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HIGH COURT OF CHHATTISGARH, BILASPUR

WP No. 3016 of 2004

A.K.Sharma, S/O. G.N. Sharma, aged about 56 years, Lecturer, Salem Girl's Higher Secondary School, Raipur, District-Raipur (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh, through, Secretary, School Education Department, DKS Bhawan
2. Education Board of Jabalpur Diosis CNI Old name of BSE & TTM PCNT) through -Secretary Jabalpur (MP)
3. Principal & Secretary Salem Girls Higher Secondary School Raipur through – Principal (Chhattisgarh)
4. Mrs. S. Waghe W/o A.P. Waghe aged about 51 years Akash Sadan Raja Talab Raipur (CG)
5. District Education Officer, Education Department, Raipur

---- Respondents

For Petitioner	:	Shri Y.C. Sharma, Advocate
For State	:	Shri Satish Gupta, Govt. Advocate
For Res. No. 2 & 3	:	Shri Sourabh Sharma, Advocate

And

WPS No. 1351 Of 2008

1. Board Of Secondary Education and Teachers Training M.P.C.N.I. through its Secretary Board of Secondary Education and Teachers Training, Raipur (Chhattisgarh)
2. Burgess Memorial Girls Higher Secondary School. Th. Its Principal In Charge Burgess Memorial Girls Higher Secondary School, Bilaspur

---- Petitioners

Vs

1. State Of Chhattisgarh through Secretary, Department of School, Mantralaya, DKS Bhawan, Raipur (CG)
2. Director (Public Instructions) Directorate, Chhattisgarh Raipur Distt. Raipur (Chhattisgarh)
3. District Education Officer Raipur, Distt. Raipur (Chhattisgarh)

---- Respondents

For Petitioners	:	Shri Sourabh Sharma, Advocate
For State	:	Shri Satish Gupta, Govt. Advocate

And

WPS No. 4709 Of 2008

1. Board of Secondary Education and Teachers Training M.P.C.N.I. through its Secretary, Education and Teachers Training, Raipur (Chhattisgarh)
2. Salem Girls Higher Secondary School, through Its Principal, Salem Girls Higher Secondary School, Raipur (C.G.)

---- Petitioners

Vs

1. State Of Chhattisgarh through Secretary, Department of School Education, Mantalaya, DKS Bhawan, Raipur (CG)
2. Director (Public Instructions) Directorate, Chhattisgarh Raipur Distt. Raipur (Chhattisgarh)
3. District Education Officer Raipur, Distt. Raipur (Chhattisgarh)
4. A.K. Sharma S/o Shri G.N. Sharma, Lecturer, Salem Girls Higher Secondary School. Raipur, District - Raipur (C.G.)

---- Respondents

For Petitioner	:	Shri Sourabh Sharma, Advocate
For State	:	Shri S.P. Kale, Dy.A.G.
For Res. No.4	:	Shri Y.C. Sharma, Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

23/10/2017

Heard.

1. The aforesaid three writ petitions are being disposed off by this common order as they involve identical issue for consideration based on similitude of facts, relevant for decision making.
2. The petitioners in WPS No.1351 of 2008 and WPS No.4709 of 2008 is a Society registered under State Society Registration Laws formed to establish and administer various minority educational institutions in the State. The educational institution involved in the present case are minority educational institutions. The grievance put-forth by the Society and the minority institution is regarding infringement of its fundamental rights to establish and administer minority institutions as guaranteed under Article 30 of the Constitution of India.
3. The petitioner in WP No.3016 of 2004, a senior most Teacher in the minority educational institution of the Society, has assailed the decision of the Society to handover current charge of the office of Principal of the school to respondent No.4 therein, who admittedly, is junior to this petitioner. The minority institution seeks to challenge legality and validity of circulars dated 18.9.2007 and 4.1.2008 (filed in WPS No.1351 of 2008), on the premise that it offends and violates the fundamental right of minority institution to administer the minority institution. Later on, during the pendency of this petition, when administrative order came to be issued by the District Education Officer, Raipur on 11.8.2008 seeking to enforce the aforesaid two circulars of the State Govt. and directing the minority institution to handover current charge of the office of Principal of the school to Mr. A.K. Sharma (petitioner in WP No.3016 of 2004), another petition WPS No.4709 of 2008 was filed.
4. According to pleadings, the petitioner-Board of Secondary Education and Teachers Training MPCNI is running various educational institutions and it

has been recognized as minority institution. This claim of it being a minority institution is beyond dispute. Further, the fact that the petitioner Society is getting 100% grant in aid by the Govt. for payment of salary to the Teachers engaged in the minority institution is also beyond all pale of dispute. It is also an admitted position that the minority institution, being 100% aided institution by the Govt, is governed and regulated by the provisions contained in Madhya Pradesh (now Chhattisgarh) Ashaskiya Shikshan Sanstha (Adhyapako Tatha Anya Karmchariyo Ke Vetano ka Sandaya) Adhiniyam, 1978 (for short "*Act of 1978*"). The Govt. has also framed Rules to regulate recruitment and promotions of Teachers and other employees of such aided institutions known as M.P. (now C.G.) Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karmchariyon Ki Bharti) Niyam, 1979 (for short "*the Rules of 1979*").

5. The minority institution decided to fill up the vacant post of Principal of its school by giving in-charge assignment of the said post to one Mrs. S. Waghe who admittedly was junior to Mr. A.K. Sharma. A dispute, therefore, arose as to whether it was within the authority of the minority institution to appoint a person of its choice as current charge holder of the office of Principal, ignoring the seniority of the senior most Teacher of the school.
6. Challenge has been laid to the validity of circular dated 18.9.2007 issued by the Directorate of Public Instructions Chhattisgarh to all the District Education Officers and communication dated 4.1.2008 of the Government to the Director, Public Instructions, on the ground that imposition of a condition that senior most Teacher alone shall be allowed to be given current charge of the office of Principal of the educational institution, interferes with the constitutionally recognized freedom of the minority institution enshrined under Article 30 of the Constitution of India to administer its own institution.
7. Learned counsel for the petitioner-Society contended that the office of the Principal of the school is the key post directly involved in the administration of minority educational institution and, therefore, the right to choose the

Principal is inherently interlinked with the freedom of the minority institution to administer. The Principal of the school is the key post and holder of the post necessarily has to be a person of confidence and choice of the Management because his performance would be directly affecting the administration of the educational institution. There is no legislative device nor any Rule framed by the Rule Making Authority imposing any such condition on the minority institution. Even then, it is argued, the State and the Director, Public Instructions have been issuing executive instructions to impose such kind of restriction on the minority institution, completely taking away from their hands, their right to choose as to who should be assigned the work as the Principal of the educational institution. The restriction based on seniority has completely trammled the institutional choice with regard to assignment on the post of Principal of the Institution and thus causing serious inroad to fundamental rights guaranteed under Article 30 of the Constitution of India. In support of his submissions, learned counsel for the petitioner-Society placed reliance on the decision of the Supreme Court in the case of **Manager, Corporate Educational Agency Vs. James Mathew & Ors.** (AIR 2017 SC 3762).

8. Learned counsel for the State, defending the two instructions issued by the Government on 18.9.2007 and 4.1.2008 by the Govt. seeks to justify by submitting that the Govt. or its authorities have not interfered with the actual administration of the minority institution but only in public interest, to ensure better administration of the educational institution which is receiving grant in aid from the Govt., have laid down a Rule of universal application in all institutions that In-charge assignment of the office of Principal should be given only to a senior most teacher. It is submitted that this only seeks to regulate the right to administer minority institution rather than actually interfering with day to day administration of minority institution. He would further advance that the authority which has been relied upon by learned counsel for the petitioner does not prohibit the Govt. which is providing finance to the institution, to regulate, by laying down appropriate Rules, affairs of the institution. According to him, this

power of the State to lay down appropriate Rules and Regulations in the interest of the administration are not in the nature of any interference, therefore, cannot be said to be violative of Article 30 of the Constitution of India.

9. Learned counsel appearing for the petitioner – A.K. Sharma in WP No.3016 of 2004 supports the submission of learned counsel for the State by submitting that the petitioner being the senior most teacher, it would be in the interest of institution that senior person should be given the charge of the office of Principal and if the State has issued such a circular, it does not in any manner restrict the fundamental rights to administer minority educational institution.
10. I have considered the submissions made by learned counsel for the parties and perused the records.
11. This Court need not dwell into the aspect of the status of petitioner-Institution because, as has already been referred herein-above, the petitioner's status as minority institution is not in dispute. If that be the admitted position, whether prescription of the criteria as to who should be made In-charge Principal, will have to be left to the decision of the minority institution itself without restricting the said choice by imposition of any criteria of seniority. The freedom of choice of the minority institution to select Principal of the institution has been considered by the Hon'ble Supreme Court in the case of **Secy. Malankara Syrian Catholic College Vs. T. Jose and Ors.** (2007) 1 SCC 386, with specific reference to the fundamental rights guaranteed under Article 30 of the Constitution of India to minority institution in the matter of establishment and administration of such minority institution. The factual score depicted in the said decision were that the post of Principal of the College run by Malankara Syrian Catholic College Association of Archdiocese at Trivandrum fell vacant. The post was filled up by appointing a Lecturer in the College which was under challenge on the grounds that person appointed as Principal did not possess the required qualifications for the post and consequently that

appointment was violative of Section 57 (3) of the Kerala Literacy, Scientific and Charitable Societies Registration Act, 1955. The relevant provision contained in Section 57 (3) of the said Act mandated appointment on the post of Principal based on the criteria of seniority-cum-fitness. The Supreme Court, after surveying its earlier decision, summarized the general principles relating to establishment and administration of educational institution by minority as below:-

"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- a`-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)."

It was further held thus:

"20. 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. "

12. The decision rendered by the Constitution Bench of the Supreme Court in the case of *T.M. A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481*, clarifying and crystallizing the extent of regulations by the State in respect of employee of minority educational institutions receiving aid from the State were also noticed as below:

"21. We may also recapitulate the extent of regulation by the State, permissible in respect of employees of minority educational institutions receiving aid from the State, as clarified and crystallised in *TMA Pai*. The State can prescribe :

(i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,

(ii) the service conditions of employees without interfering with the overall administrative control by

the Management over the staff.

(iii) a mechanism for redressal of the grievances of the employees.

(iv) the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

In other words, all laws made by the State to regulate the administration of educational institutions, and grant of aid, will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the Management over the staff, or abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions."

13. The importance of the office of Principal of an educational institution and the role played by it was highlighted as below:

"22. The Principal or Headmaster of an educational institution is responsible for the functional efficiency of the institution, as also the quality of education and discipline in the institution. He is also responsible for maintaining the philosophy and objects of the institution.

23. In *State of Kerala vs. Very Rev. Mother Provincial* [1970 (2) SCC 417], this Court upheld the decisions of the Kerala High Court declaring sub-sections (1) (2) (3) of section 53 of the Kerala University Act, 1969 relating to appointment of Principals were ultra vires Article 30(1) in respect of minority institutions. This Court affirmed the

following findings of the High Court (reported in 1969 Kerala Law Times 749) without independently considering the same :-

"The principal of a college is, as S.2(12) recognizes, the head of the college, and, the post of the principal is of pivotal importance in the life of a college; around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching; and the right to choose the principal is perhaps the most important facet of the right to administer a college. *The imposition of any trammel thereon except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself cannot but be considered as a violation of the right guaranteed by article 30(1) of the Constitution*, and, for the reasons we have already given, by article 19(1)(f) as well. To hold otherwise would be to make the rights "a teasing illusion, a promise of unreality". Provision may, of course, be made to ensure that only proper persons are appointed to the post of principal; the qualifications necessary may be prescribed, and the mode of selection for the purpose of securing the best men may be laid down. But to go beyond that and place any further fetter on the choice would be an unreasonable interference with the right of management. Therefore, so far

as the post of principal is concerned, we think it should be left to the management to secure the services of the best person available. This, it seems to us, is of paramount importance, and the prospects of advancement of the staff must yield to it. The management must have as wide a field of choice as possible; yet sub- section (2) of Section 53 restricts the choice to the teachers of the colleges or of all the colleges, as the case may be, and enables the appointment of an outsider only if there is no suitable person in such college or colleges. That might well have the result of condemning the post to a level of dull mediocrity. A provision by which an outsider is to be appointed, or a junior member of the staff preferred to a senior member, only if he is of superior merit, the assessment of which must largely be left to the management, is understandable; but a provision which compels the management to appoint only a teacher of the college (or colleges) unless it pronounces all the teachers unsuitable, is clearly in derogation of the powers of the management, and not calculated to further the interest of the institution. But we might say that there can be no objection to the appointment of the principal as of any other member of the staff being subject to the approval of some authority of the University so long as disapproval can be only on the ground that

the person appointed has not the requisite qualifications. Also that if disapproval is not to be only on some such stated ground, but is left entirely to the will and pleasure of the appointing authority, that would be to deprive the educational agency of its power of appointment and would be bad for offending article 19(1)(f) and article 30(1)."

(Emphasis supplied)

24. The importance of the right to appointment of Principals/Head-masters and teachers of their choice by minorities, as an important part of their fundamental rights under Article 30 was highlighted in *St. Xavier's* thus (SCC pp. 815-16, para 182):

"182. It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. *The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution.* .. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the

management. That is part of the fundamental right of the minorities to administer the educational institution established by them."

[Emphasis supplied]

25. In *N.Ammad* (supra) the appellant contended that he being the senior-most graduate teacher of an aided minority school, he should be appointed as the Headmaster and none else. He relied on Rule 44A of the Kerala Education Rules which provided that appointment of Headmaster shall ordinarily be according to seniority, from the seniority list prepared and maintained under clauses (a) and (b) of Rule 34. This Court held:

"18. Selection and appointment of Headmaster in a school (or Principal of a college) are of prime importance in administration of that educational institution. The Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire institution, an efficient and honest Headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. This

pristine precept remains unchanged despite many changes taking place in the structural patterns of education over the years.

19. How important is the post of Headmaster of a school has been pithily stated by a Full Bench of the Kerala High Court in *Aldo Maria Patroni v. E.C. Kesavan* (AIR 1965 Ker 75). Chief Justice M.S. Menon has, in a style which is inimitable, stated thus :

"The post of the headmaster is of pivotal importance in the life of a school. Around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching. The right to choose the headmaster is perhaps the most important facet of the right to administer a school, and we must hold that the imposition of any trammel thereon except to the extent of prescribing the requisite qualifications and experience cannot but be considered as a violation of the right guaranteed by Article 30(1) of the Constitution. To hold otherwise will be to make the right 'a teasing illusion, a promise of unreality'."

Thereafter, this Court concluded that the management of minority institution is free to find out a qualified person either from the staff of the same institution or from outside, to fill up the vacancy; and that 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; and that any such statutory or executive feat would be violative of the fundamental right enshrined in Article 30(1) and would therefore be void. This Court further observed that if the management of the school is not given the wide freedom to choose the person for holding the key-post of Principal subject, of course, to the restriction regarding qualifications to be prescribed by the State, the right to administer the School would get much diminished.

26. In *Board of Secondary Education and Teachers Training* (supra), this Court held :

"3. The decisions of this Court make it clear that in the matter of appointment of the Principal, the management of a minority educational institution has a choice. *It has been held that one of the incidents of the right to administer a minority educational institution is the selection of the Principal.*

Any rules which takes away this right of the management have been held to be interfering with the right guaranteed by Article 30 of the Constitution. In this case, both Julius Prasad selected by the management and the third respondent are qualified and eligible for appointment as Principal according to rules. The question is whether the management is not entitled to select a person of their choice. The decisions of this court including the decision in State of Kerala v. Very Rev. Mother Provincial [1970 (2) SCC 417] and Ahmedabad St. Xavier's College Society v. State of Gujarat make it clear that this right of the minority educational institution cannot be taken away by any rules or regulations or by any enactment made by the State. We are, therefore, of the opinion that the High Court was not right in holding otherwise. The State has undoubtedly the power to regulate the affairs of the minority educational institutions also in the interest of discipline and excellence. But in that process, the aforesaid right of the management cannot be taken away, even if the Government is giving hundred per cent grant."

(Emphasis supplied)

14. Having thus considered, the right to choose Principal to run the administration of the institution was held to be inherently associated with the right of the minority institution to administer, as below:

"27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by *TMA Pai*. 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 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 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."

15. Section 57 (3) of the Act of 1955 was held inapplicable to minority institution by holding that the provision providing for promotion on the post of Principal on the basis of seniority-cum-fitness 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 and that such a provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution. On aforesaid consideration, it was held that such provision is violative of Article 30(1) of the Constitution and to that extent it will not apply to minority-run-educational institutions even if they are aided.

16. The aforesaid decision was again referred to in the case of **Sindhi Education Society and Anr. Vs. Chief Secretary, Govt. of NCT of Delhi and Ors.** (2010) 8 SCC 49, dealing with an issue of reservation. Having referred to the findings recorded in para 21, 27, 28 of the decision in the case of *Secy. Malankara Syrian Catholic College* (supra), the Supreme Court held as under :

"69.....

The above answers to the questions formulated demonstrates that the Court has kept a clear line of distinction between laws made by the State to regulate the administration of educational institutions receiving grant-in-aid but if such regulations interfere with overall administrative control by the management over the staff or abridges or dilutes, in any other manner, the right to establish and administer educational institutions, in that event, to such extent, the regulations will be inapplicable to the minorities."

17. The aforesaid settled legal position was again reiterated by the Hon'ble Supreme Court in a recent decision in the case of **Manager, Corporate Educational Agency** (supra), again dealing with the similar factual dispute relating to appointment on the post of Principal. In the aforesaid decision, the minority educational institution chose to appoint a Teacher of their choice belonging to their respective community on the post of Head Master, ignoring the available senior Teacher from the same community. The law laid down in earlier decision was again noted by the Supreme Court, as below:

“5. As far as the selection and appointment of the Headmaster or the Principal, as the case may be, is concerned, this Court in *Secy. Malankara Syrian Catholic College Vs. T. Jose and Others*, reported in (2007) 1 SCC 386, after referring to all the celebrated cases on minority rights, viz. *T M A Pai Foundation v. State of Karnataka* [(2002) 8 SCC 481], *P.A. Inamdar vs. State of Maharashtra* [(2005) 6 SCC 537], *State of Kerala v. Very Rev. Mother Provincial* [(1970) 2 SCC 417], *The Ahmedabad St. Xavier's College Society v. State of Gujarat* [(1974) 1 SCC 717], *Frank Anthony Public School Employees' Association v Union of India* [(1986) 4 SCC 707], *Rev. Sidhajibhai v. State of Bombay* [(1963) 3 SCR 837], *D.A.V. College v. State of Punjab* [(1971) 2 SCC 269], *All Saints High School v. Government of A.P.* [(1980) 2 SCC 478], *St. Stephen's College v. University of Delhi* [(1992) 1 SCC 558], *N. Ammad v. Manager, Emjay High School* [(1998) 6 SCC 674], *Board of Secondary Education & Teachers Training v. Joint Director of Public Instructions* [(1998) 8 SCC 555], has held in Paras 27 to 29 that the Management of a minority aided educational institution is free to appoint the

Headmaster or the Principal, as the case may be, of 4 its own choice and has no obligation to appoint the available senior qualified member from the same community. Paras 27, 28 and 29 are quoted hereunder :-

"27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by TMA Pai. 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 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 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."

(Emphasis supplied)

The emerging position is that, once the

Management of a minority educational institution makes a conscious choice of a qualified person from the minority community to lead the institution, either as the Headmaster or Principal, the court cannot go into the merits of the choice or the rationality or propriety of the process of choice. In that regard, the right under Article 30(1) is absolute.”

18. In view of the settled legal position adumbrated by the Supreme Court in plethora of decisions dealing directly with the issue of appointment on the post of Principal, in the considered opinion of this Court, the executive instructions dated 18.9.2017 and 4.1.2008 restricting the choice of minority institution to give current charge assignment of the office of Principal only to senior most teacher is clearly violative of Article 30 (1) of the Constitution of India, as it completely takes away the right of the minority institution to choose a person whom it considers to be more suitable for the said appointment. The two circulars dated 18.9.2017 and 4.1.2008, therefore, to the extent they are intended to be made applicable to the minority institution are violative of Article 30 (1) of the Constitution and declared unconstitutional to that extent. It cannot be made applicable to minority institution in the matter of choice of Principal. Right of the minority institution guaranteed under Article 30 (1) of the Constitution of India would prevail on any such administrative instructions and the minority institution would not be bound to give In-charge assignment only to the senior most one.

In view of the above considerations, the order passed by the District Education Officer, Raipur on 11.8.2008 and assailed in WPS No.4709 of 2008 is also declared illegal and hereby set aside.

19. In the result, WP No.3016 of 2004 is dismissed and WPS No.1351 of 2008 & WPS No.4709 of 2008 are accordingly allowed in the manner and to the extent indicated above. No orders as to costs.

Sd/-
(Manindra Mohan Shrivastava)
Judge