

Court No. - 29

Case :- SPECIAL APPEAL No. - 202 of 2025

Appellant :- Deepti Kumari

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

Counsel for Appellant :- Dinesh Mishra,Prabhakar Awasthi

Counsel for Respondent :- C.S.C.,Gaurav Tripathi

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Praveen Kumar Giri,J.

1. This appeal is directed against judgment and order passed by learned Single Judge on 5.3.2025 in Writ-A No.452 of 2025.

2. In the writ petition filed by the minority institution (the writ petitioner) an issue was raised as to whether appointment on the post of assistant teacher can be directed to be made by the District Inspector of Schools ('DIOS' for short) to the minority institution, in view of the statutory scheme. Learned Single Judge has relied upon various judgments to hold that such appointment can be directed to be made by the educational authorities on class-III and class-IV posts only. A direction has been issued to the writ petitioner to consider the cause of the appellant for grant of compassionate appointment against such post.

3. Aggrieved by the judgment of learned Single Judge the appellant is before this Court in the present intra-court appeal. The grievance is two fold. Firstly, it is alleged that there is no bar in the appellant being appointed as assistant teacher in the institution concerned by virtue of regulation 103 of the U.P. Intermediate Education Act, 1921 (hereinafter referred to as the 'Act of 1921'). The second part of the appellant's grievance is that the Committee of Management of the minority institution is most likely not to allow her to function and, therefore, D.I.O.S. be directed to accommodate the appellant in any other institution.

4. Appeal is opposed by learned counsel appearing for the minority institution.

5. Before advertng to the controversy raised it would be worthwhile referring to the background in which the issue has arisen for concentration. Regulation 103 of the Act of 1921, as it originally stood, is as under:-

"103. Notwithstanding anything contained in these regulations, where any teacher or employee of ministerial grade of any recognised, aided institution, who is appointed accordingly with prescribed procedure, dies during service period, then one member of his family, who is not less than eighteen years in age, can be appointed on the post of teacher in trained graduate grade or on any ministerial post, if he possesses prescribed requisite academic qualifications, training eligibilities, if any, and he is otherwise fit for appointment :

Provided that anything contained in this regulation would not apply to any recognised aided institution established and administered by any minority class.

Explanation. For the purpose of this regulation "member of the family" means widow er widower, son, unmarried or widowed daughter of the deceased employee."

6. On 9.8.2001 regulation 103 of the Act of 1921 came to be amended and the proviso, which excluded its applicability in respect of minority institution was done away with. This aspect of the matter came to be challenged in Committee of Management, M.A.H. Inter College and another vs. D.I.O.S., Ghazipur 2002 SCC OnLine All 287. Learned Single Judge referred to various judgments that recognize the rights of the minority institutions to administer it. Reference was made to the judgment of the Supreme Court in St. Xaviers School v. State of Gujarat 1974 (1) SCC 717, wherein the court observed as under:-

"the selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied, such right of selection and appointment without infringing Article 30."

7. The provisions of Article 29(1) of the Constitution of India was also taken note of which came to be considered in Kerala Education Bill, AIR 1958 SC 956. In para 16, learned Single Judge opined that the role of teacher in imparting moral education is of great importance. The concept of morality is however a changing subject. What was regarded as a valid social system and, therefore, justified by the concept of morality in ancient times might well be regarded as intolerable transgression of human rights. The Court referred to slavery as a regressive practice prevalent in the society which was substantiated with the progressive system wherein physical human labour was given due respect and recognition. After referring to Article 30 of the Constitution of India learned Single Judge came to the conclusion that regulation 103 to 107 of the Act of 1921 confers various powers upon the D.I.O.S. to fill up vacancies in minority institutions. The Court held that repeal of the

proviso was made without due application of mind. Ultimately the writ petition of the management was allowed and the learned Single Judge held that deletion of proviso was impermissible, inasmuch as the right of the minority institution to administer such institution is taken away. In substance the learned Single Judge in M.A.H. Inter College (supra) reintroduced the proviso which was deleted from regulation 103 of the Act of 1921.

8. The judgment of learned Single Judge in M.A.H. Inter College (supra) came to be considered by a subsequent Division Bench in St. Andrew's College Association, Gorakhpur vs. State of U.P. 2003 SCC OnLine All 1015. In para 16 of the judgment in St. Andrew's College Association (supra) the rationale of the judgment in M.A.H. Inter College (supra) was doubted. This was reflected from the observations contained in para 16 of the judgment of the Division Bench, which is reproduced hereinafter:-

"16. Learned Counsel for the petitioner has invited our attention to the decision of a learned Single Judge of this Court in Committee of Management, MAH Inter College v. DIOS, Ghazipur 2002 3 AWC 2221, in which a contrary view has been taken by the learned Single Judge. The learned Single Judge was of the view that since an appointment on compassionate grounds is not made on merit since there is no competition with the candidates from the open market hence it cannot be said that a direction for making such appointments in minority institutions will be conducive to efficiency and standards of education in the said institution. We respectfully disagree with the reasoning given by the learned Single Judge. As held by the Supreme Court in TMA Pai's case (supra) regulation for the welfare of teacher does not infringe the right of a minority institution under Article 30 of the Constitution. We do not see how appointment on a class 3 or class 4 post will affect the standard of education in a minority institution. After all, a class 3 post is not a teacher's post."

9. The Division Bench in St. Andrew's College Association (supra) made a distinction between compassionate appointments made on class-III and class-IV posts viz-a-viz appointments made on the post of assistant teacher. In para 21 and 22 of the judgment the Division Bench held as under:-

"21. We see no reason why humanitarian regulations, such as the kind, which has been impugned in this petition, cannot be made for minority institutions. We cannot see how such humanitarian measures of the kind with which we are dealing in this petition can be said to infringe the right under Article 30 of a minority institution.

22. It may have been a different matter if the compassionate appointment was sought to be made on the post of Head Master or teacher, and there it possibly could have been said that this infringes the right of the minority institution under Article 30 of the Constitution. Since teaching work is

certainly related to the standard of education imparted. That is not the case here. Here we are concerned with an appointment on a Class III post in a minority institution on compassionate ground. We see no violation of Article 30 of the Constitution in such a case, or in case of a class 4 post."

10. Our attention has been invited to a subsequent judgement of this Court in Committee of Management, National Inter College and others vs. State of U.P. and others 2012 (6) ADJ 741. Though this judgment is referred to at various places as being a Division Bench judgment but learned counsel for the parties are in agreement that in fact it was a judgment delivered by Single Judge but since the judgment was pronounced by a different Judge under Chapter VII Rule 1(3) of the Allahabad High Court Rules, 1952, therefore, it was misreported as being the Division Bench judgment. In this judgment learned Single Judge approved the appointment on the post of assistant teacher in a minority institution.

11. The issue thereafter came to be considered by another learned Single Judge of this court in Writ-A No.27537 of 2017 Committee of Management Digamber Jain Inter College and another vs. State of U.P. and another. In Digamber Jain (supra) learned single Judge referred to a series of judgments on the issue and ultimately observed as under:-

"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."

12. On behalf of the appellant it is, therefore, urged that the power of the Inspector to direct compassionate appointment to be made on the post of assistant teacher on compassionate ground by virtue of regulation 103 of the Act of 1921 is clearly saved in view of the last judgment delivered by learned Single Judge of this Court in Digamber Jain (supra).

13. On behalf of the respondent-Committee of Management it is, however, submitted that the ratio laid down by learned Single Judge in M.A.H. Inter College (supra) questioning the right of the Inspector to made appointment on the post of assistant teacher was specifically approved in St. Andrew's College Association (supra) and the only interference made was in respect of appointments to be made on class-III and class-IV posts. It is, therefore, submitted that the ratio laid down by the Division Bench in St. Andrew's College Association (supra) continues to hold good and, therefore, the limited right which the Inspector can at best have to make compassionate appointment on the post of office of class-III and class-IV posts.

14. We have heard Sri Prabhakar Awasthi, learned counsel for the appellant and Sri Gaurav Tripathi, learned counsel for the Committee of Management and have carefully perused the judgments refer to by learned counsel for the parties.

15. The statutory scheme as is clearly provided in regulation 103 of the Act of 1921 reveals that making of compassionate appointment

on the post of assistant teacher as well as on the post of clerk/peon on compassionate ground is permissible. Regulation 103 of the Act of 1921 as it stood prior to its amendment on 9.8.2001 to exclude compassionate appointments both on the post of assistant teacher on class-III and class-IV posts so far as minority institution is concerned. This was by virtue of the proviso contained in regulation 103 of the Act of 1921. The first judgment of learned Single Judge in the case of M.A.H. Inter College (supra) has taken into consideration the right of the minority to administer its institutions and the impact which such right may have on account of a direction issued by the Inspector to appoint an assistant teacher or an employee on class-III and class-IV posts on compassionate ground. The rationale relied upon by learned Single Judge to protect the right of the minority institution was that such appointments have the effect of interfering with the right of the minority to manage its own institution. Series of judgments of Supreme Court in that regard were relied upon.

16. The judgment in M.A.H. Inter College (supra) has been doubted by the Division Bench of this Court in St. Andrew's College Association (supra). The Division Bench in para 16 has attempted to reconcile the two apparently conflicting concerns raised in the matter. The Division Bench protected the right of the minority to manage its affairs in view of Article 30 of the Constitution of India and for such purposes held that any appointment of assistant teacher would have the effect of causing interference in such right of the management. Simultaneously, the Court also noticed the right of the State to regulate the minority institution by making appropriate provision for compassionate appointment which was to sub-serve larger public interest of providing appointment to a teacher/employee in such minority institution dying in harness. The Division Bench came to the conclusion that appointment on a class-III and class-IV post in a minority institution would not have the effect of tinkering with the right of the minority to administer its educational institutions. For coming to such conclusion the Court took note of the nature of function/duties to be performed by such class-III and class-IV employees. It was held that the quality of education proposed to be provided by the minority institution would not be adversely affected on account of such appointment on class-III and class-IV posts. The Court, therefore, came to the conclusion that while power of regulation by the State would include power to direct the Inspector to make compassionate appointment on class-III and class-IV posts but such power would not extend to a direction issued for appointment on the post of assistant teacher.

17. We are in respectful agreement with the view taken by the Division Bench in *St. Andrew's College Association (supra)*, inasmuch as Article 30 of the Constitution of India protects the right of the minorities to establish and administer educational institutions. Article 30 of the Constitution of India has been interpreted in a series of judgment by the Supreme Court to hold that it confers fundamental right on the minority institution to manage and administer their educational institutions. It is in consonance with the secular nature of our democracy. Such right of the minority to establish and administer its institutions is hedged with the power of regulation by the State which remains secular in character. Providing compassionate appointment to the family of employee of such minority institution, dying in harness, would sub-serve the object of tiding over financial difficulty caused due to death of deceased teacher/employee. The policy providing for compassionate appointment in such institutions is in larger public interest and apparently does not in any manner infringe upon the right of such minority institution to establish and administer its educational institutions. We are, therefore, of the considered view that any direction by the Inspector to offer compassionate appointment on class-III/IV post on account of death of a teacher/employee of minority institution, by virtue of regulation 103 of the Act of 1921 would not come in conflict with the right of the minority guaranteed under Article 30 of the Constitution of India.

18. While saying so, the same consequence may not follow in respect of appointment on the post of assistant teacher. The appointment of headmaster or teacher not only affects the quality of education to be provided in such minority institution but may also impede the right of such minority to manage its own institutions. In view of the settled legal position we concur with the view taken by the Division Bench in *St. Andrew's College Association (supra)* that the Inspector will have no power under regulation 103 of the Act of 1921 to direct making of appointment on compassionate ground on the post of assistant teacher. To such extent, we are in respectful disagreement with the view expressed in *Digambar Jain (supra)*.

19. In view of the deliberations held above, we do not find any force in the submission of the appellant and, consequently, no direction is required to be issued to the Committee of Management to consider her case for compassionate appointment on the post of assistant teacher.

20. So far as second part of the appellant's grievance is concerned,

we are of the view that there is absolutely no basis to sustain any apprehension that the minority institution would either not consider her case for appointment on class-III or class IV post or would not allow her to function.

21. Sri Gaurav Tripathi, learned counsel for the Committee of Management submits that there is no basis for the appellant to have such doubt or apprehension.

22. In that view of the matter, we see no justification to issue any direction to the Inspector to accord consideration to appellant's claim for compassionate appointment in any other institution. While doing so, we also deem it appropriate to observe that in the event any such exigency does arise the Inspector would not be powerless to deal with the situation.

23. Subject to the observations made above, this special appeal is consigned to records.

24. The Inspector would issue necessary directions within six weeks for consideration of the appellant's claim for compassionate appointment in light of the above observations and it goes without saying that the Committee of Management of the minority institution shall perform its obligations, in accordance with law.

Order Date :- 19.5.2025

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