

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
WRIT PETITION Nos. 6895 of 2006 and 6812 of 2008

COMMON JUDGMENT:

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W.P.No.6895 of 2006 is filed seeking issuance of writ of mandamus declaring the action of the respondents in not approving the appointments of the petitioners in their respective posts in the fourth respondent school, as illegal and arbitrary. Rejecting the request of the fourth respondent college for approving the selection of the petitioners on the ground that the fourth respondent failed to follow the procedure laid down in G.O.Ms.No.1, dated 01.01.1994, is subject matter of challenge in W.P.No.6812 of 2008.

Since the issues involved in both the writ petitions are one and the same, they are being disposed of by this common judgment.

The facts in issue are as under:

The averments in the affidavit filed in support of the writ petition would show that after following the procedure contemplated under rules and after obtaining the prior approval of the competent authority, the fourth respondent after passing a resolution issued public notification on 04.11.2003 and 05.11.2003 in local news papers inviting applications to fill up 17 posts in different categories. Pursuant to the notification, the petitioners along with others applied for the posts. The fourth respondent conducted written test and oral interview to all those who applied and the staff selection committee of the fourth respondent selected the petitioners herein to the respective posts vide its resolution dated 09.01.2004. On 12.01.2004 the Correspondent of fourth respondent addressed a letter to the third respondent i.e. District Educational Officer, Krishna District, Machilipatnam, for approval of appointments of the petitioners and for release of their salaries. The said letter was received by the third respondent on 19.01.2004. Thereafter, the first respondent issued a memo dated 09.07.2004 to the fourth respondent college pointing out that the staff selection committee which appointed the petitioners is not having a nominee of Government at the time of selection and that the rule of reservation was not followed. A clarification to that effect was issued by the Correspondent of the fourth respondent school on 15.07.2004. Thereafter, the Deputy Educational Officer,

submitted a report dated 22.07.2004 to the third respondent enquiring about the appointments of the petitioners herein. In the said report, the Deputy Educational Officer stated that the candidates appointed by the management are fully qualified and suitably trained for the posts to which they are appointed and that they are having proper registration in the employment exchange. A proposal was submitted by him for approval of the appointments made and release of their salaries with effect from 10.01.2004. After receiving the report, the third respondent asked for some more particulars from the Deputy Educational Officer with regard to cadre strength and justification for making appointments. The Deputy Educational Officer submitted second report dated 14.12.2004, in which it was stated that the fourth respondent was justified in making the appointments of the petitioner. After receipt of the report from the Deputy Educational Officer, the third respondent sent proceedings Rc.No.88-B2/04, dated 14.12.2004 to the Regional Joint Director of School Education, Kakinada, stating that the proposals were returned to the Deputy Educational Officer for specific remarks and cadre strength. The action of respondent Nos.1 to 3 in not taking any action on the proposal sent, W.P.No.6895 of 2006 came to be filed before this Court.

While admitting W.P.No.6895 of 2006, this Court directed the fourth respondent not to discontinue the petitioners from their school, pending further orders.

A counter came to be filed by the third respondent in the said writ petition stating that the process of appointments were not approved since the fourth respondent failed to follow the procedure laid down in G.O.Ms.No.1, dated 01.01.1994, under which the staff selection committee should contain a nominee of respondent Nos.1 to 3. Thereafter, the petitioners herein approached the National Commission for Minority Educational Institutions, New Delhi (hereinafter referred to as "National Commission"). By an order dated 03.05.2007, the National Commission directed the State Government to re-consider or cause to reconsider, by a competent authorities, the cases of the petitioners for releasing their salaries as their appointments do not suffer from any legal infirmity. It is further observed that the State Government shall ensure that the cases of the petitioners are considered and appropriate reasoned order, supporting the decision or conclusion regarding release of the petitioners' salary is passed within a period of six weeks from the date of receipt of copy of the order.

Pursuant to the order of the National Commission, the petitioners made a representation to the Government to implement the said order. Vide G.O.Rt.No.100, dated 15.02.2008, the first respondent rejected the request for approval of appointments on the ground that the Staff Selection Committee in not having the nominee of respondent Nos.1 to 3 and that Rules 12 and 13 of Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of schools under Private Managements) Rules (for short "the Rules"), was not followed. Challenging the same, W.P.No.6812 of 2008 is filed.

One A.Satyanarayana Reddy, who was working as District Educational Officer, Machilipatnam, filed his counter in W.P.No.6895 of 2006. In para No.5 of the counter, it was stated that under Rule 12 (6) of the Rules, the selection of the posts in all private educational institutions shall conform to the communal rotation roster. It is further stated that the same shall not apply to minority educational institutions if they are selecting a candidate belonging to the concerned minority community. Where such a candidate is filled in a vacancy belonging to SC/ST, then the SC/ST vacancy shall be carried forward to the next point. The procedure in respect of aided schools as indicated in sub rules 4,5 and 6 of Rule 12 shall apply whether the selection is for aided and unaided posts. Insofar as Rule 12 (5) is concerned, it has been stated that aided school shall also be required to have a nominee of the District Educational Officer, not below the rank of Deputy Educational Officer in the Staff Selection Committee. However, it has been admitted that the selection will not be vitiated on the ground of absence of a nominee of the District Educational officer if the educational agency has offered reasonable explanation. The averments in the said counter further show that the Educational Institution shall appoint staff as per the staffing pattern prescribed by the Government from time to time. The counter further shows that the fourth respondent has not complied with the procedure laid down in G.O.Ms.No.1, dated 01.01.1994 and as such, the Government was right in rejecting the request of the petitioners.

A counter came to be filed by the Government in W.P.No.6812 of 2008, reiterating the contents of the counter filed by the District Educational Officer in W.P.No.6895 of 2006. It is further stated that the fourth respondent issued a fake memo bearing No.3336/PSII/05, dated 18.03.2005 approving the appointments of 17 teaching and non-teaching staff and basing on the fake memo, the Correspondent approached the Government for confirmation of appointment of 17 teaching and non-

teaching staff. The said matter has been entrusted to CBCID and the same is pending investigation. The averments in the counter further show that the management of the fourth respondent failed to follow Rules 12 and 13 of the Rules for appointment of candidates as such their appointments cannot be approved by the respondents. It is further stated that the impugned order came to be passed after considering the observation made by the National Commission and also the Judgment of the Apex Court in ***Brahmo Samaj Educational Institution and others v. State of West Bengal***. It is further urged by the Government Pleader for Education that the petitioners has no *locus standi* to file the writ petitions since the management alone is entitled to challenge the same.

In the month of January, 2016, Secretary to the Government, filed counter on behalf of the first respondent stating that the fourth respondent institution was not renewed for minority institution status and as such they cannot claim benefit under the Rules. It has been further stated that in the absence of any explanation given under Rule 12 (5) of the Rules for not having a nominee of the District Educational Officer, the entire proceedings stands vitiated. Insofar as ***Brahmo Samaj case (1 supra)*** is concerned, it has been stated that a review was filed before the Apex Court as a Bench of the Apex Court *prima facie* found that there is a mistake apparent on fact of the record in view of the Constitution Bench Judgment of the Apex Court in ***TMA Pai Foundation and others v. State of Karnataka and others***. Since the review petition was allowed and as the matter was directed to be heard by a Constitution Bench, the judgment relied upon by the learned counsel for the petitioners may not be of any help to them.

Sri S.S.Prasad, learned Senior counsel appearing for the writ petitioners strenuously contended that issuance of G.O.Rt.No.100, dated 15.02.2008 is in violation of the fundamental rights granted to the fourth respondent under Article 30 of the Constitution of India. It has been urged that the said G.O. has been issued in a mechanical manner without taking into consideration the judgments of this Court and also the Apex Court on the rights of the minority educational institutions and the procedure to be followed in the appointment of teachers and non-teaching staff in such minority educational institution. He further submits that though the findings of the National Commission is not binding but still the findings of the Commission, which has been appointed under a statute can be taken into consideration for deciding the issue. He submits that Rule 12 (5) and 12 (6) of Rules, which are

sought to be violated do not apply to the minority educational institutions since the same amounts to deprivation of fundamental rights guaranteed to them. In any event, he submits that there is no violation of Rules, since it is not mandatory for the fourth respondent to have a government nominee in the selection committee. He further submits that all the petitioners are working in the fourth respondent school since 2004 and discharging their duties to the satisfaction of the fourth respondent.

Sri Gangisetty Rajeswar Rao, learned counsel appearing for the fourth respondent, supported the case of the petitioners stating that there is no violation of any of the provisions of the Rules.

The points that arise for consideration are 1) whether the petitioners have any *locus standi* to file the writ petitions; (2) whether the appointments have been made in violation of Rule 12 (5), (6) and (13) of the Rules.

Issue with regard to the maintainability of the writ petitions at the instance of the petitioners/teachers, came up for consideration before this Court in number of judgments.

In ***M.Sreedevi v. State of Andhra Pradesh and others*** a learned Judge of this Court after referring to the judgments of the Apex Court in ***Tikaram v. Mundikota Shikshan Prasarak Mandal*** and ***Gulam Quadir v. Special Tribunal*** held as under:

“Admission/Absorption in an aided post vests the incumbent with entitlement and eligibility to aspire for beneficial Government schemes and pension. An adverse order in this regard therefore has serious civil consequences. A Lecturer subjected to such an order is a ‘person aggrieved’ for the purposes of Article 226 of the Constitution. It cannot therefore, be said that the petitioner does not have the *locus* to maintain the writ petition.”

Similar view was expressed by this Court in ***Government of Andhra Pradesh, School Education Department and others v. K.Hanmi Reddy and others***. It may be useful to extract the relevant para which is as under:

“One of the contentions of the respondents for rejecting the case of the fifth respondent school for admitting into grant-in-aid is that certain information was not furnished by the School. If that is the case, nothing prevented the officials to initiate necessary action to secure the information. The petitioners

cannot be found fault for not sending the required information by the School. Moreover, the officials can secure the information from the school and from the records. Anyhow, that cannot be a ground to reject the request of the petitioners for admitting the posts into grant-in-aid. The other grounds, viz., imposition of ban or uneconomic strength, as seen from the earlier decisions of this Court, were not acceptable to this Court. Another contention raised is with regard to Memo No.8008/SE-Genl/A1/2012 dated 07.10.2014. I have gone through the said Memo. The respondents have rejected the case of the petitioners assigning the same reasons that were shown in their counter, i.e., the same grounds that were existing prior to passing of the order in the writ petition. The ban order is shown as the main reason for rejecting the case for admitting the posts into grant-in-aid. The respondents cannot assign the same reasons that were earlier shown by them prior to the date of passing order in the writ petition. Merely because the respondents have passed some illegal order or rejected the case of the petitioners by one stroke of pen without considering the order of this Court or the latest legal position, can it be said that such an order is sustainable in the eye of law? If such kind of practice or attitude by the officials is allowed, every time whenever an order has been passed by this Court, the respondents therein may pass some illegal order and force the petitioners therein to file fresh writ petition. It will result in great injustice if the case of the petitioners is brushed aside merely because the respondents have passed some baseless and unreasonable order. The respondents, being Government officials, can have the luxury of litigation at the cost of the State, but the petitioners may not afford further litigation. The respondents would have put their head and heart together in dealing with this matter.

In view of the above facts and circumstances, it cannot be said that petitioners have no locus standi to file a writ petition seeking grant in aid. They are entitled to the same relief which has been granted to the other similarly situated persons. The case of the fifth respondent school and the petitioners was recommended along with the similarly situated persons by the High Level Committee. Thus, the petitioners have locus standi to file a writ petition seeking grant in aid and it is clear that the writ petition filed by them is maintainable.”

In view of the judgments referred to above, it cannot be said that the writ petition under Article 226 of the Constitution of India is not maintainable at the instance of teaching and non-teaching staff.

The second ground which has been canvassed by the Government Pleader for Education is that at the time of appointment of the petitioners, the fourth respondent was not having the minority status and hence no benefit can be extended to the petitioners.

In order to appreciate the same, it would be necessary to refer to the definition of "*Minority Educational Institution*" as defined in Section 2 (f) of the Rules. As per Section 2 (f) of the Rules, a Minority Educational Institution means any educational agency of which atleast 2/3rd members belong to a religious/linguistic minority and it has obtained minority certificate from the Government. The relevant Clause with regard to obtaining minority status certificate from the Government, came to be added by way of G.O.Ms.No.74, Education (SE (PS-I), dated 11.09.2006. Therefore, institutions which are set up prior to 2006 need not obtain any minority status certificate from the Government. G.O.Ms.No.1, Minorities Welfare (M&R) Department, dated 16.01.2004, states that the minority status certificate shall be given for a period of three years and shall be renewed prior to its expiry period by making an application three months in advance. The said G.O. further states that the institutions, which failed to obtain the renewal of recognition within the prescribed period ie., by the time of expiry of the existing period, shall be treated as non-minority institutions. But the said G.O. is silent about the institutions which have already obtained permanent minority status certificate and the institutions which are already set up prior to issuance of this G.O. A perusal of the letter dated 22.07.2004 in Rc.No.190 of 2004 issued by the Deputy Educational Officer, Vijayawada to the District Educational Officer, Krishna, show that the fourth respondent was granted permanent minority recognition vide Memo No.809/5412/M&R/A2/2001, dated 03.10.2001 for High school and by way of letter No.808/5411/M&R/A2/2001, dated 03.10.2001 for elementary school. Since the G.O. which is sought to be relied upon by the Government Pleader for Education does not refer to its operation with retrospective effect and since the permanent minority status certificate has been granted to the fourth respondent in the year 2001 itself, the argument of the learned Government Pleader for Education that the fourth respondent school has lost its minority status as on the date of appointment and that it is no more a minority institution cannot be accepted.

The next ground which has been urged by the counsel for the petitioners is that respondent Nos.1 to 3 have erred in issuing G.O.Rt.No.100 in refusing to review the request of the fourth respondent school for approval of appointment of 17 teaching and non-teaching staff on the ground that the fourth respondent has violated Rule 12 of the Rules. He places reliance on various judgments of this Court and also the judgment of the Apex Court to show that this institution being a minority

institution, the authorities cannot insist on the presence of a government nominee while making the selection.

In order to answer the same, it would be useful to refer to sub-rules 5 and 6 of Rule 12 and Rule 13, which are as under:

“12 (5). Aided schools shall also be required to have a nominee of the District Educational Officer not below the rank of Deputy Educational Officer in the Staff Selection Committee. The educational agency shall fix the selection process (test/interview) in consultation with the District Educational Officer or his nominee and shall afford the D.E.O.’s nominee a reasonable opportunity of being present. The selection however, shall not be vitiated only on the ground of the absence of D.E.O.’s nominee if the educational agency has offered reasonable explanation. The burden of proving this shall lie with the educational agency.

12 (6). The selection of the posts in all private educational institutions shall conform to the communal rotation roster. However this shall not apply to minority educational institution only if they are selecting a candidate belonging to the concerned minority community. Where such a candidate is fitted in a vacancy belonging to S.C/S.T., vacancy shall be carried forward to the next point.

13. Staff Selection committee:

(1) The Staff Selection Committee for the purpose of filling up of an aided post other than promotion shall consist of the following persons as members:

(a) President of educational agency or his nominee;

(b) The Headmaster, who is ex-officio Correspondent/ Secretary/Manager of the Institution;

(c) Two subject experts, to be selected by the educational agency from the panel approved by the District Educational Officer of these at least one should be the Headmaster of a recognized school.

(d) An officer of the Educational Department not below the rank of Deputy Educational Officer nominated by the District Educational Officer concerned.

(2) The president of the educational agency can either be the Chairman; or nominate one of the members of the Staff Selection Committee to be the Chairman.

(3) The quorum for the Staff Selection Committee meetings shall be four of which the presence of District Educational Officer’s nominee is compulsory.”

A reading of Rule 12 (5) of Rules would show that the aided schools should have a nominee of District Educational officer not below the rank of Deputy

Educational Officer in the Staff Selection Committee. It also states that the selection shall not be vitiated on the ground of absence of D.E.O.'s nominee, if the educational agency has offered a reasonable explanation, the burden of which shall lie on the educational agency. Rule 12 (6) of the Rules, which deals with selection of posts in private educational institutions states that the selection shall conform to the communal rotation roster. However, it states that the same shall not apply to the minority educational institutions if they are selecting a candidate belonging to a concerned minority community.

Rule 13 states that the Selection Committee shall for the purpose of filling up of aided post other than promotion shall consist of President, the Head Master, two subject experts to be selected by the educational agency from the panel approved by the District Educational Officer and an officer of the Educational Department not below the rank of Deputy Educational Officer. Rule 13 (3) states that the quorum for the Staff Selection Committee meetings shall be four of which the presence of District Educational Officer's nominee is compulsory. It is to be noted that insisting on the presence of D.E.O.'s nominee as mandatory under Rule 13 (3) of Rules would run contrary to Rule 12 (5) of the Rules which states that the selection process shall not be vitiated in the absence of D.E.O.'s nominee if reasonable explanation is offered by the educational agency.

Therefore, the question now would be whether there was any violation of any of these provisions, while appointing the petitioners as teachers.

Insofar as violation of Rule 12 (6) of the Rules is concerned, the issue of said provision came up for consideration before this Court in ***Government of A.P. and others v. P.Thirumala Devi and another***, wherein a Division Bench of this Court held as under:

"It is, therefore, not correct to contend that the purported reservation policy of the State can be implemented in relation to the institutions belonging to an educational agency. In other words, for the purpose of giving effect to sub-rule (6) of rule 12, all private educational institutions shall be treated as separate units. Furthermore, the State merely grants aid in terms of Grant-In-Aid Code. However, rule 12 (6) would apply both in relation to an aided and unaided institution. The State for the purpose of implementing the reservation policy must have a power therefor. It cannot exercise such power only because it gives grant-in-aid. The reservation theory has no

nexus with grant-in-aid by the State. Such a power of the State will also have to be considered having regard to the provisions contained in [Article 29](#) read with clause (1) of [Article 30](#) of the Constitution, in terms whereof any discrimination by the State is prohibited.

Even in terms of sub-rule (6) of Rule 12 a minority educational institution has been exempted from applying this communal rotation roster only in the event they select a candidate belonging to the concerned minority community and where such candidate is fitted in a vacancy belonging to SC/ST such vacancy shall be carried forward to the next point. Such a provision even in relation to a minority institution will, therefore, be violative of [Article 30](#) of the Constitution. In regard to private educational institutions, reservation is an essential legislative function. Such an essential legislative function cannot be delegated to a rule making authority.”

The judgment of the Division Bench of this Court was upheld by the Apex Court in Civil Appeal Nos. 6575 and 6576 of 2004, holding that Rule 12 (6) of the Rules is beyond the scope of the Act. Since the said provision itself was held to be ultra virus, the argument of the counsel for the petitioners has to be accepted.

Insofar as violation of Rule 12 (5) of the Rules is concerned, the main objection raised by the Government Pleader for Education is that there was no nominee of the Government while selecting the petitioners. It is not his case that the petitioners are not qualified and that their names were not registered in the Employment Exchange. It is also not his case that the petitioners do not fit into any of the category to which they were appointed.

On the other hand, the learned counsel for the petitioners would submit that such a condition cannot be imposed while making selection in respect of a school which has been recognized as minority institution and even otherwise the selection would not become invalid in the absence of government nominee at the time of selection since the rule itself provides acceptance of selection in the absence of government nominee if a reasonable explanation is offered by the institution.

The fact that emerges out from the findings arrived at are that the fourth respondent institution is a minority institution and the petitioners, who are appointed as teaching and non-teaching staff in the said institution were duly qualified and their names were also registered in the employment exchange.

Rule 13 of the Rules prescribe the composition of Staff Selection Committee. Rule 13 (3) provides that the quorum for the staff selection committee shall be four. Thus, even in the absence of a nominee of the District Educational Officer, as

required under Rule 13 (1) (e), there could still be a quorum for the staff selection committee. Further Rule 12 (5) of the Rules, requires aided schools to have a nominee of the District Educational Officer in the staff selection committee and for the educational agency to fix the selection process in consultation with the District Educational Officer or his nominee and to afford the D.E.O.'s nominee reasonable opportunity of being present, and it also provides that the selection shall not be vitiated only on the ground of the absence of the D.E.O.'s nominee if the Educational Agency offered a reasonable explanation.

In Writ Appeal No.1095 of 2010 a Bench of this Court while considering the orders passed by a learned Single Judge in W.P.No.27004 of 2003 and also Rules 13 (1) (3) vis-à-vis 12 (5) observed that there should be a composition of staff selection committee and the quorum for the staff selection committee shall be four. The bench held that even in the absence of a nominee of the District Educational Officer, as required under Rule 13 (1) (e), there could still be a quorum for the staff selection committee.

From a reading of the judgment of this Court referred to above, it is clear that the selection process could not be vitiated if the same was done with a required quorum. Further, neither Rule 12 (5) nor Rule 13 does anywhere refer to application of the provisions to the minority educational institutions. The issue as to whether the presence of the government's nominee is required even while filling vacancies in minority institutions came up for consideration in following cases.

In W.P.No.6190 of 1984 a learned Single Judge of this Court held as under:

“Under Article 30 (1) of the Constitution of India, minority institution, whether based on religion or language shall have the right to establish and administer educational institutions of their choice. One of the vital aspects of this right is the right to select and appoint teachers or headmaster (or principals) of the choice of the management and there can be no inference whatsoever with that right. The State has no right to insist that the selection should be made by a selection committee consisting not only of the representative of the management but also of the Government nor can the State assume a power to approve the choice of the candidate. All that the State can do is to prescribe qualifications for the post of teacher or Headmaster (or principal) and see that those prescriptions are duly followed. The fact that the institution is receiving aid from the Government does not enable the Government from deviating from the above principles.”

The legal position enunciated in TMA Pai case (2 supra) was reiterated in

[P.A. Inamdar vs. State of Maharashtra](#), as under:-

19. The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights :

a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;

b) To appoint teaching staff (Teachers/Lecturers and Head-masters/Principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees;

c) To admit eligible students of their choice and to set up a reasonable fee structure;

d) To use its properties and assets for the benefit of the institution;

(ii) The right conferred on minorities under [Article 30](#) is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under [Article 30\(1\)](#).

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/Lecturers by adopting any rational procedure of selection.

(v) Extension of aid by the State, does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under [Article 30\(1\)](#)."

After referring to these two judgments, the Apex Court in ***Secretary, Malankara Syrian Catholic College v. T.Jose and others*** held as under:

“Aided institutions give instruction either in secular education or professional education. Religious education is barred in educational institutions maintained out of State fund. These aided educational minority institutions providing secular education or professional education should necessarily have standards comparable with non-minority educational institutions. Such standards can be attained and maintained only by having well qualified professional teachers. An institution can have the services of good qualified professional teachers only if the condition of service ensures security, contentment and decent living standards. That is why State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Consequently, any law intended to regulate the service conditions of employees of educational institutions will apply to minority institutions also, provided that such law does not interfere with the overall administrative control of the managements over the staff.”

In ***Brahma Samoj case (1 supra)*** the Apex Court after referring to ***T.M.A. Pai’s case (2 supra)***, held as under:

“The control cannot extend to the day today administration of the institution. It is categorically stated in T.M.A. Pai case (2 supra) that the State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independency for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. The State can very well provide the basic qualification for teachers. Under the University Grants Commission Act, 1956, the University Grants Commission had laid down qualifications to a teaching post in a university by passing Regulations. As per these Regulations UGC conducts National Eligibility Test (NET) for determining teaching eligibility of candidates. UGC has also authorized accredited States to conduct State-Level Eligibility Test (SLET). Only a person who has qualified NET or SLET will be eligible for appointment as a teacher in an aided institution. This is the required basic qualification for a teacher. The petitioners’ right to administer includes the right to appoint teachers of their choice among the NET/SLET qualified candidates.”

In ***Sindhi Education Society and another v. Chief Secretary, Government of NCT, Delhi***, the Apex Court while dealing with the nature of administration in a aided minority schools held as under:

“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 mal-administration. 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.

Every linguistic minority may have its own socio, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus, it would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community. Its own limitations may not permit, for cultural, economic or other good reasons, to induct teachers from a particular class or community. The direction, as contemplated under Rule 64(1)(b), could be enforced against the general or majority category of the Government aided school but, it may not be appropriate to enforce such condition against linguistic minority schools. This may amount to interference with their right of choice and, at the same time, may dilute their character of linguistic minority. It would be impermissible in law to bring such actions under the cover of equality which in fact, would diminish the very essence of their character or status. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers.

To frame policy is the domain of the Government. If, as a matter of policy, the Government has decided to implement the reservation policy for upliftment of the socially or otherwise backward classes, then essentially it must do so within the frame work of the Constitution and the laws. The concept of reservation has been provided, primarily, under [Article 16](#) of the Constitution. Therefore, it would be the requirement of law that such policies are framed and enforced within the four corners of law and to achieve the laudable cause of upliftment of a particular section of the society.”

From the Judgments of the Apex Court referred to above, it is clear that the right of the Minority Educational Institution includes the Right to choose and appoint teaching staff and non-teaching staff and take action if there is any dereliction in their duty.

At this stage, the learned Government Pleader for Education placed on record an order passed by the Apex Court in Review Application filed by the **State of West**

Bengal seeking review of **Brahmo Samaj Education Society case**, wherein the Apex Court held that the observations made by the Apex Court in Para No.7 of Brahmo Samaj Education Society (1 supra) are contrary to what has been held in Para 72 of the T.M.A. Pai Foundation Case (2 supra). The Court held that the mistake was apparent on the face of the record when this Court in Brahmo Samaj Education Society case (1 supra) observed the petitioner's right to administer includes the right to appoint teachers of their choice from among the NET/SLET-qualified candidates. Further, the Court observed that the question of appointment of teachers is a larger question which was not primarily dealt with in the said judgment. As it is affecting appointment of a large number of teachers, the Apex Court felt that the decision in Brahmo Samaj Education Society (1 supra) deserves to be reviewed and the matter requires decision of a Constitution Bench.

The said matter, along with other appeals, was directed to be listed before a Constitution Bench on 15.02.2016 at 2.00 p.m. as part heard. But no stay of the judgment of Brahmo Samaj Education Society Case was granted by the Apex Court. The Government Pleader for Education was not able to say as to what happened to the case on 15.02.2016 or thereafter. It is also not brought to the notice of the Court as to whether any interim orders are passed on 15.02.2016. It is also to be noted that subsequent to Brahmo Samaj case (1 supra), the Apex Court in ***Secretary, Malankara Syrian Catholic College v. T.Jose and others (9 supra) and in Sindhi Education Society and another v. Chief Secretary, Government of NCT, Delhi (10 supra)*** held that the Government should not interfere in the day today administration of minority institutions and in appointment of teaching and non-teaching staff. In the absence of any order being placed on record by the Government Pleader for Education and having regard to the judgments of the Apex Court referred to above wherein it has been categorically held that the Government has no control over the recruitment of the teaching or non-teaching staff in a minority educational institution, the order under challenge needs to be set aside.

Accordingly, both the writ petitions are allowed.

There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

22.02.2016

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