the Director in the case of the Head of Institution, and to the Regional Deputy Director of Education in the case of teacher.

(6) Every order passed by the Director or the Regional Deputy Director of Education on a representation under sub-section (5) shall be final.

Chapter II

APPOINTMENT OF HEADS OF INSTITUTIONS AND TEACHERS

[Sections 16-E, 16 - F and 16 - FF]

1. The minimum qualifications for appointment as Head of Institution and Teachers in any recognised Institution, whether by direct recruitment or otherwise, shall be as given in Appendix A.

2. (1) The post of the Head of Institution shall except as provided in clause (2) be filled by direct recruitment after reference to the Selection Committee constituted under sub-section (1) of Section 16-F or, as the case may be, under sub-section (1) of Section 16-FF :

Provided that in the case of any institution not being an institution referred to In Section 16-FF a temporary vacancy caused by the grant of leave to an incumbent for a period not exceeding six months or by death, retirement or suspension of an incumbent occurring during an educational session in the post of the Head of Institution shall be filled by the promotion of the senior most qualified teacher, if any, in the highest grade in the institution.

[(2) (a) Where an institution is raised from a High School to an Intermediate College, the post of Principal of such college shall be filled by promotion of the Headmaster of such High School if he was duly appointed as Headmaster in substantive capacity in accordance with law for the time being in force and possesses a good record of service and the minimum qualifications prescribed in that behalf or has been granted exemption from such qualifications by the Board.

(b) The Committee of Management of such institution shall submit the proposal for promotion of the Headmaster concerned to the Regional Deputy Director of Education for his concurrence.

(c) The proposal referred to in sub-clause (b) shall be accompanied by a copy of the resolution of the Committee of Management approving such Headmaster for promotion, his service Book and Character Roll and shall contain the following particulars in relation to him, namely-

(i) date of birth,

(ii) examinations passed by him stating the subjects, divisions and year of passing such examinations.

(d) The Regional Deputy Director of Education shall communicate his decision on such proposal within two weeks from the date of receipt thereof, failing which the Regional Deputy Director shall be deemed to have given his concurrence to such proposal.

(e) The decision of the Regional Deputy Director of Education under sub-clause (d) shall be communicated to the Committee of Management as well as the Headmaster concerned.

(f) Any person aggrieved from the decision of the Regional Deputy Director of Education, including the Committee of Management may within 10 days from the date of communication of the order under subclause (e) make a representation against it to the Director whose decision in the matter shall be final.

(g) A Headmaster of a High School who is not found fit for promotion as Principal of the upgraded Intermediate College or a Headmaster of a Junior

High School who on its being raised as a High School, is not selected by the Selection Committee for the post of the Headmaster of upgraded High School, shall be retained as an assistant teacher on the highest post for which he is qualified, provided that this pay-scale shall not be reduced.

Explanation-Nothing this sub-clause shall apply to a person who was not permanent or was not duly appointed in accordance with law on the date on which the institution was raised to the level of a High School or an Intermediate College, as the case may be.

(3) Where the temporary vacancy in the post of head of institution is, for a period not exceeding thirty days, the senior-most teacher in the highest grade may be allowed to work as acting head of institution, but he shall not be entitled to pay in a scale higher than the scale of pay in which he is drawing salary as such teacher.

(4) In all cases in which promotions are made under this regulation a copy of the resolution of the Committee of Management together with particulars in the pro forma prescribed in Appendix 'B' shall be immediately forwarded by the Manager to the Inspector as well as the Regional Deputy Director of Education.

10. The procedure for filling up the vacancy of the head of institution and teaches by direct recruitment in any recognised institution shall be as follows:

- (a)*
- (b)*
- (c)*
- (d)*
- (e) Every candidate called for interview will have to pay the interview fee at rates given below:*

<i>(i) For the post of head of institution;</i>	<i>Rs.</i>
<i>General Candidates</i>	<i>20</i>
<i>Scheduled Caste/Tribe Candidate</i>	<i>5</i>
<i>(ii) For the post of teacher :</i>	
<i>General Candidates</i>	<i>13</i>
<i>Scheduled Caste/Tribe Candidate</i>	<i>3</i>

The interview fee shall be payable by crossed postal order or bank draft or through treasury challan by depositing the amount in the State Bank of India under the head indicated by the Inspector. In no case, the interview fee shall be accepted in cash. All postal order; bank drafts and treasury challans shall be sent by the Manager to the Inspector immediately after the selection.

(f) A statement (in six copies) showing the names, qualifications and other particulars in respect of every candidate called for the interview shall be got prepared by the Committee of Management in the form given in Appendix 'C'

and the same shall be placed before each member of the Selection Committee at the time of the interview. All the applications including those of candidates not called for the interview, the register maintained by the institution referred to in Clause (d), office copies of all letters sent to the members of the Selection Committee and of all interview cards including the post office receipts of sending the same by registered post and acknowledgments, if any, shall also be placed before the Selection Committee by the Management through the manager of the institution.

11. (1) It shall be the duty of the experts attending selection of a head of institution or- teacher to scrutinise all papers concerning selection and in particular to examine that the candidates called for interview have been rightly so called as per provisions of the Act and the Regulation and that no candidate has been deprived of the opportunity of interview which rightly should have gone to him. They should furnish a certificate to this effect in the proceedings of the selection as proposed in the statement in Appendix 'C'. In case they feel that a candidate has been deprived of the legitimate opportunity of interview as a result of any error or omission they shall inform the Inspector with full details of the case. If the Inspector is satisfied that the proceedings of the interview has been vitiated thereby he shall declare the proceedings of the interview null and void and shall pass orders for holding of selection again in such cases. The orders of the Inspectors in this regard shall be final and binding on all concerned.

(2) All applications, papers and registers relating to selection shall be preserved by the Management till such period as may be prescribed by the Director and shall be furnished to the Inspector, Regional Deputy Director of Education or the Director as and when the same may be summoned.

12. The Manager of the institution shall ensure that all necessary action to be taken under the Act and the regulations prior to the holding of selection including nomination of the Chairman or the member of the Selection Committee by the Committee of Management shall be taken well in time and that all arrangements have been made for the meeting of the Selection Committee and seating of candidates called for interview on the date fixed for the interview.

16. Every expert attending a meeting of the Section Committee and every person engaged for awarding quality-point-marks shall be entitled to be paid remuneration at such rates as may be sanctioned by the State Government from time to time. In addition, the experts shall be paid travelling allowance at such rates as may be sanctioned by the State Government.

17. The procedure for filling up the vacancy of the head of institution and teachers by direct recruitment in any recognised institution referred to in Section 16-FF, shall be as follows:

(a) After the management has determined the number of vacancies to be filled up by direct recruitment, the posts shall be advertised by the manager of the institution in at least one Hindi and one English newspaper having adequate circulation in the State giving particulars as to the nature (i.e., whether temporary/permanent) and number of vacancies, descriptions of post (i.e., Principal or Headmaster, Lecturer or L.T., C.T. or J.T.C./B.T.C. grade teacher including the subject or subjects in which the lecturer or teacher is required), scale or pay and other allowances, experience required minimum qualification and age prescribed, if any, for the post and prescribing a date which should not ordinarily be less than two weeks from the date of advertisement) by which the applications shall be received by the Manager. A copy of the advertisement shall be simultaneously sent to the Inspector concerned.

Notes (1) All vacancies in the posts of teachers and the head of institution existing at the time of advertisement shall be advertised.

(2) No new post shall be advertised unless sanction of the appropriate authority for the creation thereof has been received by the management.

(b) All applications shall be made in the form prescribed by the management and shall contain all necessary particulars about qualifications, teaching experience and other activities and be accompanied by certified copies of all the necessary certificates and testimonials. The management may charge cost of the application form not exceeding the amount referred to in Clause (2) of Regulation 10.

(c) An application by a person employed in an institution and applying for a post elsewhere or in the same institution shall not be withheld by his employer but shall be forwarded to the authority concerned immediately.

(d) All applications received from the candidates shall be serially numbered and entered in a register and particulars of the candidates noted under appropriate columns. The candidates to be called for interview shall be seven for each post (the number of applicants, permitting). The Manager shall intimate by registered post all the members of the Selection Committee as well as all such candidates as are called for interview, the date, time and place of selection at least ten days before it is held. The Selection Committee will hold the selection accordingly. If on account of any unavoidable reason, the expert selected by the Committee of Management under Clause (a) of the proviso to sub-section (1) of Section 16-FF is unable to attend the selection on the date fixed the meeting of the Selection Committee shall be postponed.

(e) The provisions of Clauses (e) and (f) of Regulation and those of Regulations 11, 12 and 16 shall mutatis mutandis apply to selections made under this regulation.

(f) A panel of experts consisting of fifteen or more persons selected from category (a) referred to in Regulation 14 shall be drawn by the Director for each region and be sent to the Regional Deputy Director of Education concerned. The Regional Deputy Director of Education shall out of the said panel communicate the names of three experts in a sealed cover to the management through its Manager as soon as he receives any request for supply of names of experts from him. The regional panel of experts shall, however, remain valid until it is replaced by a new one.

'[(g) किसी पद के लिए समस्त अभ्यर्थियों का साक्षात्कार कर लिए जाने के पश्चात् चयन समिति का सभापति किये गये चयन की कार्यवाहियों पर दो प्रतियों में एक टिप्पणी तैयार करायेगा जिसमें चुने गये अभ्यर्थी का नाम तथा प्रतीक्षा सूची के दो अन्य अभ्यर्थियों के नाम उल्लिखित किये जायेंगे, इस प्रकार तैयार की गई टिप्पणी पर चयन समिति के सभापति तथा अन्य सदस्य हस्ताक्षर करेंगे और अपना अपना पूर्ण नाम, पद नाम और पता तथा दिनांक उल्लिखित करेंगे, सभापति इस टिप्पणी की एक प्रति तथा विनियम 10 के खण्ड (च) में निर्दिष्ट विवरण की एक प्रति धारा 16-च के अधीन यथा अपेक्षित अनुमोदन के लिये, यथास्थिति, संभागीय उप-शिक्षा निदेशक या निरीक्षक को तुरन्त अग्रसारित करेगा, सम्बन्धित अभिलेखों के प्राप्त होने के दिनांक के एक माह के भीतर यथास्थिति संभागीय उप शिक्षा निदेशक या

निरीक्षक, उन पर अपना निर्णय दे देंगे और ऐसा न करने पर अनुमोदन प्रदान कर दिया गया समझा जायेगा]

18. (1) Within fifteen days of the receipt of the recommendation of the Selection Committee constituted under sub-section (1) or (2) of Section 16-F, and in case of an institution referred to in Section 16-FF, the approval of the authority specified therein, the Manager shall, on authorisation under resolution of the Committee of Management issued an order of appointment by Registered Post to the candidate in the form given in Appendix 'B' requiring the candidate to join duty within ten days of the receipt of such order, failing which the appointment of the candidate will be liable to cancellation.

(2) In case of promotions and (ad hoc appointments also a formal order of promotion or appointment in the form as near as possible to the form referred to in Clause (1) shall be issued to the person concerned under the signature of the Manager.

(3) A copy of every order referred to in Clauses (1) and (2) shall be sent to the Inspector and in case of appointment of the head of institution, a copy thereof shall also be sent to the Regional Deputy Director of Education.

APPENDIX-A

Minimum Qualifications for Appointment of Head Master and Teachers in Private Recognised Higher Secondary Schools

S.No	Name of the post & Educational Training Experience	Age	Desirable qualification
1	2	3	4
1	[Head of the institution (1) Trained M.A. or M.Sc. or M.Com. or M.Sc. (Agri) or any equivalent post-graduate or any other degree which is awarded by corporate body specified in abovementioned para one and should have at least teaching experience of four years in classes 9 to 12 in any training institute or in any institution or University specified in abovementioned para one or in any degree college affiliated to such University or institution, recognised by Board or any institution affiliated from Boards of other States or such other institutions whose examinations recognised by the Board, or should the condition is also that he/she should not be below 30 years of age. or (2) [First or second class postgraduate degree along with teaching experience of ten years in Intermediate classes of any recognised institutions or third class post-graduate degree with teaching experience of fifteen years,	Minimum 30 years	

	or		
	(3) Trained post-graduate diplomaholder in science. The condition is that he has passed this diploma course in first or second class and have efficiently worked for 15 or 20 years respectively after passing such diploma course.		

24. I have learned counsel for the parties and perused the record carefully.
25. Undisputedly, the fourth respondent, S.M. National Inter College Machhati, District Ghazipur, is a minority institution. Accordingly, the provisions contains under Section 16FF of the 1921 Act, stands applicable. Section 16FF provides for a constitution of Selection Committee consisting of five members including Chairman (nominated by the Committee of Management). Subsection 3(a) of Section 16FF of 1921 Act provides that no person selected under the said section shall be appointed in case of the Head of the Institution provided the proposal of the appointment has been approved by Regional Deputy Director of Education. Further Sub-Section (4) of Section 16FF provides that the Regional Deputy Director of Education or the Inspector as the case may be shall not withhold approval for selection made under the section where the person selected possess the minimum qualification prescribed and is otherwise eligible. Further so far as the eligibility in the case of minority institution is concerned the same stands specified under Chapter-II Regulation-1 of the 1921 Act, according to which the minimum qualification for appointment as a Head of the institution and Teacher in recognised institution whether by direct recruitment or **otherwise** shall be given in Appendix-A. Appendix-A provides for minimum qualification for appointment of a Head Master and Teacher in private recognised Higher Secondary School.
26. So far as the eligibility is concerned in the case of Head of the Institution it has been provided under the tabular chart, serial no.1 wherein besides educational qualification in case of first or second class postgraduate degree holder, 10 years teaching experience in intermediate class of any recognised

institution and in the case of third class postgraduate degree 15 years of teaching experience is required. Note-(1) appended thereto also provides for the same.

27. Now a question arises as to what would be the date when eligibility it to be reckoned. Regulation 17 of Chapter-II of the 1921 Act provides for filling up the vacancy of the head of the institution and teachers by direct recruitment in any recognised institution referred to Section 16FF. Further Sub-Clause (a) of Regulation 17 under Chapter II of the 1921, Act provides that after the management has determined the number of vacancies to be filled up by direct recruitment, the posts shall be advertised by the manager of the institution in newspaper having adequate circulation in the State giving particulars as to the nature (i.e., whether temporary/permanent) and number of vacancies, descriptions of post (i.e., Principal or Headmaster, Lecturer or L.T., C.T. or J.T.C./B.T.C. grade teacher including the subject or subjects in which the Lecturer or Teacher is required), scale or pay and other allowances, experience required minimum qualification and age prescribed, if any, for the post and prescribing a date which should not be less than two weeks from the date of advertisement).

Note:-(1) appended thereto provides that all vacancies in the post of teachers and the head of institution existing at the time of advertisement shall be advertised. Thus, Regulation 17 of Chapter II of 1921 Act provides for determination of vacancies. Thus, what is relevant is the determination of vacancies which is step prior to undertaking exercise for filling the same.

28. Regulation 18 of Chapter II of the 1921 provides that within 15 days of the receipt of the recommendation of the Selection Committee constituted under Sub-Section (1) and (2) of Section 16F and in case of the institution referred to in Section 16FF, the approval of the authorities specified therein the Manager shall on authorisation under resolution of the Committee of Management issue a formal order of appointment by the registered post to the candidate and further Sub-Regulation (2) of Regulation 18 provides that in case of promotions and ad hoc appointment also a formal order of promotion or appointment in the form as near as possible to the form referred to in Clause(1) shall be issued to the

persons concerned under the signature of the manager and a copy of the same shall be sent to the Inspector.

29. Here in the present case the argument of the learned counsel for the fifth respondent is that there is no such provision whereby an incumbent is to obtain necessary qualification and eligibility on the date of the occurrence of the vacancy and thus the management of a minority institution is free to choose anybody despite being not eligible or qualified does not appear to be correct. The basic purpose of application of Appendix-A in the minority institution is to eliminate those contingencies wherein even for officiation / ad hoc purposes/ including Incharge (Principal) an ineligible person is appointed. No provision whatsoever has been pointed out by Sri Sankalp Narayan who appears for the fifth respondent that the framers of the statutes have created a distinction with respect to obtaining qualification and eligibility between a Regular Principal or an Officiating/Ad hoc Principal. More so, selection procedure commences either after occurrence of the vacancy or before the vacancy occurs in anticipation thereof, thus, the selection is dependent upon the vacancy. The said issue can also be seen from another point of angle that when an incumbent is to retire on a particular date then before the date of retirement the selection proceedings are commenced, however the actual appointment is made post retirement. This can be very well termed as an exercise in anticipation of vacancy. On the other hand consequent to the death or otherwise when the vacancy arises then post, said event the selection proceeding commences.

30. Here in the present case, the date of the retirement of Sri Saifullah Khan was known to everybody i.e. 31.3.2022 might be he had taken medical leave thus what is to be seen is the date of the vacancy. The fifth respondent in the present case is staking his claim for officiation as a Principal against the post which fell vacant on 31.3.2022 for assuming charge on 1.4.2022. Thus, the crucial date would be 1.4.2022.

31. Though, it is the argument of the learned counsel for the fifth respondent that there happens to be a resolution dated 20.5.2022 for according

officiating/ad hoc promotion but on the said day also the fifth respondent was not having 10 years of teaching experience which he attained on 1.7.2022.

32. In case the logic propounded by the counsel for the fifth respondent is taken into face value then it would create havoc and undesired results creating a situation whereby an unqualified and ineligible person would be conferred with the benefit sidetracking the claim of the deserving candidate who is qualified and eligible in that regard.

33. Though, there is no quarrel to the proposition that the Committee of Management of a minority institution is free to choose any incumbent to officiate but the same is not an unfettered right so as to create a situation whereby an ineligible and unqualified person is being allowed to man the post. Otherwise it would create not only anarchy but would also be detrimental to the interest of the institution.

34. In the case of **Secretary Malankara Syrian Catholic College vs. T. Jose and others (2007) 1 SCC 386** while dealing with the contingency relating to the selection and the appointment of Principal in a minority institution the Hon'ble Apex Court in para 27, 28 and 29 observed as under:-

"27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai¹. Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an c important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid will make no difference.

28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the d same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited to head the institution. provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

29. Section 57(3) of the Act provides that the post of Principal when filled by promotion is to be made on the basis of seniority-cum-fitness. Section 57(3) trammels the right of the management to take note of merit of the candidate or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority-run educational institutions even if they are aided. “

35. The Hon’ble Supreme Court in the case of **N. Ammad vs. Manager, Emjay High School and others reported in AIR 1999 SC 50** in para 28 observed as under:-

“28. Thus the management's right to choose a qualified person as the Headmaster of the school is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be chiselled out through any legislative act or executive rule except for fixing up the qualifications and conditions of service for the post. Any such statutory or executive fiat would be violative of the fundamental right enshrined in the aforesaid Article and would hence be void.”

36. That the Hon’ble Apex Court judgement has been followed by Division Bench of this Court in the case of **National Inter College (Supra)**.

37. Recently in the case of **SK. MD. Rafique vs. Managing Committee, Contai Rahamania High Madrasah and others 2020 (4) ESC 863 (SC)**, the Hon’ble Apex Court had the occasion to consider the provisions of West Bengal Madrasah Service Commission Recruitment (selection and recommendation of persons for appointment and transfer to the posts of teaching and non-teaching staff) Rules, 2010 wherein the Hon’ble Apex Court scanning the proposition of law culled out in the series of judgements in para 49 to 58 observed as under:-

49. Thus, if the intent is to achieve excellence in education, would it be enough if the concerned educational institutions were to employ teachers with minimum requisite qualifications in the name of exercise of Right under Article 30 of the Constitution, while better qualified teachers are available to impart education in the second category of institutions as stated hereinabove. For example, if the qualifying percentile index for a teacher to be appointed in an educational institution, considering his educational qualifications, experience and research, is required to be a 50, and if teachers possessing qualifications far greater and higher than this basic index are available, will it be proper exercise for a minority educational institution to select teachers with

lower index disregarding those who are better qualified? Will that subserve pursuit of excellence in education? One can understand if under the regulatory regime candidates who are otherwise less qualified are being nominated in the minority educational institution and the minority educational institution is forced to accept such less meritorious candidates. In such cases, the minority educational institution can certainly be within its rights to agitate the issue and claim a right to choose better teachers. But if the candidates who are selected and nominated under the regulatory regime to impart education which is purely secular in character, are better qualified, would the minority institution be within its rights to reject such nomination only in the name of exercise of a right of choice? The choice so exercised would not be in pursuit of excellence. Can such choice then be accepted? If the right is taken to be absolute and unqualified, then certainly such choice must be recognised and accepted. But, if the right has not been accepted to be absolute and unqualified and the national interest must always permeate and apply, the excellence and merit must be the governing criteria. Any departure from the concept of merit and excellence would not make a minority educational institution an effective vehicle to achieve what has been contemplated in various decisions of this Court. Further, if merit is not the sole and governing criteria, the minority institutions may lag behind the non-minority institutions rather than keep in step with them. Going back to the example given above, as against index of 50 i.e. the minimum qualifying index, if a candidate nominated under the regulatory regime is at an index of 85, selection by a minority educational institution of a candidate at an index 55 may certainly be above the minimum qualifying mark, but in preference to the one at the index of 85 who is otherwise available, the appointment of a person at the index level of 55, will never give the requisite impetus to achieve excellence. A meritorious candidate at the index level of 85 in the above example, if given the requisite posting will not only help in upholding the principle of merit but will in turn generate an atmosphere of qualitative progress and sense of achievement commensurate with societal objectives and ideology and such posting will, therefore, be in true national interest.

50. At the cost of repetition, clarified that if the minority institution has a better candidate available than the one nominated under a regulatory regime, the institution would certainly be within its rights to reject the nomination made by the authorities but if the person nominated for imparting education is otherwise better qualified and suitable, any rejection of such nomination by the minority institution would never help such institution in achieving excellence and as such, any such rejection would not be within the true scope of the Right protected under Article 30(1) of the Constitution.

51. With these basic principles in mind, we may now consider the statutory provisions under which the teachers could be nominated under the Commission Act and see whether the concerned regulations help in achieving excellence or whether those provisions are violative of the Rights of the minority institutions.

52. In terms of Section 4 of the Commission Act, the Commission is to consist of a Chairman and four Members. The Chairman of the Commission has to be an eminent educationist knowledgeable in Islamic Culture and having profound and must be well versed in education with teaching experience inter alia as a teacher of a University or as a Principal of a college, for a period of not less than twelve years. It is true that the Rahmania High Madrasah (Uday Umesh Lalit, J.) 929 latter part of Section 4(ii) speaks of an officer of the State Government not below the rank of Joint Secretary who could also be appointed as the Chairman of the Commission. But in our view, considering the nature of

duties that the Chairman is to discharge, even an officer of the State Government has to be a person with profound knowledge in Islamic Culture. Apart from the Chairman, there are four Members who are to be appointed in terms of Section 4(iii) of the Commission Act. Out of these four Members, one has to be an eminent educationist having profound knowledge in Islamic Theology and Culture, while the other two Members must have teaching experience inter alia as a teacher of a University, or a Principal of a College for a period of not less than ten years. The fourth member could be a non-educationist, but he must have held the position of eminence in public life or in Legal or Administrative Service. Predominant composition of the Commission is thus of educationists and two of them have to be persons with profound knowledge in Islamic Culture and Islamic Theology. The provisions of the Commission Act are thus specially designed for Madrasahs and Madrasah Education System in the State. Rule 8 of the 2010 Rules stipulates fair and transparent process of merit based selection and the statutory mechanism would ensure that only those teachers would be selected who would be best suited to impart education in Madrasah Education System. The State Legislature has taken care to see that the composition of the Commission would ensure compatibility of the teachers who would be selected to impart education in Madrasah Education System, which is also emphasized in the Statement of Objects and Reasons.

53. It is true that the recommendations or nominations of teachers made by the Commission are otherwise binding on the Managing Committees of concerned Madrasahs, but, in terms of second proviso to Section 10 of the Commission Act, if there be any error, it is open to the Managing Committee of the concerned Madrasah to bring it to the notice of the Commission for removal of such error. The concept of 'error' as contemplated must also include cases where the concerned Madrasah could appoint a better qualified teacher than the one nominated by the Commission. If any such error is pointed out, the Commission will certainly have to rectify and remove the error. The further protection is afforded by Section 12 of the Commission Act, under which the concerned Madrasah could be within its rights to refuse to issue appointment letter to the candidate recommended by the Commission if any better qualified candidate is otherwise available with the managing committee of the concerned Madrasah. Such refusal may also come within the expression 'any reasonable ground' as contemplated in Section 12(i) of the Act. The legislature has thus taken due care that the interest of a minority institution will always be taken care of by ensuring that i) in normal circumstances, the best qualified and suitable candidates will be nominated by the Commission; ii) and in case there be any error on part of the Commission, the concerned Managing Committee could not only point out the error which would then be rectified by the Commission but the Managing Committee may also be within its rights in terms of Section 12 (i) to refuse the nomination on a reasonable ground.

54. The regime put in place by the State legislature thus ensures that the Commission comprising of experts in the field would screen the talent all across the State; will adopt a fair selection procedure and select the best available talent purely on merit basis; and even while nominating, the interest of the minority institution will also be given due weightage and taken care of. The statutory provisions thus seek to achieve 'excellence' in education and also seek to promote the interest of the minority institutions. The provisions satisfy the test as culled out in the decision of this Court in *TMA Pai Foundation*, (2002) 8 SCC 481, case.

55. In our considered view going by the principles laid down in the decision in *TMA Pai Foundation* case, (2002) 8 SCC 481, the concerned provisions

cannot, therefore, be said to be transgressing the rights of the minority institutions. The selection of the teachers and their nomination by the Commission constituted under the provisions of the Commission Act would satisfy the national interest as well as the interest of the minority educational institutions and said provisions are not violative of the rights of the minority educational institutions.

56. The aforesaid conclusions have been arrived at by us in keeping with the principles laid down by this Court in TMA Pai Foundation, (2002) 8 SCC 481, case. We are aware that in Brahmo Samaj Education Society, (2004) 6 SCC 224, Sindhi Education Society, 2010(4) ESC 483 (SC) and Chandana Das (Malakar), 2019(3) d ESC 783 (SC), decided after TMA Pai Foundation, (2002) 8 SCC 481, this Court had also dealt with the question whether the concerned authorities could validly nominate teachers to be appointed in minority educational institutions. Brahmo Samaj Education Society, (2004) 6 SCC 224, did not specifically deal with the question whether rules were valid or not and left it to the authorities to bring the rules and regulations in conformity with the principles in TMA Pai Foundation, (2002) 8 SCC 481, case. Sindhi Education Society, 2010(4) ESC 483 (SC), dealt with the issue in the context of reservation. It also found that the teachers nominated by the concerned authorities would not be compatible to teach in educational institutions run by linguistic minorities.

In Chandana Das (Malakar), 2019(3) ESC 783 (SC), the basic issue was whether the concerned institution was a minority institution or not. Sindhi Education Society, 2010(4) ESC 483 (SC) and Chandana Das (Malakar), 2019(3) ESC 783 (SC), dealt with statutory regimes which did not have any special features or matters concerning compatibility of teachers which could be required going by the special characteristics of the minority educational institutions. However, the additional feature in the present matter shows that the composition of the Commission with special emphasis on persons having profound knowledge in Islamic Culture and Theology, would ensure that the special needs and requirements of minority educational institutions will always be taken care of and thus the present case stands on a different footing. We, therefore, have no hesitation in going by the test culled out in the TMA Pai Foundation, (2002) 8 SCC 481, and hold that the provisions of the Commission Act are not violative of the rights of the minority educational institutions on any count.

57. In the premises, while allowing these appeals, we set aside the view taken by the Single Judge and the Division Bench of the High Court and dismiss Writ Petition No. 20650(W) of 2013 and other connected matters. We also hold Sections 8, 10, 11 and 12 of the Commission Act to be valid and constitutional.

58. In the end, we declare all nominations made by the Commission in pursuance of the provisions of the Commission Act to be valid and operative. However, if after the disposal of the matters by the High Court any appointments are made by the concerned Madarshas, such appointments of teachers shall be deemed to be valid for all purposes. But the Commission shall hereafter be competent to select and nominate teachers to various Madarshas in accordance with the provisions of the Commission Act and the Rules framed thereunder.

38. In the case of **Sunil Kumar Sharma vs. State of U.P. & others, Writ-A No.45123 of 2008 decided on 16.8.2023** this Court had the occasion to consider the issue with regard to the applicability of Regulation IV of Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921 impinging upon the rights of minority institution as guaranteed under the Constitution of India and while noticing the provisions of **Section 16FF of 1921 Act, it was opined as under:-**

“The minimum qualifications for appointment of teachers in an institution are provided in Regulation 1 Chapter II which refers to Appendix 'A'. From the provisions of Section 16FF (4) of the 1921 Act a noticeable legislative intent is clearly decipherable namely that apart from requiring a selected candidate to possess the minimum qualifications prescribed, it also requires a selected candidate to be "otherwise eligible". Section 16FF was inserted in 1921 Act by U.P. Act No. 26 of 1975 and at the time when it was inserted Regulation 4 Chapter III providing restrictions for appointment of relatives was already there. The Legislature will therefore be presumed to be well aware of the existing provisions of the Regulations as provided for in Section 16FF of the 1921 Act i.e. the requirement of selection of teachers in a minority institution; (i) the candidate should possess the minimum qualifications prescribed (ii) and is otherwise eligible. The above provisions in no uncertain terms indicates that merely possessing of minimum qualifications is not sufficient for a candidate to be selected in a minority institution and the scheme contemplates possession of other eligibilities as prescribed by Regulations.”

A Nine Judges' Bench in The Ahmedabad St. Xaviers Society & Anr. Vs. State of Gujarat & Anr, (1974) 1 SCC 717, had occasion to consider the ambit and scope of Article 30 of the Constitution. It is useful to quote paragraph 30 of the said judgment where the Apex Court held that in the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. It was held that the right to administer is to be tempered with regulatory measures to facilitate smooth administration. Following was laid down in paragraph 30: "30. Educational institutions are temples of learning. The virtues of human intelligence are mastered and harmonized by education. Where there is complete harmony between the teacher and the taught, where the teacher imparts and the student receives, where there is complete dedication of the teacher and the taught in learning, where there is discipline: between the teacher and the taught, where both are worshipers of learning, no discord or challenge will arise. An educational institution runs smoothly when the teacher and the taught are engaged in the, common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The, qualifications and the character of the teachers are really important. The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions, to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no

trace or colour of minority. A minority institution should shine in exemplary eclectic in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or Proclaim its minority character."

In Sindhi Education Society & Anr Vs. Chief Secretary, Government of NCT of Delhi & Ors, (2010) 8 SCC 49, the Apex Court had laid down that regulations could relate to guidelines for the efficiency and excellence of educational standards, ensuring the security of the services of the teachers or other employees. It is useful to extract following observations made in paragraphs 94, 97 and 111:

"94. It is also equally true that the right to administer does not amount to the right to maladminister and the right is not free from regulations. The regulatory measures are necessary for ensuring orderly, efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institutions. The right of the State is to be exercised primarily to prevent maladministration and such regulations are permissible regulations. These regulations could relate to guidelines for the efficiency and excellence of educational standards, ensuring the security of the services of the teachers or other employees, framing rules and regulations governing the conditions of service of teachers and employees and their pay and allowances and prescribing course of study or syllabi of the nature of books etc. Some of the impermissible regulations are refusal to affiliation without sufficient reasons, such conditions as would completely destroy the autonomous status of the educational institution, by introduction of outside authority either directly or through its nominees in the governing body or the managing committee of minority institution to conduct its affairs etc. These have been illustrated by this Court in State of Kerala v. Very Rev. Mother Provincial [1970] 2 SCC 417, All Saints High School v. Govt. of A.P. [(1980) 2 SCC 478] and T.M.A. Pai's case (supra).

97. It is not necessary for us to examine the extent of power to make regulations, which can be enforced against linguistic minority institutions, as we have already discussed the same in the earlier part of the judgment. No doubt, right conferred on minorities under Article 30 is only to ensure equality with the majority but, at the same time, what protection is available to them and what right is granted to them under Article 30 of the Constitution cannot be diluted or impaired on the pretext of framing of regulations in exercise of its statutory powers by the State. The permissible regulations, as afore-indicated, can always be framed and where there is a maladministration or even where a minority linguistic or religious school is being run against the public or national interest, appropriate steps can be taken by the authorities including closure but in accordance with law. The minimum qualifications, experience, other criteria for making appointments etc are the matters which will fall squarely within the power of the State to frame regulations but power to veto or command that a particular person or class of persons ought to be appointed to the school failing which the grant-in-aid will be withdrawn, will apparently be a subject which would be arbitrary and unenforceable.

111. A linguistic minority has constitution and character of its own. A provision of law or a Circular, which would be enforced against the general class, may not be enforceable with the same rigors against the minority institution, particularly where it relates to establishment and management of the school. It has been held that founders of the minority institution have faith and confidence in their own committee or body consisting of the persons selected by them. Thus, they could choose their managing committee as well as

they have a right to choose its teachers. Minority institutions have some kind of autonomy in their administration. This would entail the right to administer effectively and to manage and conduct the affairs of the institution. There is a fine distinction between a restriction on the right of administration and a regulation prescribing the manner of administration. What should be prevented is the maladministration. Just as regulatory measures are necessary for maintaining the educational character and content of the minority institutions, similarly, regulatory measures are necessary for ensuring orderly, efficient and sound administration."

Section 16FF(4) of the 1921 Act contains two requirements for selected candidates; firstly he should possess minimum qualifications and secondly "is otherwise eligible." The words "is otherwise eligible" are wide enough to save any valid conditions for appointment which have been provided in the regulations. Section 16FF (4) has to be read along with the regulations framed under the U.P. Intermediate Education Act, 1921. The mere fact that Section 16FF does not contain any provision for prohibition of appointment of relatives does not lead to the inference that relatives can be appointed despite the statutory restrictions provided for under Chapter III Regulation 4. Learned Single Judge in Satendra Kumar Misra's (supra) case has not referred to Chapter III Regulation 4 hence, the said judgment cannot be said to laying down the correct law."

39. Though reliance has been placed upon the judgement in the case of **Nisar Ahmad (Supra)** so as to contend while relying upon paragraph 13 and 14 that in absence of any provisions under the Rules or the Regulations that the qualification has to be adjudged on the date of occurrence of vacancy thus the fifth respondent was rightly entitled for the said benefit is concerned, the said judgement is not applicable as that was a case wherein the provisions of U.P. Arabic, Farsi, Madarsa Rule 1987 were under consideration but here in the present case there happens to be provision under the U.P. Intermediate Education Act, 1921 for determination of the vacancy. This Court may also hasten to add that in absence of any provisions creating a class or a distinction for determination of the eligibility on the date of the occurrence of vacancy in the case of an institution otherwise vis-a-vis a minority institution, this Court cannot subscribe to contention raised by counsel for the fifth respondent.

40. As regards the judgement in the case of **Ashok Kumar Mehrotra (Supra)** is concerned the same is of no help to the respondents particularly when in the present case at hand there has been violation of principles of law

and once this Court finds that the action of the respondent is illegal then obviously the Court cannot shut its eyes.

41. A coordinate Bench of this Court in **Writ-A No.44485 of 2011, Smt. Praveena Yadav vs. State Of U.P. and others decided on 8.8.2011** had the occasioned to consider the issue with regard to the eligibility of Regular Principal and an Officiating/Ad hoc Principal and held as under:-

Consequently, this Court has no hesitation to record that so far as respondent no. 5 is concerned she cannot be appointed as Officiating Principal because of lack of minimum essential qualification prescribed for the post. The issue that the Officiating Principal be possessed of the prescribed minimum qualifications has been settled by a Division Bench of this Court in Special Appeal No. 756 of 1991 decided on 14.09.2001 which has since been followed by the Hon'ble Single Judge in Civil Misc. Writ Petition No. 55697 of 2000 decided on 25.05.2001. The Special Appeal filed against the same bearing no. 810 of 1993 was dismissed and thereafter the Special Leave to Appeal No. 154 of 2000 filed was also dismissed by the Apex Court vide order dated 23.11.2009.

42. The distinction drawn by the District Inspector of Schools, Ghazipur in the order impugned that the fifth respondent has been made incharge to look into day today affairs without any monetary benefits only the same is preposterous besides be misconceived as once an incumbent is not eligible and qualified then it would not cloth either the Committee of Management of minority institution or the beneficiary who even otherwise is not eligible to be conferred with the said benefit. After all the Committee of Management has a right to choose an Officiating Principal as per his choice but the said liberty cannot be given such a leverage so as to do violence with the aims and object for which the statute has been enacted.

43. Since the fifth respondent, Shoeb Ahmad Khan has been held to be not possessing the the relevant eligibility for being appointed as an Officiating/Incharge Principal of the institution in question thus, this Court is not addressing upon the issue with regard to the disqualification so attached in view of the relationship norm as per the clauses in the scheme of administration.

44. Accordingly, this Court is of the firm opinion that the order of the District Inspector of Schools, Ghazipur impugned dated 6.6.2023 cannot be sustained and is liable to be set aside and is set aside.

45. Resultantly, the writ petition stands **allowed**.

Order Date :- 31.10.2023

piyush