

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	29.03.2019
Orders pronounced on	18.07 .2019

CORAM

THE HONOURABLE Mr.JUSTICE D.KRISHNAKUMAR

W.P.Nos.9612 and 9620 of 2014

M.P.No.2, 3 and 4 of 2014 in W.P.No.9612 of 2014

M.P.No.2 and 3 of 2014 in W.P.No.9620 of 2014

- 1 THE ASSOCIATION OF ST. CHRISTOPHERS
COLLEGE OF EDUCATION
REP.BY ITS SECRETARY,
63 EVK SAMPATH ROAD, VEPERY,
CHENNAI-7.

... PETITIONER IN W.P.No.9612 of 2014/
5TH RESPONDENT IN W.P.No.9620/2014

MARIAN USHA RANI
BENTINCK Hr.SEC. SCHOOL FOR GIRLS,
VEPERY, CHENNAI - 7.

... PETITIONER IN W.P.No.9620 of 2014

Vs.

- 1 THE GOVT. OF TAMILNADU
REP.BY ITS SECRETARY DEPARTMENT OF SCHOOL
EDUCATION FORT ST. GEORGE CHENNAI-9
- 2 THE JOINT DIRECTOR OF SCHOOL
EDUCATION (HIGHER SECONDARY) DPI CAMPUS
COLLEGE ROAD CHENNAI-6
- 3 THE CHIEF EDUCATIONAL OFFICER
PANAGAL BUILDING SAIDAPET CHENNAI-15
- 4 DISTRICT EDUCATIONAL OFFICER
CHENNAI NORTH AMBETHKAR SCHOOL (UPSTAIRS)
GANDHI IRVIN BRIDGE CHENNAI-8

...RESPONDENTS 1 TO 4 IN BOTH
W.Ps.

5 M.RAMANIJEBATHAI
W/O. CHELLASAMY,
NEW NO.11, OLD NO.6 VICHUR,
MUTHAIAH STREET, CHOOLAI,
CHENNAI-112 ... 5th RESPONDENT IN W.P.No.9612/2014/
AND 6th RESPONDENT IN W.P.No.9620/2014

Prayer in both W.Ps.:

The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings dated 12.3.2014 in Mu.Mu.No. 9554/W5/E3/2013 on the file of the 2nd respondent and the consequential proceedings dated 14.3.2014 in Na.Ka.No. 4348/A1/2013 on the file of the 4th respondent 1 to 4 and quash the same directing the respondents to accord approval to the appointment of Mrs.N.Marian Usha Rani as Headmistress in Bentinck Hr.Sec.School, Vepery, Chennai w.e.f. 1.9.2013.

For Petitioner in : Fr.Xavier Arul Raj,
Sr. Counsel for

W.P.No.9612 of 2014 M/s.A.Arul Mary
For Respondents 1 to 4 : Mr.K.Karthikeyan, G.A. (Edn.)

For Respondent No.5 in : Mr.Govardan for
W.P.No.9612/2014/R-6 in M/s.R.Subburaj

W.P.No.9620/2014
For petitioner in : No appearance
W.P.No.9620 of 2014/
5th Respondent in
W.P.No.9612 of 2014

COMMON ORDER

Petitioner is a Christian Minority organization and the petitioner's School is "The Bentinck Higher Secondary School for Girls", established in the year 1837. It is incorporated under the Companies Act, 1956 (Act VII of 1956), bearing Reg.No.8214/1980, dated 9.4.1980 in the name and style of, "The St. Christopher's Training College Association", which was subsequently changed as, "The Association of St. Christopher's College of Education" vide certificate dated 11.12.1981, for the purpose of legal perpetuity. It is a religious and charitable organization to promote education of the Christian minority women. The petitioner's school was declared to be a minority school by this Court in W.P.No.522 of 1975, dated 24.9.1975. It was again reconfirmed by this Court by its order, dated 10.10.2012 made in W.P.No.522 of 1975. The said order

of this Court was acted upon by the educational authorities vide proceedings of the Director of School Education in R.C.No.24541-G.3/76 dated 20.11.1976. Therefore, the petitioner school is a Christian minority institution governed under Art.30(1) of the Constitution of India. The Post of Head mistress of the petitioner school fell vacant due to the retirement of Ms.D.D.D.Chellanatchiar. Pursuant to the vacancy caused for the post of Headmistress, a Selection Committee was constituted to select a suitable person to the post of Headmistress by the Management vide resolution, dated 10.5.2013. The Selection Committee was headed by Dr.Ms.Adella Paul, along with 4 other members. Pursuant to the decision taken by the Committee, advertisement was published in dailies on 9.6.2013 inviting applications from the eligible candidates by prescribing eligibility criteria for appointment to the post of Headmistress in the petitioner's school. The said advertisement was made mainly for the applicants from outside the management and internal 'Office Note' was issued on 12.6.2013 stating that qualified candidates within the Management shall also apply, and the age limit notified in the public advertisement will not apply to the staff working in the Management. In response to the said advertisement, 15 applications were received by the Management. Out of 15 applications, 11 applicants were shortlisted, 8 candidates from outside and 3 candidates from within the Management. All the 11 applicants were called for an interview to assess their merit and ability in fair and objective manner on 26.6.2013. Written test was conducted along with personal interview. Out of the 11 candidates, Mrs.N.Marian Usha Rani and Mrs.Gigi Samuel were selected in the order of preference. Based on the assessment, two candidates were found eligible for appointment to the post of Headmistress of the School. The Management in its meeting, dated 19.7.2013 approved the selection of the first candidate Mrs.N.Marian Usha Rani to be appointed as Headmistress of the petitioner School w.e.f. 1.9.2013 subject to the approval of the Department of School Education. Mrs.N.Marian Usha Rani joined duty as Headmistress and Correspondent w.e.f. 1.9.2013. The Management forwarded the proposal for approval of the appointment of Mrs.N.Marian Usha Rani, to the 4th respondent along with required documents on 12.9.2013. The School Education department has granted approval for appointment of Mrs.N.Marian Usha Rani as Correspondent w.e.f. 1.9.2013. However, approval for appointment to the post of Headmistress was not granted. Meanwhile, Mrs.M.Ramani Jebathai, the 5th respondent in W.P.No.9612 of 2014 has preferred an appeal before the 4th respondent, to consider her for the post of Headmistress on 17.9.2013 and the petitioner had submitted an explanation on 15.10.2013. In the meantime, 5th respondent and another P.G. Assistant had filed W.P.No.31245 of 2013 before this Court to appoint her to the post of Headmistress. This Court while

disposing of the writ petition in W.P.No.31245 of 2013, vide order, dated 20.11.2013, passed the following order:

"Considering the fact that the petitioner filed an appeal before the first respondent on 9.11.2013, questioning the appointment of the sixth respondent by the fifth respondent, this Court directs the first respondent to dispose of the appeal, after issuing notice to all the parties, viz., respondents 4 to 6 and giving adequate opportunity of hearing including to the petitioner also, on merits and as per law, within a period of twelve weeks from the date of receipt of a copy of this order.'"

After hearing the parties concerned, the second respondent by its impugned proceedings, dated 12.3.2014 in Mu.Mu.No.9554/W5/E3/2013 cancelled the appointment of Mrs.Marian Usha Rani, as Headmistress of the petitioner School and directed the petitioner Management to appoint an eligible P.G. Teacher as Headmistress of the petitioner School. In the aforesaid order, the second respondent cancelled the appointment order mainly on the ground that the said promotion is in violation of Rule 15(4) (d) (ii) of the Tamil Nadu Recognized Private School (Regulation) Rules, 1974 and only the Headmistress of High School, Teacher Training School or Graduate Teachers can be appointed as Headmistress of Higher Secondary School. Mrs.N.Marian Usha Rani was not working as a Post Graduate Teacher and she has not completed the age of 48 years as on 1.6.2013 as mentioned in the newspaper advertisement and the Selection Committee has not considered the eligible non-Christian candidates working in the same School. Challenging the said order, the petitioner has filed W.P.No.9612 of 2014.

2. The learned Senior counsel appearing for the petitioner submitted that there is no violation of Rule 15(4) (d) (ii) of the Tamil Nadu Recognized Private School (Regulation) Rules, 1974. The aforesaid rule is not applicable to the Minority institution as held in EKA RATCHAGAR SABAI HIGHER SECONDARY SCHOOL & ANOTHER VS. K.SUMATHI MAHARANI EKA RATCHAGAR SABAI HIGHER SECONDARY SCHOOL, SALAIPUTHUR, ASIRVATHAPURAM (PO) TUTICORIN DISTRICT (2008) 1 MLJ 322. In so far as the age factor is concerned, selected candidate was not an outsider and she was in-service candidate of the School. There was separate circular for in-service candidates from the School without any age restrictions. Further, according to the learned Senior counsel, the aforesaid School, being a Christian Minority School, the respondent cannot find fault with the policy decision of the Management to appoint only a Christian as Headmistress. This constitutional right has been enshrined in Art.30(1) of the Constitution of India and the same was consistently protected by the Hon'ble Supreme Court.

Therefore, the right of selection/appointment to the post of Headmistress of the School is purely vested with the Management and the authorities cannot interfere with the selection process. Therefore, the impugned order is liable to be quashed.

3. The learned counsel appearing for the petitioner in W.P.No.9620 of 2014 adopted the arguments of the learned Senior counsel appearing for the petitioner Management in W.P.No.9612 of 2014.

4. Counter affidavit has been filed by the 5th respondent, mainly relying upon the advertisement made in Daily Thanthi, dated 9.6.2013 wherein eligibility criteria has been prescribed by the Management. Clause D of the said advertisement specifically mentioned that, "Candidate should have completed atleast 48 years of age as on 1.6.2013. The 5th respondent is a senior most Teacher in the School having more experience than the other candidates. Further, most of the in-service Teachers have satisfied eligibility criteria fixed by the Selection Committee in the advertisement. However, one Mrs.N.Marian Usha Rani, Writ petitioner in W.P.No.9620 of 2014 and her friend Mrs.S.Jasmine Patience were called for interview, even though they have not completed the age of 48 years as on 1.6.2013 as per the advertisement, dated 9.7.2013. It is the specific case of the petitioner that most of the candidates have not applied to the post of Headmistress due to age limit fixed by the Selection Committee. But the 5th respondent was not aware of the fact that Mrs.N.Marian Usha Rani was selected to the post of Headmistress. According to the 5th respondent, the appointment of Mrs.N.Marian Usha Rani to the post of Headmistress is illegal, unfair and against the age criteria mentioned in the advertisement. The 5th respondent immediately made a representation to the School Education department to promote the 5th respondent to the post of Headmistress of the School and furnished all the details to the authorities concerned. The representation made by the 5th respondent was considered by the second respondent, who cancelled the appointment of Mrs.N.Marian Usha Rani, the petitioner in W.P.No.9620 of 2014, made by the Management/petitioner in W.P.No.9612 of 2014, mainly on the ground that it violates the Rules as well as age criteria as mentioned in the advertisement. Therefore, the order of the second respondent is sustainable in law.

5. The learned Government Advocate appearing for the respondents 1 to 4 submitted that the petitioner Management violated Sub Rule 2 of Rule 15(4) (d) of Tamil Nadu Recognized Private School (Regulation) Rules, 1974 and the Management has not specifically mentioned in the advertisement that the age criteria is applicable only to the outside candidates and not applicable to the in-service candidates of the petitioner's

school. Even though the petitioner is a minority institution, it is bound to follow the procedure contemplated under the Rules and in such circumstances, the authority can cancel the said appointment order issued by the petitioner Management. Therefore, the order of the second respondent is perfectly valid and the same is in accordance with Rules.

6. Heard the learned counsel for the petitioner in both writ petitions, learned Government Advocate appearing for the respondents 1 to 4, learned counsel appearing for the 5th respondent in W.P.No.9612 of 2014 and perused the materials available on record and the decisions cited.

7. The ground raised by the petitioner Management is that the petitioner Management has not violated Rule 15(4) (d) (ii) of Tamil Nadu Recognized Private School (Regulation) Rules, 1974. The Management being a Christian minority institution cannot be compelled to conduct an interview to all the qualified non Christian candidates, which will only be an empty formality and an eyewash. In so far as the eligibility criteria is concerned, in the office Note, it is mentioned that the age limit prescribed in the advertisement is not applicable to the in-service candidates.

8. The learned Senior counsel appearing for the petitioner submitted that Rule 15(4) (2) of Tamil Nadu Recognized Private School (Regulation) Rules, 1974 is not applicable to the minority institution, as already held by the Hon'ble Courts in various decisions. In support of his contention, he relied upon various decisions of the Hon'ble Supreme Court as well as High Court. It will be useful to extract the relevant portions of the said judgments:

(i) In N.AMMAD Vs. MANAGER, EMJAY HIGH SCHOOL AND OTHERS [(1998) 6 SCC 674] the Hon'ble Supreme Court held as follows:

"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* [1964 Ker LT 791 : 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'."

20. The importance of the key role which a Headmaster plays in the school cannot be better delineated than that. The nine-Judge Bench in the *Ahmedabad St. Xavier's College Society* [(1974) 1 SCC 717] has highlighted the importance of the role of the Principal of a college. In support of majority view in that decision K.K. Mathew, J. has observed 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."

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

(ii) In SECRETARY, MALANKARA SYRIAN CATHOLIC COLLEGE VS. T.JOSE AND OTHERS [(2007)1 SCC 386 the Hon'ble Supreme Court held as follows:

"24. The importance of the right to appointment of Principals/Headmasters and teachers of their choice by minorities, as an important part of their fundamental rights under Article 30 was highlighted in St. Xavier's [(1974) 1 SCC 717] 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.

25. In N. Ammad [(1998) 6 SCC 674] the appellant contended that he being the seniormost graduate teacher of an aided minority school, he should be appointed as the Headmaster and none else. He relied on Rule 44-A 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: (SCC p. 680, paras 18-19)

"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 : 1964 KLT 791 (FB)] . Chief Justice M.S. Menon has, in a style which is inimitable, stated thus:

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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 fiat 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.

27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai [(2002) 8 SCC 481] . 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."

(iii) In HEPSY BELL MOHAN VS. THE STATE OF TAMIL NADU [2000 (3) CTC 277 (DB)] the Division Bench of this Court held as follows:

"5. Mr. Rajan, learned counsel appearing on behalf of the petitioner very fervently took us through the various Government Orders and tried to urge that the petitioner was fully qualified to hold the post in as much as she had the qualification of M.A. M.Ed. He took us particularly to G.O.Ms. No. 1091 dated 16.05.1978 and tried to rely on Clause (ii) with regard to Aided Schools-(a) Headmasters, which is as follows:

"(ii) The Headmaster of a High School under Private Management when upgraded as

a Higher Secondary School may also continue as the Head Master of the said Higher Secondary School."

Relying on this, the learned counsel for the petitioner suggests that once the petitioner fulfilled the Qualification as per clause (i) and once this was a private management school which was upgraded as a higher secondary school, she can continue as a Headmistress. We do not agree with this proposition for the simple reason that the language does not permit any such Interpretation. According to us there is no right in the Headmaster/Headmistress of an upgraded school even If the concerned person was acting as a Headmaster/Headmistress prior to its upgradation even in an ordinary Institute. This is because of the use of the term "may". We are more concerned with minority institutions. There would be no question of any qualification or any right to continue on a post of Headmaster or Principal, in view of the judgment of the Apex Court. The judgment of the Apex Court is very clear that the concerned management of a minority Institution could have the Headmaster or Principal of their own choice to run their school provided such an appointee has an adequate qualification. We are therefore not with the learned counsel for the petitioner and we would choose to dismiss the writ appeal.

6. However, before dismissing the writ appeal, we may only express that here is a case where the Headmistress has been working from the year 1979 and has served for almost 21 years. She has made a representation on 25.5.1995 to the school, management. It does not seem that the school management has one way or the other considered or-answered the said representation. We would direct that the school management shall consider the representation of the petitioner dated 25.5.1995 within 15 days from to-day. The learned counsel appearing on behalf of the respondents 4 to 6 has promised that the school management would consider the

representation of the petitioner within 15 days from to-day.''

(iv) In EKA RATCHAGAR SABAI HIGHER SECONDARY SCHOOL & ANOTHER VS. K.SUMATHI MAHARANI EKA RATCHAGAR SABAI HIGHER SECONDARY SCHOOL, SALAIPUTHUR, ASIRVATHAPURAM (PO) TUTICORIN DISTRICT [(2008) 1 MLJ 322] the Division Bench of this Court held as under:

"10. Learned counsel appearing for the appellants submitted that these two decisions of the learned single Judge do not reflect the correct position of law and the enforcement of Rule 15(4) in the minority aided schools would be in direct infraction with the fundamental rights guaranteed under the Constitution. It has been submitted by him that even though reference has been made to TMA PAI FOUNDATION'S case in such decision of the learned single Judge, relevant portions of such decision have not been considered. Learned counsel further submitted that at any rate in view of the latest decision of the Supreme Court reported in (2007) 1 SCC 386 (The Secretary, Malankara Syrian Catholic College v. T. Jose & others), any other view expressed by the Madras High Court to the contrary must be taken to be impliedly over-ruled.

13. The aforesaid observation was cited with approval in TMA Pai Foundation's Case reported in (2002) 8 SCC 481. In para 161 of the aforesaid decision, it was observed:-

"161. ... A. So far as the statutory provisions regulation the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the condition of affiliation to an university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a

rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself.

...
The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution. Regulations can be framed governing service conditions for teaching and other staff for which aid is provided by the State, without interfering with the overall administrative control of the management over the staff."

(Emphasis added)

14. As observed in TMA Pai Foundation's case, essential ingredients of the management including admission of students and recruitment of staff, cannot be regulated. It is of course true that the earlier decision of the single Judge in M. Chelladorai's case, which we have already noticed, also purported to rely upon the observations made in TMA Pai Foundation's case. However, now that the matter has been decided by the Supreme Court in (2007) 1 SCC 386 after referring to other earlier decisions, we do not think that the interpretation given earlier by different learned single Judges of this Court can hold good. The necessary conclusion, therefore, is that the discretion of the Management to appoint teacher of its own choice (of course a teacher who is otherwise qualified and eligible as per the prescribed regulations) cannot be curtailed through the process of rules, regulations or other executive instructions as such rules, regulations or executive instructions would violate the right of the minority institution under Article 30(1) of the Constitution.

15. Judged in light of the observations made by the Supreme Court in

(2007) 1 SCC 386 (supra), the provisions which lay down qualification for appointment of teachers are obviously required to be followed; whereas the procedure contemplated in Rule 15(4) of the Rules severely constricting the scope of the discretion of the Management in appointment of teachers and confining the same to a particular source would be violative of Article 30(1). Therefore, such provisions are not required to be followed by the minority institutions. In view of the above, we cannot agree with the view expressed by the learned single Judge under the impugned judgment and such decision is liable to be over-turned.

16. Even assuming that Rule 15(4) of the Rules is applicable and therefore the Management had to follow such procedure, there is no requirement in the Rule nor there is any judicial pronouncement laying down that promotion has to be made only on the basis of seniority. As indicated in the Rule itself, only when a suitable candidate possess the qualification is available from the staff, his case can be considered. In the present case, the Management had given an option to Respondent No. 1 to participate in the interview. This was obviously with a view to assess the merit of Respondent No. 1. It is no doubt true that simultaneously the Management had also given opportunity to outsiders to participate in the interview. But, merely because of that, it cannot be said that inservice candidates' right had been violated. It is quite possible to hold that the Management in order to avoid delay may think of simultaneously interviewing inservice candidates along with the outsiders and when in-service candidate is found meritorious, such candidate is required to be preferred where Rule 15(4) is applicable. However, merely because such candidate is being interviewed along with other outsiders may not be a factor to vitiate the selection."

(v) In Unreported Judgment in A.BELAVENDRAN VS. THE
JOINT DIRECTOR (W.A.No.556 of 2008 Dated 27.7.2009) (DB) the
Division Bench of this Court held as under:

"21. The general principles relating to establishment/administration of education institution by minorities as reiterated in P.A. INAMDAR's case are as follows:-

"19(i)

(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"

22. We are concerned only with principle 'b' referred above, which deals with their right to appoint teaching staff including teachers and lecturers. Though the learned counsel appearing for the petitioner submitted that the right of the minority institutions is secured only with reference to appointment of the Principal of their choice, the general principles crystallized above regarding the establishment and administration of education institution would show clearly that the right of the institution to establish and administer the educational institutions by minorities, includes the appointment of teaching staff also and in paragraph 21 of 2007 AIR SCW 132 (cited supra), the Supreme Court has held as follows:-

"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 institution."

23. In 2007(4) Law Weekly 617 (cited supra), which is almost identical to the present case, the Division Bench dealt with each of the judgments that have been cited before us. The minority institutions' right of appointment of Principals/ Headmasters and Teachers of their choice have been protected under Article 30(1) of the Constitution of India in the above case. As observed by the Supreme Court in St. Xavier's case, the Division Bench held that though it relates to appointment of Principal, the same logic and ratio would be applicable to the appointment of Teachers also and the Division Bench further held that since the matter has been decided by the Supreme Court in the decision in (2007 (1) SCC 386), the interpretation given earlier by different Judges of this Court cannot hold good and therefore the necessary conclusion is that the discretion of the Management to appoint Teachers of its own choice (of course a Teacher, who is otherwise qualified and eligible as per the prescribed regulations) cannot be curtailed through

the process of rules, regulations or other executive instructions.''

(vi) In Unreported Judgment in ANNA FREEDA CHANDRAN VS. THE CHAIRMAN, NOMINATION COMMITTEE AND ANOTHER (W.P.No.17815 of 2003, dated 30.6.2003) this Court held as under:

"4. The relief sought for in this writ petition cannot be granted. Admittedly, the first respondent is a minority institution. Though the first respondent is an aided school, by virtue of the minority status, the first respondent is entitled to call for applications from various candidates to fill up the post of Headmistress. The discretion to select the best of the candidates always must be with the Management viz., the first respondent. In fact, even according to paragraph No.3 of the affidavit filed in support of the writ petition, one candidate by name Mrs.D.D.D. Chellanachiyar has already been selected and appointed. The petitioner has not challenged the said appointment order and on the other hand, seeks only for calling of the relevant records of the selection. when the first respondent has discretion as well as the entitlement to select the candidates of its choice, being a minority institution, this Court cannot issue direction to the first respondent to forward the records relating to the procedure followed in selection. Moreover, it is not the case of the petitioner that the candidate selected by the first respondent is not qualified. In that view of the matter, I find no merit in the writ petition."

(vii) In Unreported Judgment in J.SANKAR KUMAR VS. CHIEF EDUCATIONAL OFFICER (W.P.No.12712 of 2011, dated 21.6.2011) this Court held as under:

"5. The third respondent being a minority school, Rule 15(4) relied upon by the petitioner, is not applicable to the third respondent school. The said issue is considered by the Division Bench of this Court in (2008) 1 MLJ 322 (Eka Ratchagar Sabai Higher Secondary School rep. by its Correspondent, Tuticorin

District and others vs. K.Sumathi and another) as well as in the judgment of the Supreme Court reported in (2007) 1 SCC 386 (Secretary, Malankara Syrian Catholic College Vs. T.Jose and others). In para 15 of the judgment reported in (2008) 1 MLJ 322, it is held thus:

"Judged in light of the observations made by the Supreme Court in (2007) 1 SCC 386 (supra), the provisions which lay down qualification for appointment of teachers are obviously required to be followed; whereas the procedure contemplated in Rule 15(4) of the Rules severely constricting the scope of the discretion of the Management in appointment of teachers and confining the same to a particular source would be violative of Article 30(1). Therefore, such provisions are not required to be followed by the minority institutions. In view of the above, we cannot agree with the view expressed by the learned single Judge under the impugned judgment and such decision is liable to be over-turned.'"

(viii) In THE MANAGER/CORRESPONDENT, V.K.P.HIGHER SECONDARY SCHOOL, KANYAKUMARI DIST. VS. THE STATE OF TAMIL NADU AND 3 OTHERS (W.P.(MD) No.12113 of 2011, dated 3.6.2014) this Court held as under:

"7.....14. As observed in TMA Pai Foundation's case, essential ingredients of the management including admission of students and recruitment of staff, cannot be regulated. It is of course true that the earlier decision of the single Judge in M. Chelladorai's case, which we have already noticed, also purported to rely upon the observations made in TMA Pai Foundation's case. However, now that the matter has been decided by the Supreme Court in (2007) 1 SCC 386 after referring to other earlier decisions, we do not think that the interpretation given earlier by different learned single Judges of this Court can hold good. The necessary conclusion, therefore, is that the discretion of the Management to appoint teacher of its own choice (of

course a teacher who is otherwise qualified and eligible as per the prescribed regulations) cannot be curtailed through the process of rules, regulations or other executive instructions as such rules, regulations or executive instructions would violate the right of the minority institution under Article 30(1) of the Constitution.

15. Judged in light of the observations made by the Supreme Court in (2007) 1 SCC 386 (supra), the provisions which lay down qualification for appointment of teachers are obviously required to be followed; whereas the procedure contemplated in Rule 15(4) of the Rules severely constricting the scope of the discretion of the Management in appointment of teachers and confining the same to a particular source would be violative of Article 30(1). Therefore, such provisions are not required to be followed by the minority institutions. In view of the above, we cannot agree with the view expressed by the learned single Judge under the impugned judgment and such decision is liable to be over-turned.

9. From the reading of the cited judgments, it is crystal clear that the discretion of the Management to appoint teacher of its own choice (of course a teacher who is otherwise qualified and eligible as per the prescribed regulations) cannot be curtailed through the process of rules, regulations or other executive instructions as such rules, regulations or executive instructions would violate the right of the Minority Institution under Article 30 (1) of the Constitution of India. Therefore, keeping those judgments in mind, I am of the considered view that the order impugned in the present writ petition warrants interference at the hands of this Court."

(ix) In THE MANAGER, CORPORATE EDUCATIONAL AGENCY VS. JAMES MATHEW & OTHERS (2017 SCC ONLINE SC 870) the Hon'ble Supreme Court held as under:

"4. We are afraid, the stand taken by the High Court cannot be appreciated. On all the three points, the position is well settled by the judgments of this Court.

5. As far as the selection and appointment of the Headmaster or the Principal, as the case may be, is concerned, this Court in *Malankara Syrian Catholic College v. T. Jose* [*Malankara Syrian Catholic College v. T. Jose*, (2007) 1 SCC 386 : 5 SCEC 728] after referring to all the celebrated cases on minority rights, viz. *T.M.A. Pai Foundation v. State of Karnataka* [*T.M.A. Pai Foundation vs. State of Karnataka*, (2002) 8 SCC 481 : 2 SCEC 1] , *P.A. Inamdar v. State of Maharashtra* [*P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537 : 2 SCEC 745] , *State of Kerala v. Very Rev. Mother Provincial* [*State of Kerala v. Very Rev. Mother Provincial*, (1970) 2 SCC 417] , *Ahmedabad St. Xavier's College Society v. State of Gujarat* [*Ahmedabad St. Xavier's College Society v. State of Gujarat*, (1974) 1 SCC 717 : 1 SCEC 125] , *Frank Anthony Public School Employees' Assn. v. Union of India* [*Frank Anthony Public School Employees' Assn. v. Union of India*, (1986) 4 SCC 707] , *Sidhrajibhai Sabhai v. State of Gujarat* [*Sidhrajibhai Sabhai v. State of Gujarat*, (1963) 3 SCR 837 : AIR 1963 SC 540] , *D.A.V. College v. State of Punjab* [*D.A.V. College v. State of Punjab*, (1971) 2 SCC 269] , *All Saints High School v. State of A.P.* [*All Saints High School v. State of A.P.*, (1980) 2 SCC 478] , *St. Stephen's College v. University of Delhi* [*St. Stephen's College v. University of Delhi*, (1992) 1 SCC 558 : 1 SCEC 404] , *N. Ammad v. Emjay High School* [*N. Ammad v. Emjay High School*, (1998) 6 SCC 674 : 1 SCEC 732] , *Board of Secondary Education & Teachers Training v. Director of Public Instructions* [*Board of Secondary Education & Teachers Training v. 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 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: (Malankara Syrian case [Malankara Syrian Catholic College v. T. Jose, (2007) 1 SCC 386 : 5 SCEC 728] , SCC p. 404)

"27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] . 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."

6. 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.''

9. The learned counsel appearing for the 5th respondent relied upon the various decisions of the Hon'ble Supreme Court as well as High courts. It will be useful to extract the said judgments:

(i) In KOLAWANA GRAM VIKAS KENDRA VS. STATE OF GUJARAT & OTHERS [(2010) 1 SCC 133] the Hon'ble Supreme Court held as under:

''6. In our considered view, we do not view this to be the interference in the selection process. It would be perfectly all right for a minority institution to select the candidates without any interference from the Government. However, the requirement of

this prior approval is necessitated because it is for the Government to see as to whether there was actually posts available in the said institution as per the strength of students and secondly; whether the candidates, who were sought to be appointed, were having the requisite qualifications in terms of the rules and regulations of the Education Department. That is precisely the stand taken by the State of Gujarat before us in its counter-affidavit. Para 3 of the said affidavit reads as under: "Minority institutions are free to select their teaching and non-teaching staff. No Government Officer or the representative of the Board was appointed in the selection committee of the minority institution. There is no interference by the Government in the administration of the schools. However, N.O.C. is required to be obtained to verify whether there is a vacancy of a teacher of a particular subject as per the workload fixed by the Gujarat Secondary and Higher Secondary Education Board specially when the government is providing grant-in-aid and that he possesses minimum required qualification for the post he is appointed."

7. From the reading of aforementioned para 3, it is clear that all that the Government wants to examine is as to whether the proposed appointments were within the frame work of the rules considering the workload and the availability of the post in that institution and, secondly; whether the selected candidates had the necessary qualifications for the subjects in which the said teachers were appointed. The same applies to the non-teaching staff also.'

(ii) In M.REETHAMMAL AND ANOTHER VS. STATE OF TAMIL NADU REP. BY THE COMMISSIONER AND SECRETARY TO GOVERNMENT, DEPARTMENT OF EDUCATION, FORT ST. GEORGE, MADRAS-9 AND SIX OTHERS [2002 (3) CTC 65], the Division Bench of this Court held as under:

'10. An analysis of the above judgments would indicate that the right

of a minority to establish and administer educational institution guaranteed under Article 30(1) of the Constitution of India is a fundamental right declared in terms absolute. Though the said Article is couched in absolute terms, it does not follow that the right guaranteed is not subject to regulatory laws which would not amount to its abridgement. In the words of Justice Mathew of the Supreme Court speaking for himself and Justice Chandrachud in St. Xaviers College Society v. State of Gujarat, AIR 1974 SC 1389 the right guaranteed under Article 30(1) of the Constitution of India has been observed as follows:-

"In considering the question whether a regulation imposing a condition subserves the purpose for which recognition or affiliation is granted, it is necessary to have regard to what regulation the appropriate authority may make and impose in respect of an educational institution established and administered by a religious minority and receiving to recognition or aid. Such an institution will, of course, be subject to the general laws of the land like the law of taxation, law relating to sanitation, transfer of property, or registration of documents, etc., because they are laws affecting not only educational institutions established by religious minorities but also all other persons and institutions. It cannot be said that by these general laws, the State in any way takes away or abridges the right guaranteed under Article 30(1). Because article 30(1) is couched in absolute terms, it does not follow that the right guaranteed is not subject to regulatory laws which would not amount to its abridgement. It is a total misconception to say that because the right is couched in absolute terms, the exercise of the right cannot be regulated or that every regulation of that right would be an abridgement of the right."

It is further manifestly clear that

in the matters of maintaining a uniform standard in education, the State can regulate the conditions of employment of teachers and other staff of the private aided colleges including the minority institutions. Conditions of service of both teaching and non-teaching staff of the private colleges as found in Sections 15,16 and 17 of "the Act" are not excluded by the provisions of Section 24 (3) of the Act. Regulating conditions of service by both the teaching and non-teaching staff cannot be in any way termed as infringing Article 30(1) of the Constitution of India. Hence, we do not find any infringement of the right conferred on a minority under Article 30 (1) of the Constitution of India while the State Government framed the rules, more particularly, Rule 11(4)(i) and (ii) of the rules requiring the minority institutions to consider the promotion in the case of non-teaching staff only on the basis of seniority, more so, there is no challenge to Section 17 of the Act which enables the Government to make rules prescribing the conditions of service for both teachers and other staff namely non-teaching staff.

11. Much reliance was placed by Mr. A.L. Somayaji, learned senior counsel appearing for the fourth respondent institution on the judgment of the Supreme Court in N. Ammad v. Manager, Emjay High School and others, 1998 (6) SCC 674. In that case, the Supreme Court was considering the right of the management of a aided minority school regarding appointment of a Headmaster. The Supreme Court finally held that the minority institution has absolute right to select and appoint a person of its choice for the post of Headmaster. What weighed Their Lordships of the Supreme Court to declare so was that the post of Headmaster is a prime important in administration of the educational institution. In fact, the Supreme Court referred to the emphasize of such

importance of a Headmaster of a school made by a Full Bench of the Kerala High Court in *Aldo Maria Patroni v. E.C. Kesavan*, AIR 1965 Ker. 75 which reads 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'."

The Supreme Court also took note of the judgment of a nine Judge Bench in the matter of *Ahmedabad v. St. Xavier's College Society*, 1974 (1) SCC 717 which highlighted the role of the Principal of the college in the administration of the college. The relevant paragraph of the observation of the Supreme Court reads thus:-

"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."

13. Coming to the second point, we have already held that the Government is empowered to make rules relating to the

conditions of service and other persons employed in private colleges by virtue of the powers conferred under Section 17 read with Section 53 of the Act. When once such rules are made, the private colleges are bound to follow the same. It is not the case of the respondents that the State Government is empowered either under the Act or under the Rules to exempt any of the provisions of the Rules. In the absence of such power, the State Government cannot permit any relaxation of the rules. A similar view had been taken by a learned single of this Court in the judgment in W.P. Nos. 6607 of 1991, 17963 and 18718 of 1992 dated 5.9.95. In yet another judgment in Rajendran v. State, 1991 W.L.R. 694, this Court also had taken a similar view. In that view of the matter, we do not find any justification on the part of the Government in relaxing the rule impugned in the writ petition to enable the college to appoint the fifth respondent as an Assistant. A contention was also raised that in the absence of challenge to the Government Order made in G.O.Ms. No. 1051, Education dated 11.8.89 approving the appointment of the fifth respondent by relaxing the rules, no direction could be given at the instance of the appellant without there being any challenge to the Government Order. We do not find any force in the said contention as the said Government Order is ex facie illegal and was passed without any power of relaxation. In our considered view, the appellant can maintain the writ petition for a direction to promote her to the post of Assistant even without there being a challenge to the said Government Order."

(iii) In S.DEVASAHAYAM & ANOTHER VS. JOINT DIRECTOR & ANOTHER [2004 (1) CTC 388] the Hon'ble Supreme Court held as under:

'2. In order to find out whether the view taken by the High Court and the Tribunal is erroneous, it is necessary to

examine the matter with reference to the relevant rules. Rule 15(4)(i)(d) provides that the post of Head Master could be filled up only amongst the categories stated therein and they are from the category of (1) Head Masters of High schools; (2) Post Graduate Assistants in academic subjects; (3) Post Graduate Assistants in languages provided that they possess the prescribed qualifications. It cannot be seriously disputed that the appellant is not a Post Graduate Assistant and he does not come under the feeder category. Merely because he possesses the necessary qualifications by itself will not enable him to claim to be appointed as a Head Master. It is on this basis the Appellate Authority, the learned Single Judge of the High Court held that the appellant is not entitled to be appointed as the Head Master. The claim made by appellant is that he possesses Master's degree in History but he had not undergone the regular course but in a condensed course conducted by the Department itself for a period of 10 months and his degree is conferred by way of certificate and such teachers are held to be not in the feeder category so as to become eligible to be appointed as Head Master. Such arrangement of giving certificates to certain teachers became necessary as there was dearth of Post Graduate teachers being available in the Higher Secondary Schools such as that of the second appellant. Thus he becomes an inducted teacher and not a regular teacher in the cadre. Bearing these aspects in mind and Appellate Authority as well as the High Court, have taken a view, we do not find this matter calls for interference in a proceeding arising under Article 136 of the Constitution.

In the aforesaid case, the Institution is not a minority Institution, therefore, said judgment will not apply to the case in hand.

(iv) In KURIAN LIZY VS. STATE OF KERALA [2006 (4) KLT 264], the Kerala High Court held as under:

'22. After answer to the question directly covering the issue in hand with regard to appointment of Headmaster or Principal, nothing else survives for determination. It would be unnecessary in this order in probing further the matter. We, thus, hold that the management of a minority educational institution would have freedom to appoint Headmaster or Principal. R. 44 (1) of the Rules of 1959 would have no control over the powers conferred under Art. 30(1) of the Constitution, although such institution has necessarily to evolve a rationale procedure for selection of the Headmaster or Principal, this context, we feel that some directions should be issued to the Managements of minority educational institutions, to evolve a procedure for selection to the post of Headmaster, in the light of the observations in the answer to question 5(c) in T.M.A. Pai Foundation's case (supra) quoted above. We notice that in many cases senior teachers belonging to the minority community, which runs the institution are superseded without assigning any reason. Art. 30(1) of the Constitution of India is an armour to protect the minority against the legislative and executive actions of the State, which is normally controlled by the majority. The said armour cannot be used as a weapon against other members of the same minority community. The protection under Art. 30(1) is to the minority community and for the minority community. The Manager may supersede the members of other communities and also members of the minority community, who are found unsuitable for promotion to the post of Headmaster. But there may be teachers, who are, in every respect, qualified and suitable to head a minority educational institution. The management may select the best among them. The selection procedure should be fair, reasonable and transparent. The eligible members of the minority community may not have a

feeling that they have been superseded without any valid grounds. So, all minority educational institutions, which propose to select the best person to the post of Headmaster/Principal of a School or College, as the case may be, ignoring seniority in the feeder category or ignoring the available teachers, should frame and publish regulations or bye-laws, containing a transparent procedure, governing such selection. The publication can be made in the Notice Board of the educational institution concerned and a copy of it should be available in school/college library for reference. When superseding a senior qualified member of the minority community the reasons thereof should be clear from the records. The question as framed in the beginning of this order is thus answered accordingly.''

(v) In Dr.Mrs.SHAMS VS. THE COMMISSIONER OF COLLEGIATE EDUCATION, COLLEGE ROAD, MADRAS AND OTHERS [1998 (I) CTC 609], this Court held as under:

'1. This writ of certiorarified mandamus filed under Article 226 of the Constitution of India is to quash the order of the first respondent, the licensing authority in R.C. No. 319/085685/E2(1)/96 dated 6.8.1996 renewing the licence in favour of the second respondent to run the cinema theatre, by name, Kapali Talkies.

2. The facts are not in dispute. The petitioner are the owners of the above mentioned cinema theatre, by name Kapali Talkies and the second respondent was given a composite lease of the land, buildings with all the fittings furnitures fixtures, machineries and the entire cinematographic equipments like projectors, screen, complete sound system, record player and all other things required for running the cinema theatre. The original lease was in favour of the second respondent in the year 1984 and periodically it was renewed, and finally, the lease was renewed for

1.4.1996 to 30.9.1996. Therefore, the second respondent had the right to run the abovesaid cinema theatre upto 30.9.1996. In the meanwhile, he applied to the first respondent, the licensing authority, for the renewal of the 'C' Form licence to run the cinema theatre for the period from 1.8.1996 to 14.2.1998. The first respondent, renewed the licence by the order which is being under the challenge on 6.8.1996 for the period from 1.8.1996 to 14.2.1998. The impugned order is challenged on the ground that the first respondent had no powers to renew the licence beyond the period of lease, i.e. for the period from 1.10.1996 to 14.2.1998. As the second respondent had no right to be in possession of the premises to run the cinema theatre, after 1.10.96 the petitioners have come forward with this writ of certiorari to quash the above said order.

11. But the learned senior counsel for the petitioners Mr. V.R. Venkataraman would contend that the petitioners were not even aware of such an order passed by the first respondent, because, they were not a party to the application made by the second respondent to the first respondent that only when the second respondent sent a letter along with the copy of the order on 4.10.1996, they came to know about the extension of licence, that when they were not a party to the proceedings before the Commissioner of Police, they cannot file an appeal against that order. He further contended that without the copy of the order passed by the first respondent, no appeal can be filed, but the first respondent in his counter in para 13, has stated that there is no provision in Tamil Nadu Cinemas (Regulation) Act or rules to furnish a copy of the order to the petitioners herein, and therefore, when the licensing authority itself is refusing to grant a copy of the order, there is no possibility for filing any appeal by the

petitioners and except resorting to writ proceedings, there is no other way for the petitioners. As we are able to see from para 13 of the counter filed by the first respondent that he was not inclined to grant a copy of the order to the petitioners on the ground that the rules do not permit for granting of any order, there was no possibility of getting the order copy from the first respondent for the purpose of filing an appeal. Under those circumstances, we cannot find fault with the petitioners for having not filed any appeal against the order of the licensing authority.''

(vi) In THE SECRETARY, ST. JOSEPH'S COLLEGE (AUTONOMOUS), TIRUCHIRAPALLI VS. THE STATE OF TAMIL NADU REP. BY ITS SECRETARY, DEPARTMENT OF COLLEGIATE EDUCATION AND 3 OTHERS [2011 (I) CWC 574] Madurai Bench of this Court held as under:

'15. In this case, as noticed by us, the impugned Government Order is recognising the right of a senior most person in the department to be nominated and designated as Senior most Lecturer/Selection Grade Lecturer/Reader/Head of the Department. It is undoubtedly a condition of service to persons, who are in service in the minority college and in other words, it is recognition of right to the staff serving in the very same minority college to enjoy certain status without any monitory benefit. The impugned order was issued by the Government to prevent maladministration and it is intended to promote the excellence of education of the minority college itself. Therefore, it is only regulatory in nature and not in any way interference with the rights of the minority management.''

(vii) In Unreported Judgment in S.KUPPUSAMY VS. THE DIRECTOR OF COLLEGIATE EDUCATION, COLLEGE ROAD, CHENNAI 600 006 [W.P.(MD) No.7082 of 2011, dated 8.12.2011] Madurai Bench of this Court held as under:

'8. Though the management claims that

they have gone to the Supreme Court against the said order in SLP(Civil) No.22808 and 22809 of 2011, they have not mentioned about any interim order being obtained in the Supreme Court. In any event, this court as well as the division bench essentially had dealt with the scope of minority right under Article 30 (1) of the Constitution and that the senior most person in the department being redesignated as the HOD was not violative of Article 30(1). It is rather unfortunate that the college should again and again file such writ petitions and allow the teachers to come to this court without adhering to the precedent set up by this court. Therefore, this court is not only constrained to mould the relief in favour of the petitioner and give positive direction to the management, but also to impose cost on the management for their conduct in repeatedly raising similar issue.

9.It must also be noted that an identical prayer had been rejected in respect of an another minority institution which is also an autonomous college in The Principal and Secretary, Madras Christian College, Madras and another V. Dr.(Mrs.)Shams and another reported in 2001 (2) CTC 84 (cited supra). There must be limit in such litigation. Under these circumstances, instead of directing the first and second respondents to give direction to the third respondent college, since the third respondent college also states that no direction can be given by the Director of the Collegiate Education as he only governed the Government college, this court in exercise of power under Article 226 is constrained to issue a mandamus directing the third respondent to redesignate the petitioner as the Head of the Department of Maths forthwith in the place of the fourth respondent.

10.This writ petition is allowed with the above directions. The third respondent college is hereby directed to pay Rs.5000/- (Rupees five thousand only)

as cost to the writ petitioner.
Consequently connected miscellaneous
petition stands closed.''

(viii) In IVY C.DA CONCEICAO VS. STATE OF GOA AND OTHERS
[(2017) 3 SCC 619] the Hon'ble Supreme Court held as under:

'10. We have given our anxious consideration to the rival submissions. There is no dispute with the proposition laid down in T. Jose [Malankara Syrian Catholic College v. T. Jose, (2007) 1 SCC 386 : 5 SCEC 728] , that right to choose a Principal is a part of a right of minority institution under Article 30 (1) of the Constitution and the said right is not affected merely because aid is extended by the State to a minority institution. In T. Jose [Malankara Syrian Catholic College v. T. Jose, (2007) 1 SCC 386 : 5 SCEC 728] , this Court held that Section 57(3) of the Kerala University Act, 1974 which required appointment of seniormost lecturer as Principal did not apply to a minority institution. However, the decision of this Court cannot be read as laying down a principle that a minority institution could act arbitrarily or unfairly in dealing with the selection out of the eligible candidates. The minority institution may not be compelled to go by seniority alone but it must follow a criteria which is rational.

11. In the Full Bench judgment of the Kerala High Court in Belsi M. v. Corporate Management of Latin Catholic Schools [Belsi M. v. Corporate Management of Latin Catholic Schools, 2010 SCC OnLine Ker 4789 : (2010) 2 KHC 220] the question considered was: whether the judgment delivered by this Court in T. Jose [Malankara Syrian Catholic College v. T. Jose, (2007) 1 SCC 386 : 5 SCEC 728] dispensed with the requirement of fair procedure in selecting Headmaster of a school. The Full Bench held that the autonomy under Article 30 was not in conflict with the requirement of fair procedure, in the

matter of selection of a Headmaster/Principal. It was held: (Belsi M. case [Belsi M. v. Corporate Management of Latin Catholic Schools, 2010 SCC OnLine Ker 4789 : (2010) 2 KHC 220] , SCC OnLine Ker para 14)

"14. ... So, we find it difficult to accept the view canvassed by the learned counsel for the management that the direction to follow a fair procedure in the matter of selection of teachers for appointment to the post of Headmaster, will have the effect of diluting the right of the minorities to administer their institutions, guaranteed by Article 30(1) of the Constitution of India. The Manager is a statutory authority under the Kerala Education Act. He is conferred with certain powers, rights and duties. Every power conferred on a statutory authority has to be exercised fairly and reasonably. It is an implied limitation on the power of every statutory functionary. The Manager has the power to take disciplinary action against an erring teacher, but he cannot take action against a teacher for being red-haired. Likewise, the Manager of a minority educational institution cannot say that he will select the Headmaster by holding a test of 100 m race and person who comes out first in the said race will be appointed as Headmaster. If such a procedure is followed, the same will be condemned as ultra vires, being arbitrary and irrational. The power to administer does not include the power to maladminister. The power to make selection does not take in its fold the power to follow an unfair procedure in making the selection. In this context, we refer to the decision of the House of Lords

in Roberts v. Hopwood [Roberts v. Hopwood, 1925 AC 578 (HL)] . It was a case where the Poplar Borough Council substantially increased the wages of its employees, on the ground that the

Council was authorised to grant wages it thought fit. The auditors objected. The matter finally reached the House of Lords. The House held that the power to grant such wages the Borough Council thinks fit, is subject to the implied limitation that it can pay only reasonable wages, even though the word "reasonable" is not present in the enabling statute. What is stated by the House of Lords is a well-settled principle of Administrative Law. This decision has been referred to with approval by the Hon'ble Supreme Court in *Delhi Science Forum v. Union of India* [Delhi Science Forum v. Union of India, (1996) 2 SCC 405]. So, the Full Court in *Kurian Lizy* [Kurian Lizy v. State of Kerala, 2006 SCC OnLine Ker 386 : (2006) 4 KLT 264] only reminded the duty of a statutory functionary that while he overlooks the rights of seniors, he may follow a fair procedure. We have no doubt in our mind that the said direction can definitely stand with the decision in *Malankara Syrian Catholic College* [Malankara Syrian Catholic College v. T. Jose, (2007) 1 SCC 386 : 5 SCEC 728] . The said decision does not impliedly overrule the decision in *Kurian Lizy* [Kurian Lizy v. State of Kerala, 2006 SCC OnLine Ker 386 : (2006) 4 KLT 264] . So, the observation of the Division Bench in *Lijin* [S.S. Higher Secondary School v. Lijin G.S., 2007 SCC OnLine Ker 371 : (2007) 3 KLJ 64] that *Kurian Lizy* [Kurian Lizy v. State of Kerala, 2006 SCC OnLine Ker 386 : (2006) 4 KLT 264] cannot stand with *Malankara Syrian Catholic College* [Malankara Syrian Catholic College v. T. Jose, (2007) 1 SCC 386 : 5 SCEC 728] is not tenable."

12. It can hardly be disputed that power of judicial review under Article 226 is available to go into the question whether action of an aided educational institution (even a minority

institution) is transparent and fair. Despite the autonomy under Article 30, exercise of power by a minority institution discharging public functions is open to judicial review. [Zee Telefilms Ltd. v. Union of India, (2005) 4 SCC 649, paras 31-32] In T.M.A. Pai Foundation v. State of Karnataka [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] this Court held: (SCC pp. 578-79 & 589, paras 135-39 & 161)

"135. We agree with the contention of the learned Solicitor General that the Constitution in Part III does not contain or give any absolute right. All rights conferred in Part III of the Constitution are subject to at least other provisions of the said Part. It is difficult to comprehend that the Framers of the Constitution would have given such an absolute right to the religious or linguistic minorities, which would enable them to establish and administer educational institutions in a manner so as to be in conflict with the other Parts of the Constitution. We find it difficult to accept that in the establishment and administration of educational institutions by the religious and linguistic minorities, no law of the land, even the Constitution, is to apply to them.

136. Decisions of this Court have held that the right to administer does not include the right to maladminister. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also - for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

137. It follows from the aforesaid

decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other provisions of the law, and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning, generally, the welfare of students and teachers should not be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30(1).

138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country. Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-à-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination. It was observed in St. Xavier's College case [Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717 : 1 SCEC 125 : (1975) 1 SCR 173] at SCR p. 192 that: (SCC p. 743, para 9)

'9. ... The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality.'

In other words, the essence of Article 30(1) is to ensure equal treatment between the majority and the minority institutions. No one type or category of institution should be disfavoured or, for that matter, receive more favourable treatment than another. Laws of the land, including rules and regulations, must apply equally to the majority institutions as well as to the minority institutions. The minority institutions must be allowed to do what the non-minority institutions are permitted to do.

139. Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g. method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30.

Q. 5. (c) Whether the statutory provisions which regulate the facets of administration like control over educational agencies, control over governing bodies, conditions of affiliation including recognition / withdrawal thereof, and appointment of staff, employees, teachers and principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the

regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to a university or board have to be complied with, but in the matter of day-to-day management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency.

However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself

(emphasis in original)

13. In the same judgment, Khare, J. (as his Lordship then was) held: (T.M.A. Pai case [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , SCC pp. 616-17, para 232)

"232. Another question that arises in this connection is as to on what grounds the staff and teachers, if aggrieved, can challenge the arbitrary decisions of the management. One of the learned Senior Counsel suggested that such decisions be tested on the grounds available under the labour laws. However, seeing the nature of the minority institutions the grounds available under labour laws are too wide and it would be appropriate if adverse decisions of the management are tested on grounds of breach of the principles of natural justice and fair play or any regulation made in that respect."

14. In M. Nagaraj v. Union of India [M. Nagaraj v. Union of India, (2006) 8 SCC 212 : (2007) 1 SCC (L&S) 1013] it was observed: (SCC pp. 245, 270 & 277, paras 31, 106 & 118)

"31. At the outset, it may be noted that equality, rule of law, judicial review and separation of powers are distinct concepts. They have to be treated separately, though they are

intimately connected. There can be no rule of law if there is no equality before the law; and rule of law and equality before the law would be empty words if their violation was not a matter of judicial scrutiny or judicial review and judicial relief and all these features would lose their significance if judicial, executive and legislative functions were united in only one authority, whose dictates had the force of law. The rule of law and equality before the law are designed to secure among other things, justice, both social and economic.

106. ... According to Constitutional Law of India, by H.M. Seervai, 4th Edn., p. 546, equality is not violated by mere conferment of discretionary power. It is violated by arbitrary exercise by those on whom it is conferred. This is the theory of "guided power". This theory is based on the assumption that in the event of arbitrary exercise by those on whom the power is conferred, would be corrected by the courts.

118. The constitutional principle of equality is inherent in the rule of law. However, its reach is limited because its primary concern is not with the content of the law but with its enforcement and application. The rule of law is satisfied when laws are applied or enforced equally, that is, even-handedly, free of bias and without irrational distinction. The concept of equality allows differential treatment but it prevents distinctions that are not properly justified. Justification needs each case to be decided on case-to-case basis."

15. The above decisions clearly show that autonomy of a minority institution does not dispense with the requirement to act fairly and in a transparent manner and the High Court in exercise of its power of judicial review is entitled to examine fairness of selection process. Grievance of a citizen that he

was treated unfairly cannot be ignored on the ground that a minority institution has autonomy or right of choice. Exercise of right of choice has to be fair, non-discriminatory and rational.

16. We, thus, hold that while under the constitutional scheme, a "minority institution" is free to select and appoint a Principal, without being bound by the principle of seniority alone, whether the appointment has been made fairly and reasonably and whether there is violation of right of an individual eligible candidate by the minority institution by not adopting fair procedure, is liable to be tested in exercise of power of judicial review under Article 226 of the Constitution. Since this aspect of the matter has not been gone into by the High Court, we allow this appeal and set aside the impugned order. The matter stands remitted back to the High Court for a fresh decision in accordance with law. We make it clear that we have not expressed any opinion on merits of the controversy between the parties. No costs.'

10. Therefore, if any violation of procedure contemplated under the Rule for selection and appointment to the post of Headmistress, even though by minority institution, the educational authorities have ample power to interfere with the appointment and pass appropriate orders.

11. On the facts on hand, in the advertisement, dated 16.9.2003, it has been mentioned that the age limit is 48 years as on 1.6.2013. Admittedly, the 5th respondent has not crossed the age of 48 years. The learned Senior counsel appearing for the petitioner Management drew the attention of this Court by relying upon the Office Note, dated 12.6.2013 wherein it is stated that the age limit notified in the advertisement is applicable to only those who are directly recruited from outside and the in-service candidates, on selection, will be appointed on promotion by the Selection Committee.

12. According to the learned Senior counsel appearing for the petitioner, Office note is sufficient that there is no age limit for appointing in- service candidates as Headmistress of

the petitioner School.

13. 'Office Note' is only for the purpose of internal administration. The said age criteria as stated in Office Note has not been indicated or mentioned in the advertisement or Notice Board or any other materials placed before this Court. The applications are also invited from the in-service candidates of the school without fixing the age limit, through promotion to the post of Headmistress.

14. The learned Government Advocate appearing for the respondents 1 to 4 produced records pertaining to the appointment of the petitioner in W.P.No.9620 of 2014. The Management has forwarded the proposal for approval to the 4th respondent with necessary documents. In the said proposal, the petitioner Management requested the 4th respondent to approve Tmt.N.Marian Usha Rani as Headmistress and Correspondent of the petitioner's School. It is seen from the records, the Management also received reply from one Mrs.D.Suguna, P.G. Assistant (Tamil) wherein she has stated that even though she was interested in applying for the post of Headmistress, since she is more qualified and experienced in the higher Secondary section, she does not want to go against the law, in this particular context. Seniors having more qualifications working in higher Secondary section are eligible for promotion to the Post of Headmistress. One Mrs.Josephine Usha, P.G. Assistant (English) in her reply has also made similar statement to the Management. Mrs.Kezia Robinson, P.G. Assistant, Physics Mrs.Y.Adhin Vijila, P.G. Assistant (Chemistry), Mrs.P.Sophia Selvakumari, P.G. Assistant (Zoology) and Mrs.N.Koil Rathy, P.G. Assistant (History) in their reply, have stated that they did not apply for the post of Headmistress and Correspondent. Mrs.S.Jansi Flora, P.G. Assistant (Mathematics), by her letter, dated 14.10.2013, has specifically stated that she is not eligible for the post of Headmistress as per the age criteria and hence, she did not apply for the said post.

15. The aforesaid statements made by the P.G. Teachers in the petitioner's School, would show that the in-service Teachers are not aware that the age limit of 48 years, prescribed for the post of Headmistress in the advertisement is not applicable to them. In the advertisement, the Management has fixed the age limit for appointment to the post of Headmistress. However, the Management failed to mention in the advertisement that the age limit is applicable only for the outside candidates by way of direct recruitment. Even for the sake of argument, there is no mention about the eligibility criteria for the in-service candidates in the Office Note, but the Office Note is prepared only for the purpose of internal administration. There is no

materials placed before this Court that applications were invited from the in-service candidates also, for appointment to the post of Headmistress through promotion with specific clause stating that age limit as fixed in the advertisement is not applicable to the in-service candidates. Therefore, the contention of the learned Senior counsel for the petitioner Management that in the Office Note, no age limit was prescribed for the in-service candidates could not be accepted, since no material has been produced before this Court to show that the 'Office Note' was communicated to the eligible Teachers or displayed in the Notice Board. The statement made by the P.G. Teachers of the petitioner School itself is evident that they did not apply for the said post since they have not crossed the age of 48 years, whereas other Teachers made a statement that they did not apply for the post of Headmistress of the School. The learned Senior counsel appearing for the petitioner submitted that under the Constitutional Scheme, a 'minority Institution' is free to select and appoint Headmistress of the School, without being bound by the principle of seniority alone. Therefore, according to the learned Senior counsel, selection for the post of Headmistress shall not be interfered in so far as the minority Institution is concerned as held by the Hon'ble Supreme Court in the decisions cited supra.

16. It is clear from the records that the Management has not placed any materials to show that the 'Office Note' inviting applications from the in-service candidates has been communicated to the P.G. Teachers who are working in the said School, nor the Management has considered the eligible candidates who are working as P.G. Teachers in their School, for promotion to the post of Headmistress by the Management Committee. On the contrary, Mrs.N.Marian Usha Rani, was appointed to the post of Headmistress of the School even though she has not satisfied the age limit fixed in the advertisement and more so, without proper communication to the other eligible Teachers working in the School. A perusal of record shows that numerous Teachers, who are qualified to the Post of Headmistress and working in the school, have not applied for the said post, because of age limit prescribed in the advertisement. Further, no internal communication was issued to the eligible Teachers. A careful reading of the qualification mentioned in the advertisement, makes it clear that it is only for direct recruitment for the post of Headmistress of the petitioner school. But there is no mention that in-service candidates shall also apply to the post of Headmistress.

17. In so far as the petitioner minority Institution is concerned, the Institution has not followed fair procedure in the selection process to the post of Headmistress of the School. Therefore, this Court has the power of judicial review to

examine the fairness of selection process conducted by the petitioner School. The Hon'ble Supreme Court in IVY C.DA CONCEICAO VS. STATE OF GOA AND OTHERS [(2017) 3 SCC 619] categorically held that grievance of a citizen that he was treated unfairly cannot be ignored on the ground that a minority Institution has autonomy or right of choice. Exercise of right of choice has to be fair, non-discriminatory and rational. When there is violation of right of an individual eligible candidate by the minority Institution by not adopting fair procedure, then it is liable to be tested in exercise of power of judicial review under Article 226 of the Constitution.

18. Therefore, in the light of the aforesaid judgments and the facts and circumstances of the case, the petitioner Management has not adopted fair procedure in the selection process for appointment to the post of Headmistress of the School by giving equal opportunity to the in-service Teachers of the School. There is no materials placed to show that applications from all the in-service Teachers for recruitment to the post of Headmistress of the School were invited. Thus, the contentions of the petitioner Management are negatived and the same are rejected. The impugned order passed by the respondent is perfectly valid and there is no scope to interfere with the order passed by the respondent department.

19. In view of the facts and circumstances of the case and the decisions cited supra, both the writ petitions stand dismissed. No order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Vaan

To

- 1 THE SECRETARY,
GOVT. OF TAMILNADU
DEPARTMENT OF SCHOOL EDUCATION,
FORT ST. GEORGE, CHENNAI-9
- 2 THE JOINT DIRECTOR OF SCHOOL EDUCATION
(HIGHER SECONDARY)
DPI CAMPUS, COLLEGE ROAD CHENNAI-6

3 THE CHIEF EDUCATIONAL OFFICER
PANAGAL BUILDING SAIDAPET CHENNAI-15

4 DISTRICT EDUCATIONAL OFFICER
CHENNAI NORTH AMBETHKAR SCHOOL (UPSTAIRS)
GANDHI IRVIN BRIDGE CHENNAI-8

+2cc to Mr.Father Xavier, Advocate, S.R.No. 61797 & 61796

+1cc to Mr.R.Subburaj, Advocate, S.R.No. 61442

+1cc to the Government Pleader, S.R.No. 62378

Pre-Delivery order in
W.P.Nos.9612 and 9620 of 2014
M.P.No.2, 3 and 4 of 2014 in W.P.No.9612 of 2014
M.P.No.2 and 3 of 2014 in W.P.No.9620 of 2014

LN(CO)
GN(02/08/2019)