

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO. 359 OF 2009**

**AND**

**WRIT PETITION NO. 589 OF 2010**

**WRIT PETITION NO. 359 OF 2009**

Dr. Gopal Chandra Pradhan, F-1, Ashoka  
II, Vasudha Colony, Alto Santa Cruz,  
Post Bambolim Complex, Goa 403 202.

...Petitioner

*Versus*

1. The State of Goa, through its  
Secretary (Education/Higher  
Education), having office at Secretariat  
Porvorim, Bardez, Goa.

2. The Director of Higher Education,  
Government of Goa, having office at  
Junta House, 2<sup>nd</sup> Lift, 5<sup>th</sup> Floor, Panaji,  
Goa.

3. The SCERT, through its in charge  
Director, having office at Alto Porvorim,  
Goa.

...Respondents

**AND**

**WRIT PETITION NO. 589 OF 2010**

1. Nirmala Education Society, A Society  
registered under the Societies  
Registration Act 1860, Having office at  
Nirmala Nivas, Altinho, Panaji, Goa,  
Through its Vice-President, Sr. Annie  
Valadares, 66 years old, Indian National,  
resident of Nirmala Nivas, Altinho,  
Panaji, Goa.

2. Nirmala Institute of Education, A Teacher Education Institution, Altinho, Panaji, Goa, Through its Principal: Dr. (Sr.) Rita Paes, 64 years old, Indian National, resident of Nirmala, Nivas, Altinho, Panaji, Goa.

3. Dr. (Sr.) Rita Paes, Daughter of late A.F.X. Paes, 64 years old, Indian National, Nun, Principal Nirmala INStitute of Education, residing at Nirmala Nivas, Altinho, Panaji, Goa.

...Petitioners

*Versus*

1. The State of Goa, through the Secretary (Education) Office of the Secretary (Education), Government of Goa, Secretariat, Alto Porvorim, Bardez, Goa.

2. Goa University, A University established under the Goa University Act, 1984, Having office at Taleigao Plateau, Taleigao, Goa, Through its Registrar

3. The Director of Higher Education, Directorate of Higher Education, Government of Goa, Junta House, 2<sup>nd</sup> Lift, 5<sup>th</sup> Floor, Panaji, Goa.

4. State Institute of Education/State Council of Educational Research and Training, Government of Goa, Alto Porvorim, Goa.

5. Shri Bhaskar G. Nayak, major,

married, Indian National, Director of Higher Education, 2<sup>nd</sup> Lift, 5<sup>th</sup> Floor, Junta House, )Panaji, Goa.

6. Dr. Gopal Chandra Pradhan, F-1, Ashoka II, Vasudha Colony, Alto Santa Cruz, P.O. Bambolim Complex, Goa 403202.

7. Dr. Susanta Kumar Pradhan, 5-S-4 Shantaben Housing Complex, Mercedes, P.O. Santa Cruz, Goa (403005)

...Respondents

**Mr. S. G. Desai, Senior Advocate with Mr. V. Parsekar, Advocate for the Petitioners in WP No. 589 of 2010.**

**Mr. Pravin Faldessai, Additional Government Advocate for the Respondent nos. 1 and 3 in WP No. 589 of 2009.**

**Ms. S. Kamat, Additional Government Advocate for the Respondent nos. 1 and 3 in WP No. 359 of 2009.**

**Ms. A. A. Agni, Senior Advocate with Ms. Jay Sawaikar, Advocate for the Respondent no.2-University in WP No. 589 of 2010.**

**Mr. Jitendra P. Supekar, Advocate for the Respondent no. 6 and for the Petitioner in WP No. 359 of 2009 .**

**Mr. L. Raghunandan, Advocate for the Respondent no. 7.**

**CORAM:**

**MANISH PITALE &  
SMT. M. S. JAWALKAR, JJ**

**RESERVED ON :**

**1<sup>st</sup> September, 2021**

**PRONOUNCED ON:**

**17<sup>th</sup> September, 2021**

**JUDGMENT (Per Manish Pitale, J.)**

1. The Petitioner in Writ Petition no. 589 of 2010, Nirmala Education Society, is invoking Article 30(1) of the Constitution of India to challenge the impugned orders dated 06.07.2010 and 12.07.2010 issued by the Respondent no.1-State of Goa. It is the case of the Petitioners that the manner in which the impugned orders have been issued, amounts to violation of the right of the

Petitioner nos. 1 and 2 as a minority institution to administer its Educational Institution.

2. The factual backdrop in which the said Writ Petition has been filed is that the Petitioner no.1 is a registered Society constituted by the Daughters of the Heart of Mary in India for the purpose of service of the human kind. The said Society has set up various Educational Institutions, including Nirmala Institute of Education i.e. the Petitioner no.2 herein, which conducts the course of B.Ed. in the State of Goa.

3. In the year 1967-68, the said Institute started the M.Ed. Course as a part time course of two years duration and from the year 1991 onwards, it started the full time M.Ed. Course of one year duration. The Respondent no. 6 was appointed on 22.07.1993 as a Lecturer on temporary basis for the M.Ed. Course and later by order dated 13.06.1994, he was appointed as Lecturer on regular basis, exclusively for the said M.Ed. Course. Similarly, the Respondent no.7 was appointed on 17.03.1994 on temporary basis and later, on 25.07.1994, he was appointed on regular basis for the M.Ed. Course.

4. On 23.07.2004, the Respondent-State directed the Petitioner no.2-Institute, to discontinue the M.Ed. Course from the academic year 2004-05 in view of the poor response for admission to the said course. By order dated 03.11.2004, the Respondent-State directed permanent closure of the M.Ed. Course at the Petitioner no.2-Institute, declaring Respondent nos. 6 and 7 as surplus, to be paid full salary by the said Institute till such time that they were adjusted in alternative employment.

The salaries of Respondent nos. 6 and 7 were permitted to be paid from grant-in-aid payable to the Petitioner no.2-Institute.

5. On 03.04.2006, the Respondent-State redeployed Respondent nos. 6 and 7 to work in the State Institute of Education (SIE) under the Directorate of School Education and they were put under the administrative control of the Director of SIE, who was to allot them appropriate work. Their salaries were to be drawn at the SIE and they were granted the status of Government Gazetted Officers. The said Respondents were redeployed in the State Institute of Education and it was directed that they shall draw pay and allowance against vacant post of Subject Inspectors (Languages) in the SIE. Consequently, the said Respondents were relieved and they joined the SIE in the aforesaid posts.

Corrections carried  
out in view of order  
dated 08.10.2021  
passed In  
MCA No. 2024/2021-F

6. It is the case of the Petitioners that on 07.07.2010, when the Respondent no.7 approached the Petitioner no.2-Institute to join that they realised that the said Respondent had been deployed by the Respondent-State in the post of Reader that he had held prior to the closure of the M.Ed. Course. Similarly, on 12.07.2010, the Respondent no.6 approached the Petitioner no.2-Institute for joining in the aforesaid post. It was stated that the Respondent no.6 was joining without prejudice to his rights and contentions in Writ Petition no. 359 of 2009. It was at this stage that the Petitioners realised that the Respondent no.6 had filed the aforesaid Writ Petition before this Court, seeking a direction to the Respondent-State to either deploy him to the vacant post of Director of the State Council for Educational Research and Training (SCERT) i.e. the successor of SIE or to post him as a Principal of any Government College of Arts, Science and Commerce with protection of pay. Alternatively, it

was prayed that the Respondent no.6 be deployed to any other post commensurate to his qualifications and experience. The Petitioners then realised that the impugned orders had been issued by the Respondent-State.

7. By impugned order dated 06.07.2010, the Respondent-State stated that the Government had approved the restarting of M.Ed. Course in the Petitioner no.2-Institute and to redeploy the Respondent nos. 6 and 7 in the said Institute in their respective posts held prior to closure of the M.Ed. Course. It was further directed that if the Petitioner no.2-Institute was unable to restart the M.Ed. Course for any reason, the Respondent nos. 6 and 7 be redeployed in the Institute by accommodating them against the existing vacancies presently occupied by contract basis Teachers. It was further directed that till such time that the vacancies were available, the pay and allowances of Respondent nos. 6 and 7 shall be released by the Government through grant-in-aid to the Petitioner no.2-Institute.

8. By the impugned order dated 12.07.2010, the Respondent nos. 6 and 7 were relieved from their posts held in SIE/SCERT with a direction to join the Petitioner no.2-Institute immediately.

9. The Petitioners approached this Court by filing Writ Petition No. 589 of 2010 to challenge the said impugned orders and on 18.08.2010, this Court granted Rule in the Writ Petition. Interim relief was granted to the effect that the Petitioners shall not be compelled to restart M.Ed. Course in the Petitioner no.2-Institute and to employ Respondent nos. 6 and 7. It was clarified that the interim relief shall not affect the liability of the State to

release pay and allowances payable to the Respondent nos. 6 and 7. It is an admitted position, that the Respondent nos. 6 and 7 continued as employees of the SCERT till date.

**10.** Mr. S. G. Desai, the learned Senior Counsel appearing for the Petitioners in Writ Petition no. 589 of 2010, submitted that the impugned orders deserved to be quashed as they violated the fundamental right of the Petitioner nos. 1 and 2 guaranteed under Article 30(1) of the Constitution of India. According to the learned Senior Counsel appearing for the Petitioners, the impugned orders were an assault on the right of the said Petitioners to administer the Petitioner no.2-Institute. Attention of this Court was invited to a certificate dated 19.09.2007 issued by the National Commission for Minority Educational Institutions of the Government of India, certifying and declaring that the Petitioner no.2-Institute is a minority Educational Institute covered under Article 30 of the Constitution of India. On this basis, it was submitted that the minority character of the Petitioner no.2-Institute could not be disputed and the nature of the impugned orders was such that there was a clear violation of Article 30(1) of the Constitution of India in the present case.

**11.** The learned Senior Counsel invited attention of this Court to judgments of the Hon'ble Supreme Court in the case of *N. Ammad vs. The Manager, Emjay High School & Ors*<sup>1</sup>, *Secy. Malankara Syrian Catholic College vs. T. Jose & Ors.*<sup>2</sup>, and *Manager, Corporate Educational Agency vs. James Mathew*

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<sup>1</sup> (1998) 6 SCC 674

<sup>2</sup> (2007) 1 SCC 386

*& Ors*<sup>3</sup>. The learned Senior Counsel also relied upon the Judgments of this Court in the case of *Ivy C. Da Conceicao vs. State of Goa*<sup>4</sup> and *All Goa Private Schools Pre-Primary and Primary Teachers' Association & Ors. Vs. State of Goa & Ors.*<sup>5</sup>.

12. By relying upon the said judgments, the learned Senior Counsel for the Petitioners submitted that appointment of teaching staff was part of the right to administer of a minority institution like the Petitioner no.2-Institute and the same stood blatantly violated in the present case when Respondent-State sought to foist Respondent nos. 6 and 7 on the Petitioner no.2-Institute. It was further submitted that when the M.Ed. Course was permanently discontinued and closed down, due to poor response in admission, there was no reason for the Respondent-State to have suddenly issued the impugned order directing the Petitioner no.2-Institute to restart the M.Ed. Course and that this direction was also a violation of the right guaranteed to the Petitioner no.2-Institute under Article 30(1) of the Constitution of India. It was further submitted that the Respondent nos. 6 and 7 were employees of the SCERT and there was no reason for relieving them from their posts and directing them to join the Petitioner no.2-Institute immediately. It was further submitted that by way of additional affidavit, the Petitioners had placed on record before this Court their reservations about the Respondent nos. 6 and 7 re-joining at the Petitioner no.2-Institute, in view of the experience that the Petitioner no.2-Institute had when Respondent nos. 6 and 7 were employed for the M.Ed. Course.

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3 (2017) 15 SCC 595

4 2012 SCC OnLine BOM 1180

5 1990 MhLJ 353



The learned Senior Counsel for the Petitioner emphasised upon Article 13(3)(a) of the Constitution of India to contend that even orders in the nature of the impugned orders issued by the Respondent-State were covered under the said Article and if the same were in derogation of the fundamental right guaranteed to the institute under Article 30(1) of the Constitution of India, such orders deserved to be set aside.

**13.** Mr. Faldessai, the learned Additional Government Advocate appearing on behalf of the Respondent-State, submitted that the Petitioners were not justified in claiming that their fundamental right under Article 30(1) of the Constitution was violated. It was submitted that when the Petitioners themselves had closed down the M.Ed. Course on the direction given by the Respondent-State, there was no reason for them to claim that when a direction was given to restart the course, it violated their fundamental right. He submitted that the salaries and the emoluments of the Respondent nos. 6 and 7 were to be paid from the grant-in-aid provided to the Petitioner no.2-Institute and, therefore, there was no basis for the Petitioners to claim that their fundamental rights stood violated. It was submitted that the said Respondents were, in fact, initially selected and appointed by the Petitioners themselves and that, therefore, they could not turn around and claim that the said Respondents were being unfairly foisted upon them by the Respondent-State. The minority status of the Petitioner no.2-Institute was not seriously disputed, but it was claimed that the impugned orders did not in any manner violate the fundamental right guaranteed under Article 30(1) of the Constitution of India.

14. As regards the judgments on which reliance was placed by the learned Senior Counsel appearing for the Petitioners, it was submitted that most of the judgments pertained to the right of a minority Institute to appoint a Principal or Head of the Institution and that the same logic could not be extended to the appointment of the teaching staff and employees. It was further submitted that when the Petitioner no.2-Institute was taking grant in aid from the State, it was bound to follow the directions given by the State in respect of restarting the M.Ed. Course and employing the Respondent nos. 6 and 7 in the Petitioner no.2-Institute.

15. Ms. A. Agni, the learned Senior Counsel appeared on behalf of the Respondent no.2-University and submitted that merely because the State provided aid to the Institution, it did not amount to change in the minority character or status of the Institution.

16. Mr. J. Supekar, learned Counsel appeared on behalf of Respondent no. 6 and Mr. Raghunandan, learned Counsel appeared on behalf of the Respondent no. 7.

17. The learned Counsel for the said Respondents submitted that their clients were unnecessarily caught in the controversy and dispute between the Petitioners and the Respondent-State, as a result of which, they had continued in the employment of the SIE/SCERT for all these years. The learned Counsel appearing for the Respondent no.6, who is also Petitioner in Writ Petition no. 359 of 2009, submitted that the prayer made in the said Writ Petition would have to be pressed in case Writ Petition no. 589 of

2010 filed by the said Institute was allowed and the orders impugned therein stood set aside. It was submitted that for all these years, due to the interim order passed by this Court in Writ Petition no. 589 of 2010, the Respondent nos. 6 and 7 had continued as employees of the SCERT, but they were not granted any designation or post due to which they had suffered embarrassment and humiliation. Attention of this Court was invited to a Notification published on 30.07.2020 in the Official Gazette of the Respondent-State, whereby the State had granted sanction to creation of posts after restructuring of SCERT. It was submitted that posts of Director-Professor, Jt. Director (Academic)-Professor, Associate Professors and Assistant Professors were sanctioned and that, in the interest of justice, this Court may direct the Respondent-State to consider Respondent nos. 6 and 7 for any of the aforesaid four posts in the SCERT, so that the said Respondents would be absorbed in specific posts commensurate to their qualifications and experience.

**18.** Before advertng to the contentions raised on behalf of the rival parties, it would be appropriate to refer to the position of law laid down by the Hon'ble Supreme Court in the context of the fundamental right available to a minority institution under Article 30(1) of the Constitution of India. This is particularly in the backdrop of the admitted position that in the present case, the Petitioner no.2-Institute is receiving grant-in-aid from the State and it needs to be examined as to whether fundamental right guaranteed under Article 30(1) of the Constitution of India can be said to be truncated in any manner on the basis that Petitioner no.2-Institute is receiving aid from the State.

19. In the case of *Secy. Malankara Syrian Catholic College* (supra), the Hon'ble Supreme Court considered this precise question. In fact, of the two questions framed for consideration in the said case, the question relevant for the present case reads as follows:

*“(i) To what extent, the State can regulate the right of the minorities to administer their educational institutions, when such institutions receive aid from the State?”*

20. This question was answered by the Supreme Court after taking into consideration various earlier judgments and the general principles culled out from such judgments, particularly judgments of the Hon'ble Supreme Court in the case of *T.M.A. Pai Foundation vs. State of Karnataka*<sup>6</sup> and *P. A. Inamdar vs. State of Maharashtra*<sup>7</sup>, were summarised in paragraph 19, which reads as follows:

*“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*

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<sup>6</sup> (2002) 8 SCC 481

<sup>7</sup> (2005) 6 SCC 537

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

*(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be*

*regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).*

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

*(v) Extention 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).*

**21.** Thereafter, in paragraph 21 of the said judgment, the Hon'ble Supreme Court recapitulated the permissible extent of regulation by the State in respect of employees of Minority Educational Institutions receiving aid from the State. The said paragraph reads 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 crystalised 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.”*

22. This position of law has been reiterated in recent judgments of the Hon’ble Supreme Court in the case of ***SK. Mohd. Rafique vs. Managing Committee, Contai Rahamania High Madrasah & Ors.***<sup>8</sup> and ***Christian Medical College Vellore Association vs. Union of India & Ors.***<sup>9</sup>. The said position of law clearly indicates that Minority Educational Institutions under Article 30(1) of the Constitution of India have a right to appoint teaching staff including Teachers/Lecturers and non-teaching staff, despite receiving aid from the State, so long as the procedure for making such appointments is fair and transparent. Such Minority Institutions have a guaranteed right of overall administrative control over the staff and to administer the educational institutions. The question that arises for consideration in the present case is, as to whether the orders impugned in Writ Petition no. 589 of 2010 amount to violation of the fundamental right guaranteed to the Petitioner no.2-Institute under Article 30(1) of the Constitution of India, on the touchstone of the above quoted principles recognised by the Hon’ble Supreme Court.

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8 2020(6) SCC 689

9 2020(8) SCC 705



**23.** A perusal of the impugned order dated 06.07.2010 shows that the Respondent-State directed the Petitioner no.2-Institute to restart the M.Ed. Course and to redeploy Respondent nos. 6 and 7 as Readers in the said Institute. It was further directed that, if for some reason the M.Ed. Course could not be restarted, the Respondent nos. 6 and 7 shall be accommodated against existing vacancies. By the impugned orders dated 12.07.2010, the Respondent nos. 6 and 7 stood relieved from the employment of SIE/SCERT, directing them to join the Petitioner no.2-Institute immediately. The tenor of the impugned orders was such that a *fait accompli* was imposed on the Petitioner no.2-Institute.

**24.** The backdrop in which the said orders were issued is significant for the reason that the Respondent-State itself had directed the Petitioner no.2-Institute to initially temporarily discontinue the M.Ed. Course and thereafter to permanently close down the same in view of poor response to admissions in the said course. There does not appear to be any reason as to why suddenly the Respondent-State did a *volte-face* and issued the impugned orders. There is no material on record to indicate that the response to the M.Ed. Course had suddenly improved or that the Petitioner no.2-Institute approached the State for restarting the said course. It appears that the Respondent-State wanted to somehow redeploy or readjust the Respondent nos. 6 and 7, taking them out of the employment of the SIE/SCERT, to force the Petitioner no.2-Institute to accept them in employment, either by restarting the M.Ed. Course or if that was not possible, to redeploy the said Respondent against existing vacancies in the Petitioner no.2-Institute.

**25.** It was perhaps because Respondent no.6 in Writ Petition no. 589 of 2010 had already approached this Court by filing the said Writ Petition no. 359 of 2009, seeking a direction to the Respondent-State for being posted in appropriate post commensurate to his qualifications and experience, that the Respondent-State hastily issued the impugned orders. In fact, while seeking to join the Petitioner no.2-Institute in pursuance of the impugned order dated 12.07.2010, the Respondent no.6 had stated that he would be joining without prejudice to his rights and contentions in Writ Petition no. 359 of 2010.

**26.** When the entire factual backdrop of the present cases is appreciated in the proper perspective, it comes to light that the Respondent-State acted in haste and in an arbitrary manner to force the Petitioner no.2-Institute, a Minority Institution, not only to restart the M.Ed. Course and to accept Respondent nos. 6 and 7 in its employment, but to further direct that even if the said course could not be restarted, the Respondent nos. 6 and 7 would have to be adjusted in the existing vacancies in the Petitioner no.2-Institute. The manner in which the Respondent-State acted in the present case, amounts to clear violation of the fundamental right guaranteed to the Petitioner no.2-Institute under Article 30(1) of the Constitution of India.

**27.** The learned Additional Government Advocate is to some extent justified in stating that the Petitioners may not rely on the judgments of the Hon'ble Supreme Court in the cases of **N. Ammad** (supra) and **James Mathew** (supra) because the said cases specifically concern the right of a Minority Institution to choose a Principal or Headmaster or Head of an Institution as in

the present case, the Respondent nos. 6 and 7 were not being appointed on any such post. But, the principles summarised and laid down by the Hon'ble Supreme Court in the case of ***Secy. Malankara Syrian Catholic College*** (supra) specifically recognise the right of a Minority Institution to appoint the teaching staff including Teachers and Lecturers. The said position of law has been reiterated in the aforesaid recent judgments of the Hon'ble Supreme Court, thereby indicating that the Respondent-State could not have forced the Petitioner no.2-Institute to accept Respondent nos. 6 and 7 as employees. The direction to restart the M.Ed. Course without any plausible reason, when it was discontinued due to poor response also indicates an unwarranted interference in the administration of the Petitioner no.2-Institute, which is undisputedly a minority institution.

**28.** There is also no substance in the contention raised on behalf of the Respondent-State that when the petitioner no.2-Institute had accepted the direction of the State to close down the M.Ed. course, it was bound to obey the direction to re-start the same. In a given case, a minority institution could have continued such a course despite the direction of the State to discontinue the same, for some special reasons, including the interest of the minority community. At worst, such a minority institution would have to do so from its own resources. But, the converse cannot be forced on a minority institution and employees can certainly not be foisted on such an institution like the Petitioner No.2-Institute, as it would amount to violation of its right guaranteed under Article 30(1) of the Constitution of India. The arbitrariness on the part of the Respondent-State is writ large in the facts of the present case, because the M.Ed. course was closed down due

to poor response, while it was suddenly sought to be restarted without any material on record to show improvement in the response or a sudden demand for the said course. Thus, viewed from any angle, the impugned orders are found to be unsustainable.

**29.** The judgments of this Court on which the learned Senior Counsel for the Petitioner has placed reliance are also in line with the aforesaid position of law laid down by the Hon'ble Supreme Court and, therefore, the said judgments also support the contentions raised on behalf of the Petitioners. Thus, it is found that the impugned orders are unsustainable.

**30.** But, at the same time, we are of the opinion that the Respondent nos. 6 and 7 cannot be left high and dry. There is substance in the contention raised on their behalf, that for all these years, due to the dispute and controversy between the Petitioners in Writ Petition no. 589 of 2010 and the Respondent-State, they have suffered the consequence of being deprived of specific posts commensurate to their qualifications and experience. For all these years, the said Respondents have continued as employees of the erstwhile SIE and now its successor the SCERT, but they have not been granted specific posts, thereby depriving them of various benefits.

**31.** The Notification published by the Respondent-State on 30.07.2020 undisputedly sanctions creation of aforementioned four categories of posts in the SCERT upon its restructuring. Since the Respondent nos. 6 and 7 have worked in SCERT and its predecessor SIE for all these years, it would be in the interest of

justice that the Respondent-State is directed to consider appointing the said Respondents on any of the four posts i.e. Director-Professor, Jt. Director (Academic)-Professor, Associate Professors and Assistant Professors, as per their qualifications and experience.

**32.** In view of the above, Writ Petition No. 589 of 2010 is allowed and the impugned orders dated 06.07.2010 and 12.07.2010 are quashed and set aside.

**33.** The Respondent-State is directed to consider appointing Respondent nos. 6 and 7 on any of the four aforementioned posts sanctioned as per Notification published on 30.07.2020, after taking into consideration their qualifications and experience. The said exercise be carried out and orders be passed within a period of three months from today.

**34.** Writ Petition no. 359 of 2009 stands disposed of in view of the aforesaid directions. Pending applications, if any, stand disposed of. Rule made absolute in above terms.

**SMT. M. S. JAWALKAR, J.**

**MANISH PITALE J.**

ANDREZA PEREIRA Digitally signed by ANDREZA PEREIRA  
Date: 2021.10.22 11:27:41 +05'30'