

Neutral Citation No. - 2025:AHC:30984

Reserved on : 17.02.2025

Delivered on : 05.03.2025

Court No. - 10

Case :- WRIT - A No. - 452 of 2025

Petitioner :- C/M St. Thomas Inter College. Shahganj, Jaunpur

Through Its Assistant Manager A. Anthony Samy

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Gaurav Tripathi

Counsel for Respondent :- C.S.C.,Dinesh Mishra,Prabhakar

Awasthi

Hon'ble Saurabh Shyam Shamshery,J.

1. Heard Sri Ashok Khare, learned Senior Counsel assisted by Sri Gaurav Tripathi, learned counsel for petitioner and Sri Prabhakar Awasthi, learned counsel for respondent.

2. The issue before this Court for consideration is whether a minority institution be forced to appoint a person on compassionate appointment on post of a Teacher. The issue has already been considered in various judgments that minority institutions are governed with relevant provisions of compassionate appointment, so far as Class III and Class IV is concerned only and an amendment to done away has already been set aside in an earlier judgment passed by a Single Bench of this Court in **Committee of Management M.A.H. Inter College and another Vs. DIOS Ghazipur and others, 2002 SCC OnLine All 287**, For reference the relevant paragraphs thereof are reproduced hereinafter :-

“25. Thus, it is clear that the repeal of the proviso was made without application of mind. This country which is torn by strife—the carnage in Gujarat being a burning example can ill-afford a hasty decision of the State Government without proper understanding of the implications on such a sensitive issue of minority rights. In the *Ahmedabad St. Xavier's College Society v. State of Gujarat* (supra), it was said by Jaganmohan Reddy, J.:

“54. In spite of the consistent and categorical decisions which have held invalid certain provisions of the University Acts of some of the State as interfering with the fundamental rights of management of minority institutions Inherent in the right to establish educational institutions of their choice under Article 30(1), the State of Gujarat has incorporated similar analogous provisions to those that have been declared invalid by this Court. No doubt education is a State subject, but in the exercise of their right any transgression of the fundamental right guaranteed to the minorities will have its impact beyond the borders of that State and the minorities in the rest of the country will feel apprehensive of their rights being invaded in a similar manner by other States. A kind of instability in the body politic will be created by action of a State which will be construed as a deliberate attempt to transgress the rights of the minorities where similar earlier attempts were successfully challenged and the offending provisions held invalid.”

26. As the notification substituting the new Regulation 103 only repeals the proviso and otherwise re-enacts the old Regulation entirely has the effect of creating confusion about the true legal position on the issue of minority rights, it is necessary to strike down it and not merely to read down the provisions of Regulations 103 to 107 as Inapplicable to minority institutions. It does not require emphasis that subordinate legislation by the notification on an issue so sensitive as minority rights without application of mind and which does not, according to the admission of the State itself bring out the true intention casts doubt upon the bona fides of the Government itself upon the minority question and cannot be tolerated to exist

27. In the result, both the writ petitions are allowed. The Notification No. 5834/15-7-2 (I)/90, dated 9th August, 2001 (Annexure-1) and also the order of the District Inspector of Schools, Ghazipur dated 27.12.2001 in Writ Petition No. 4308 of 2002 are quashed and the order dated 8.11.2001 (Annexure-4) passed by the District Inspector of Schools, Muzaffarnagar and the notification dated 9.8.2001 (Annexure-5) in Civil Misc. Writ Petition No. 43328 of 2001 are quashed. In the last Sri V.K. Shukla and Sri V.K. Srivastava learned counsel for the teacher and Class IV employee in

the respective writ petitions submitted that in view of the fact that there was an order appointing them to the minority institution, they should have been adjusted elsewhere by the District Inspector of Schools. The learned standing counsel also has no objection to this prayer. The question is not directly involved in this petition. If they make an application the District Inspector of Schools may consider their case in accordance with law”

3. The Division Bench of this Court has in a case of **St. Andrew's College Association, Gorakhpur Vs. State of U.P., 2003 SCC OnLine All 1015** has doubted to the some extent on **Committee of Management M.A.H. Inter College and another (supra)** and held that law so far as appointment on compassionate ground on post of teacher is concerned, would be a good law but it could not be considered a good law, so far as compassionate appointment on post of Class III and Class IV is concerned.

4. A number of judgments were placed by learned Senior Counsel for petitioner passed in **Committee of Management M.A.H. Inter College and Another Vs. DIOS Ghazipur, 2002 SCC OnLine All 287, (2002) 3 AWC 2221, St. Andrew's College Association, Gorakhpur Vs. State of U.P., 2003 SCC OnLine All 1015, Gopal Ji Trivedi Vs. State of Uttar Pradesh, 2005 SCC OnLine All 2768, Naushad Alam Vs. State of U.P. and others, 2011 SCC OnLine All 4072, Committee of Management, Sri Kund Kund Jain Inter College, Muzaffar Nagar Vs. State of U.P. and others, 2006 (3) ESC 1528 (All), Arjun Singh Rathore Vs. State of U.P. and 4 others, Writ A No. 5471 of 2020, C/M Digamber Jain Inter College, Vs. State of U.P., Writ A No. 27537 of 2017, Committee of Management National Inter College and others Vs. State of U.P. and others, 2012 (6) ADJ 741, Furkan Ahmed Khan Vs. State of U.P., Service Single**

No.2140 of 2013 (Lucknow Bench), The C/M Forbes Intermediate College Faizabad 2140 (S/S) 2013 Vs. State of U.P., Special Appeal No. 272 of 2013, Appalaneni China Veera Raghviah Vs. Estates Abolition Tribunal, 1975 SCC OnLine AP 126 to submit that above referred position of law still remains consistent and for reference a latest judgment of **C/M Digamber Jain Inter College and Another Vs. State of U.P. and 2 others, 2017:AHC:158090** was also placed.

5. At this stage, an exception in series of judgments would be relevant by referring the judgment passed by co-ordinate Bench in case of **C/M Digamber Jain Inter College and Another Vs. State of U.P. and 2 others, 2017:AHC:158090** with connected writ petitions wherein the Court has held as follows :-

“These decisions leave no scope for doubt that the State can regulate the administration of the minority institution which is not obstructive or innhalative of the substance to the right of Article 30(1). To put it differently it can be said that providing compassionate appointment to a dependent of a teacher or staff, which provides security to the teaching staff, cannot be said to cause any interference in the Management. A dependent of a teacher/ staff can only be appointed on the post of teacher in terms of Regulation 103 of Chapter-III of the Regulations framed under the U.P. Act No. II of 1921. In fact, it will enable them to render better service to the Institution.

No submission has been made to demonstrate that in case a dependent of a teacher or staff is provided compassionate appointment in the Institution how it will affect the administration of the minority institution.

It is true that in absence of regulations it was not possible to appoint an Assistant Teacher under the provisions of Dying-in-Harness Rules, but the Regulation 103 gives a legal right to the dependent of an employee to seek the appointment on the post of Assistant Teacher

also if he/she possesses the essential qualification. If a person is appointed on the post of Assistant Teacher who possesses the essential qualification it cannot be said that the standard of education will be diluted by such appointment.

In the present case the District Selection Committee, which is constituted under the Regulations, has considered the qualification of Prateek Jain and it has found him eligible for the appointment as Assistant Teacher.

The learned counsel for the Management could not deny the fact that a similarly placed person has been given appointment on the post of Assistant Teacher on compassionate ground. In the said case the Management has complied with the directions of the District Inspector of Schools to appoint him on the post of Assistant Teacher on compassionate ground. As noted above, the said fact has not been denied by the Management. Hence, I find considerable force in the submissions of learned counsel for third respondent that action of the Management is discriminatory.

For the reasons recorded herein-above, I find no merit in the writ petitions being Writ-A No. 27537 of 2017 and Writ-A No. 5887 of 2017 filed by the Committee of Management of the Institution and same are accordingly dismissed.

In view of the above, the writ petition filed by Prateek Jain being Writ-A No. 1438 of 2017 is allowed. The District Inspector of Schools and the Committee of Management of the Institution are directed to ensure joining of Prateek Jain in accordance with law within six weeks from the date of production of a certified copy of this order.

No order as to costs. ”

6. The similar view was taken by another Single Bench in Committee of Management National Inter College and another, however, in another Division Bench of this Court in The C/M Forbes Intermediate College Faizabad 2140(S/S) 2013 Vs. State of U.P. Thro.Secy.Govt. Of U.P. Deptt. Secondary Edu. & Ors, Special Appeal No.272 of 2013 has followed the judgments

passed by Single Bench passed in the **Committee of Management M.A.H. Inter College(supra)** and a subsequent judgment also that though the minority institution cannot be forced to appoint a person on compassionate appointment on post of a teacher since the relevant provision has already been quashed in **Committee of Management M.A.H. Inter College (supra)**, however, they are not outside the preview of Rule 107 in case of compassionate appointment on Class III and Class IV post.

7. The argument of learned counsel for respondents submits that respondent does not belong to the particular religion, therefore, they do not want him to appoint but such argument being a vague argument is liable to be rejected outrightly as well as that Sri Prabhakar Awasthi, learned counsel for respondent has not able to point out any other position of law which could help him, therefore, the impugned order is set aside and writ petition is **disposed of** with the direction that concerned respondent be considered for appointment on compassionate ground on a post of Class III or Class IV post, as the case may be, if he still willing and agreed, within four weeks.

Order Date :- 05.03.2025

P. Pandey

[SAURABH SHYAM SHAMSHERY, J.]