

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10935 of 2021

1. Reena Kumari, Daughter of Sharvan Kumar Singh, Resident of Binova Nagar, Behind A.N.M.C.H., P.S.- Magadh Medical, District- Gaya.
2. Mozaffar Ahmad, Son of Khelafat Hussain, resident of Chatarghat, P.S.- Chakand, District- Gaya.

... .. Petitioners.

Versus

1. The State of Bihar through the Principal Secretary, Department of Education, Government of Bihar, Patna.
2. The Special Secretary, Education Department, Govt. of Bihar, Patna.
3. The Magadh University, Gaya through its Registrar.
4. The Vice Chancellor, Magadh University, Gaya.
5. The Registrar, Magadh University, Gaya.
6. The Principal, Mirza Ghalib College, Gaya.
7. Mirza Ghalib College, Gaya through its Secretary, Governing Body
8. The Governing Body, Mirza Ghalib College, Gaya through its Secretary.
9. Shabi Arfeen Shamsi Male, aged about not known to the Petitioners, Presently posted as Secretary, Governing Body, Mirza Ghalib College, Gaya.
10. Akeel Ahmad Male, aged about not known to the Petitioners, Presently posted as Assistant Professor, in the Department of Chemistry, Mirza Ghalib College, Gaya.
11. Md. Shabbir Alam, Male, aged about not known to the Petitioners, Presently posted as Assistant Professor, in the Department of Persian, Mirza Ghalib College, Gaya.

... .. Respondents.

Appearance :

For the Petitioners	: Mr. Tej Bahadur Singh, Senior Advocate Mr. Prince Kumar Mishra, Advocate
For the Respondent Nos.7 to 11:	Mr. Y.V. Giri, Senior Advocate Ms. Shristi Singh, Advocate Mr. Ashish Giri, Advocate
For the Magadh University	: Mr. Sidhartha Prasad, Advocate
For the Mirza Ghalib College	: Mr. Abhinav Shrivastava, Advocate
For the State	: Mr. Prabhakar Jha, GP-27 : Mr. Umesh Narayan Dubey, AC to GP-27

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV JUDGMENT

Date :08-10-2024

Heard Mr. Tej Bahadur Singh, learned senior counsel, aptly



assisted by Mr. Prince Kumar Mishra, learned Advocate, for the petitioners, Mr. Y.V. Giri, learned senior counsel assisted by Ms. Shristi Singh, learned Advocate, for the respondent nos.7 to 11, Mr. Abhinav Srivastava, learned Advocate, for the Mirza Ghalib College, Gaya, Mr. Sidhartha Prasad, learned Advocate, for the Magadh University and Mr. Prabhakar Jha, learned GA-27, for the State.

2. By filing the present petition under Article-226 of the Constitution of India, the petitioners pray for the following relief/reliefs:

(i) For issuance of a writ in the nature of Certiorari, quashing the Advertisement published in the Hindi daily Hindustan dated 06/10/2019 issued by Secretary, Governing Body, Mirza Ghalib College, Gaya, whereby and whereunder it has been informed that the advertisement issued in March 2018 and for which interview were held in February 2019 and for which panel was prepared – have been cancelled by the Governing Body of the College, without specifying any reason as to what were the compelling circumstances which warranted cancellation of the entire selection process, in which petitioners have succeeded.



(ii) For issuance of writ in the nature of Certiorari, quashing the Advertisement published in the Hindi daily Hindustan on 06/10/2019 for recruitment to the post of Assistant Professor in the Departments of Persian & Chemistry in Mirza Ghalib College, Gaya, whereby and whereunder fresh applications have been invited for appointment by cancelling the earlier Advertisement issued in March 2018 and for which interview were held in February 2019, in completely arbitrary and illegal manner and for which no justifiable reason much less legally sustainable reasons have been provided.

(iii) For issuance of appropriate writ in nature of mandamus or any other order, holding and declaring that the entire selection process has been conducted in the breach of Section 57-B of Bihar State University Act, 1976 as quorum required for selection committee was totally missing, rendering the constitution of interview board, illegal and arbitrary.

(iv) For issuance of writ in the nature of mandamus directing and commanding upon the Secretary, Governing Body, Mirza Ghalib College, Gaya to produce the minute of second round of selection process, which has been kept by him in



iron chest and merit list of same was not published and after such production be quashed as same has been prepared ignoring the experience candidates like petitioner's.

(v) For issuance of writ in the nature of mandamus directing and commanding upon the respondent authorities, particularly the Secretary, Governing Body, Mirza Ghalib College, Gaya to implement the result of Advertisement issued in March 2018 and for which interview were held in February 2019 forthwith— as the selected candidates have committed no fault and they fulfill all the requirements as per prevailing UGC norms and any delay in their appointment would be per se illegal.

(vi) For issuance of writ in the nature of mandamus, directing upon the Secretary, Governing Body, Mirza Ghalib College, Gaya to produce the minutes of Constitution of selection committee as per section 57 B of the Bihar State University Act.

(vii) For issuance of appropriate writ in the nature mandamus or any other appropriate order, restraining the respondent College from taking any coercive steps like removal of Petitioners



from the post of Assistant Professor (Adhoc) on which they are presently working or termination, during the pendency of the writ petition.

(viii) To any other relief or relief which the petitioners may be found entitled to in the facts and circumstances of the case;

(ix) Cost of this litigation.

Fact of the case

3. The brief fact emanates from the case record is that petitioner no.1 was appointed as Assistant Professor for the post of chemistry on *ad hoc* basis on 02.01.2018 by the orders of Secretary, Governing Body, Mirza Ghalib College, Gaya, and joined the College as Assistant Professor on 03.01.2018 and started discharging her duties to the satisfaction of all concerned and continue to do so till date. While petitioner no.1 was working as Assistant Professor, she was given several responsibilities including the assignment to see the renovation of departments of vocational courses etc., which she successfully completed. Petitioner No.1 was given appreciation letter by the College administration for successfully handling several responsibilities including successful conduct of webinar during the lock-down in COVID.

3.1. Similarly petitioner no.2 has completed his PhD in the year



2014. Prior to this, petitioner no.2 was appointed as Assistant Professor on 05.03.2011 in the Department of Persian studies vide orders of Secretary, Governing Body, Mirza Ghalib College, Gaya, and joined as Assistant Professor in the Department of Persian on the same day. It is stated that petitioner no.2 continued to discharge his function as Assistant Professor in the Department of Persian studies to the satisfaction of all concerned authorities and continue to do so till date. An advertisement was published in the Hindi daily i.e. Hindustan in the month of March, 2018 by the Secretary, Governing Body, Mirza Ghalib College, Gaya, inviting applications for appointment to the post of Assistant Professor in the Department of Urdu, Persian, Hindi, Psychology, Political Science, Economics, History, Philosophy, Physics, Chemistry, Botany, Mathematics and Commerce. The applications were required to be filed before 26th March, 2018. It was stipulated in the advertisement that preference will be given to experience teachers.

3.2. In response to the aforesaid advertisement, petitioner no.1 made application for consideration as Assistant Professor in the Department of Chemistry and petitioner no.2 made application for consideration as Assistant Professor in the Department of



Persian. Petitioners have the requisite qualification as per the prevailing UGC norms for appointment to the post of Assistant Professor.

3.3. Upon due verification of the candidature of petitioners and considering the eligibility requirements being fulfilled by them, both were called for interview. Petitioner no.1 was called to appear for the interview on 24th February, 2019 at 9 AM in the premises of Mirza Ghalib College, Gaya. Similarly, petitioner no.2 was directed to appear for the interview on 17th February, 2019 at 9 AM in the premises of Mirza Ghalib College, Gaya. Petitioners were directed to appear before the interview board with all original documents for verification along with passport size photograph. Petitioners were also required to produce a xerox copy of the certificate from the officials of the University concern for approval of the Ph.D. as per the latest UGC regulation act at the time of interview. It was further indicated in the interview letter that no T.A. will be admissible.

3.4. Upon due completion of the interview, on 24.02.2019, for the post of Assistant Professor, final merit list was published taking into account the Marks of Academic qualifications and Marks of Interview. In the list of 20 candidates, who have applied for the post of Assistant Professor in the Department of



Chemistry, petitioner no.1, secured second position with a total marks of 88. On the basis of performance before the interview board held on 24th February, 2019 and the academic marks including publications and teaching experience, panel of experts recommended her name for the post of Assistant Professor in the order of merit for the Department of Chemistry.

3.5. Similarly, upon due completion of the interview held on 17.02.2019 for the post of Assistant Professor in the Department of Persian studies, final merit list was published taking into account marks of academic qualifications and marks of interview. Out of 9 candidates, petitioner no.2, secured fourth position. It is stated that the panel of experts submitted the report on the basis of performance before the interview board held on 17th February, 2019 and the academic marks including publications and teaching experience for the post of Assistant Professor in order of merit.

3.6. However, no appointments were made as per the aforesaid final results and the matter was kept pending. Petitioners were hopeful that considering their position in merit list and number of vacancies in the respective departments, they would be appointed as Assistant Professors.

3.7. All of sudden, vide Advertisement published in Hindi daily



i.e. Hindustan dated 06.10.2019, fresh applications were invited for appointment to the post of Assistant Professors in the respective departments from eligible candidates, who possessed the prevailing UGC criteria. It was further stated that the applications and all testimonials must reach vide 25th October, 2019 through registered post only. In the same advertisement, it was mentioned that the Advertisement issued in March, 2018 and for which interview were held in February, 2019 have been cancelled by the Governing Body of the college due to unavoidable reasons.

3.8. By filing a supplementary affidavit on behalf of the petitioners, *inter alia*, it is alleged that after filing of the present writ application and bringing into light the irregularities committed in the second round of selection process drawn in furtherance of advertisement dated 06.10.2019 (Annexure-P/9), the petitioners have been subjected to undue coercion by the members of governing body including Secretary and the Chairman of the governing body of the college. It is further stated in the supplementary affidavit that Aziz Ahmad, who is chairman of the governing body ensured that his son-in-law Ehsanullah Danish is selected as Assistant Professor in the department of the Urdu. The aforesaid Ehsanullah Danish was



placed in the second merit panel for the Urdu subject, even though there was a candidate at Serial No.1, Mr. Ehsanullah Danish, being the close relative of Chairman, was shown favouritism by being selected in supersession of the candidate place at Serial No.1. For his selection date of interview for subject Urdu, which was initially schedule on 08.02.2021 was extended to 20.02.2021, the candidate who was above in the merit panel was deliberately not inform, no notice was published in this regard and in the most secretive clandestine manner interview was conducted on 20.02.2021 so that Mr. Ehsanullah Danish could appear and be selected finally. It is further stated that the teachers representative, namely, Sujat Ali Khan, who is the teachers representative and was also Vice Principal of the College, was part of the selection committee for selection of Assistant Professor for subject Psychology in which his cousin sister, namely, Khursid Jahan was finally selected as Assistant Professor. The aforesaid Sujat Ali Khan was himself sitting as member of selection committee while conducting interview and finalizing the selection process of his cousin sister namely Khursid Jahan as Assistant Professor in Psychology. It is further stated that Salma Jafar, who has been selected as Assistant Professor in Political Science, who is niece of Wasibul



Haque (Member of selection committee), is also demonstrative of fact regarding the favoritism, which has been the sole guiding factor for selection of the Assistant Professor through the advertisement dated 06.10.2019 (Annexure-P/9). The said Wasibul Haque, who was member of selection committee, was present at the time of interview and has ensured that his niece Salma Jafari be appointed as Assistant Professor in Political Science.

3.9. It is further stated that Petitioner No.1, after filing of the writ application, was coerced and threatened by Respondent No.9 for withdrawing the writ application. Petitioner No.1 was threatened to the extent that she belongs to fair gender and she could be subjected to anything unpleasant any time for her conduct of exposing the illegalities in the selection process. The petitioner No.1 has in her possession the electronic evidence in the form of telephonic conversation with Secretary of the Governing Body (Respondent No.9), wherein she has been coerced for withdrawing the writ application, else she should be ready to face the consequences. Further, she was made to feel humiliated by taking away her classes and allotting her classes to the newly appointed lecturer barely having a couple of months of experience. The extent of the stress, duress and



coercion was such on Petitioner No.1 that she has to finally resign and leave the college after a month of filing the writ application. Other infirmities has also been brought on record.

Contention on behalf of the Petitioners

4. Mr. Tej Bahadur Singh, learned Senior counsel appearing for the petitioners submitted that selection committee for conducting the interview has been prepared in complete breach of provisions contained in Section 57 -A & 57-B of Bihar State Universities Act. The selection committee was not comprised as per the statutory mandate as there was no university representative. At no stage any consultation with University for preparation of Selection Committee for the interview board was made.

4.1. It is next submitted that the Selection Committee comprising of a nominee of the Governing body (Chairman), Principal of the College, Head of the concerned Department, 3 Subject Experts from the panel of 5 names from the list approved by the University's Academic Council and duly recommended by the Vice Chancellor as mandated by Bihar State Universities Act 1976, was not done. Till date it is not clear as to how the experts were selected. There is a complete lack of transparency and objectivity in the mode and manner of



selection.

4.2. It is next submitted that in the selection committee, Principal of the College, respective Heads of Departments were absent. Apart from it, how the selection of subject expert was made is not clear. Entire selection committee was constituted in breach of Bihar State Universities Act, more particularly Section 57-A & 57-B of the said Act.

4.3. It is next submitted that in absence of duly constituted selection committee, any appointment made is required to be set aside. It is submitted that ignoring all the relevant rules and regulation, entire selection process has been carried out, which is in teeth of provisions contained in the Bihar State Universities Act.

4.4. It is further submitted that after selection, large number of complaints were made. The Honourable Chancellor constituted an inquiry committee vide Letter dated 17.06.2021 and, thereafter, vide Letter dated 26.06.2021, Secretary, Governing Body, Mirza Ghalib College, Gaya was asked to submit his response. However, the response submitted by the college was found to be vague and evasive.

4.5. It is further submitted that, thereafter, inquiry committee vide its Letter dated 13.07.2021, directed, Secretary of the



Governing Body, to send reply of the 20-point questionnaire seeking details of the appointment process, composition of Selection Committee and other relevant details. However, the secretary of the governing body did not provide any information and in apparent and conscious effort tried to mislead the enquiry committee and concealed the relevant facts. The video footage off the interview has gone missing. Relevant records like tabulation seat, proof of proper dispatch of appointment letter, basis of Selection of Expert, etc. were not provided by the college.

4.6. Learned senior counsel for the petitioners relied upon the judgement passed in the case of **Dr. (Major) Meeta Sahay Vs. State of Bihar** reported in **(2019) 20 SCC 17** and in particular para-17 thereof, in support of his submission. It is, accordingly, submitted that all appointments made pursuant to advertisement dated 06.10.2019 is illegal and required to be set aside.

Contention on behalf of Respondent Nos.10 & 11

5. Mr. Y.V. Giri, learned senior counsel appearing on behalf of the Respondent Nos. 10 and 11 submitted that the present writ application is not maintainable, as the college in question is a recognized minority institution, protected under Article 30 of the Constitution of India. Furthermore, since the petitioners



participated in the selection process, they are precluded from pursuing this writ application, as it is barred by the principles of waiver, acquiescence, and estoppel. This principle was affirmed by the Hon'ble Supreme Court in the case of **Dhananjay Malik and Ors. vs State of Uttaranchal and Ors. (2008) 4 SCC 171** [para 7 to 9, 10, and 11].

5.1. It is further submitted that the writ petition rests on the unfounded assumption that the previous advertisement was cancelled, and a new one was issued to promote nepotism. However, this claim is disproved by the fact that Respondent No. 11 was already selected under the 2018 advertisement, in which his name appeared at the top of the merit list for the subject of Persian, for which only one post was available. Thus, the cancellation of the 2018 advertisement and the subsequent issuance of a fresh one did not place Respondent No. 11 in a more advantageous position, negating the argument of any undue influence or prejudice against the petitioners. Additionally, Respondent No. 10 is a legitimate and meritorious candidate who qualified for the post of Assistant Professor in Chemistry without any external assistance.

5.2. Mounting the attack, learned senior counsel further submitted that the petitioners lack the locus standi to maintain



the present writ petition. During the selection process under the 2018 advertisement, the selection committee merely recommended their names, along with others, for appointment to the post of Assistant Professor. However, no appointments were made as a result, and therefore, no rights were vested in the petitioners. By their own admission, they were only part of a panel of candidates, which does not confer any enforceable right upon them. Furthermore, it is well-settled law that an employer has the authority to cancel any selection process, and such decisions cannot be challenged in a writ petition, particularly when no right has vested in any candidate. Additionally, the subsequent selection process was publicly notified and conducted in accordance with Article 14 of the Constitution of India, ensuring fairness and transparency.

5.3. He further submitted that the college, as a minority institution, has the constitutional right under Article 30 to administer its affairs independently. Neither the State nor the University has the authority to interfere in its administration, and the decisions made by the governing body of the minority institution are not subject to judicial review. If the appointed Assistant Professors meet the required qualifications (as is the case with the respondents), any interference in the selection



process would violate the institution's autonomy and rights. Such interference could also set a dangerous precedent, opening the floodgates to unnecessary and impermissible litigation.

5.4. It is further submitted that both the respondents are well qualified, eligible and possesses all requisite criteria against the advertisement advertised by the concerned college on 06.10.2019 for the post of Assistant Professors in various subjects. The respondent no. 10 possesses M.Sc. degree in the subject of chemistry, as well as Ph.D. degree also in accordance with provisions contained in UGC (Minimum Standards and Procedure for Award of M.Phil./Ph.D. Degree) regulations, 2009, from the Deen Dayal Upadhyay Gorakhpur University, Gorakhpur, UP. Whereas, the Respondent No. 11 possesses B.A. (Hons.) in Persian language; M.A. (Hons.) in Persian Language; M.Phil as well as Ph.D degree also in accordance with provisions contained in UGC (Minimum Standards and Procedure for Award of M.Phil./Ph.D. Degree) regulations, 2009, from the Jawaharlal Nehru University, New Delhi.

5.5. Learned senior counsel further submitted that both the respondents nos. 10 and 11 have been duly appointed on the post of assistant professor in their respective subjects based on recommendation made by the selection committee constituted in



the said respect. Pursuant to this they did not have any role to play in the matter of publication of advertisement or anything connected with the constitution of selection committee and other ancillary matters pertaining to the matter of selection of candidates against the post of Assistant Professor in different subjects at the college. The writ petitioners have filed this writ petition only after they have not been succeeded in the selection process against the posts of Assistant Professors, have the writ petitioners approached this Court to achieve what they could not through the selection process.

5.6. It is further submitted that the Respondent No. 10 has been duly appointed and is currently serving as an Assistant Professor in Chemistry at the college. However, it is important to note that Respondent No. 10 neither applied for nor participated in the earlier selection process conducted by the concerned authorities through the advertisement issued in March 2018. Consequently, no comparative evaluation was made between Respondent No. 10 and Petitioner No. 1.

5.7. It is further submitted that mere participation in the selection process and securing a place on the merit list does not grant Petitioner No.1 an indefeasible right to the position, even though Petitioner No. 1 ranked second on the merit list prepared



based on the selection committee's recommendations. As the entire selection process conducted pursuant to the earlier advertisement issued in March, 2018 was subsequently cancelled, no right to appointment arises in Petitioner No. 1's favour.

5.8. It is further submitted that in the year, 2018, a vacancy for the post of Assistant Professor in Persian was advertised. Both Respondent No. 11 and Petitioner No. 2, along with others, participated in the selection process. Following this process, Respondent No. 11 was declared successful and was ranked first in the panel prepared based on the experts' recommendations, while Petitioner No.2 was ranked fourth. As a result, Respondent No.11 was recommended for the only available post of Assistant Professor in Persian. However, no action was taken on this panel as the selection process was later cancelled. Petitioner No. 2 ranked fourth, while Respondent No. 11 ranked first, there was no possibility for Petitioner No. 2 to have gained any advantage, even if the panel had been acted upon and appointments made. In that case, Respondent No. 11 would have been given preference for the post of Assistant Professor in Persian at the College.

5.9. It is further submitted that the earlier selection process



was cancelled based on a decision taken by the concerned authorities at the College. Subsequently, a new advertisement dated 06.10.2019 was issued following a decision by the College's Governing Body, which the writ petitioners did not challenge at any point. Furthermore, the allegations made against various office bearers are unsupported by any material evidence on record.

5.10. It is reiterated that following the publication of the advertisement dated 06.10.2019, the writ petitioners, along with others, participated in the selection process. They claim that the selection committee members did not meet the criteria under Section 57B of the Bihar State Universities Act, 1976, is entirely unfounded. The selection committee was properly constituted, including subject experts, and the selection process was conducted based on the committee's recommendations. Neither Respondent No. 10 nor Respondent No. 11 were members of the College's Governing Body or the selection committee. Their appointments as Assistant Professors were based solely on their merit in comparison to other candidates who participated in the selection process, and their appointments were made in accordance with the law.

5.11. Learned senior counsel further submitted that, in line with



the fundamental right guaranteed under Article 30 of the Constitution of India, the Bihar State Universities Act, 1976 does not mandate prior approval from any selection committee for the appointment of teachers in minority institutions. The authority to make such appointments, along with related decisions, rests solely with the governing body, and cannot be overridden by the selection committee. Any involvement of the selection committee is purely formal and advisory, not obligatory. Nevertheless, despite not being required to involve a selection committee, the governing body, in the spirit of fairness and in adherence to the principles of Article 14 of the Constitution of India, included a selection committee comprising independent experts. This committee recommended the appointment of the respondents. It is noteworthy that the same process was followed for the 2018 advertisement, in which the petitioners also participated without raising any objections of a similar nature.

5.12. It is further submitted that it is a well-established principle of law that neither the State nor any other authority can, under the guise of implementing regulatory measures, undermine the administrative autonomy of minority institutions or interfere with their core management in a manner that renders



the institution's right to administer its affairs meaningless or ineffective. It is the inherent and fundamental right of minority institutions to manage their employees and teachers, including decisions related to appointments. The imposition of external authority over the institution's governing body, and making such external decisions final and binding, constitutes an undue interference. Such actions are impermissible in light of the protection granted under Article 30 of the Constitution of India and the provisions of the Bihar State Universities Act, 1976. Consequently, any interference with the Governing Body's decisions regarding appointments would be legally untenable.

5.13. It is further submitted that the regulatory measures concerning conditions of service, such as prescribing minimum qualifications for staff, setting pay scales, and ensuring safeguards for the removal of employees, are permissible. However, such regulation cannot extend to reviewing the appointment process itself, as this would constitute undue interference, particularly when the eligibility of the selected candidates is not in question.

5.14. In support of his submission, he relied on various decisions of the Hon'ble Supreme Court submitting that it is a well-established legal principle that the employer has discretion



in the selection process, which cannot be challenged, particularly when the selection is made by an expert committee. The legal position, as affirmed in **Sajeesh Babu K. v. N.K. Santhosh & Ors., (2012) 12 SCC 106**, holds that deference must be given to the recommendations of an expert committee comprising distinguished specialists in the field, as they possess a deeper understanding of the technicalities and nature of the work involved. Moreover, as previously mentioned, the writ petitioners, having already participated in the recruitment process, are barred from challenging the selection process, the method adopted, or its outcome. This legal principle has been upheld by the Hon'ble Supreme Court in ***Ramesh Chandra Shah & Ors. v. Anil Joshi & Ors., (2013) 11 SCC 309 [para 18, 20, 21 and 24]***.

5.15. He further submitted that the writ petitioners have not alleged that the respondents intentionally or inadvertently contributed to any discrepancies in the selection process, if any existed. In fact, no fault can be attributed to the respondents throughout the process. Therefore, since a right has accrued in favour of the respondents, who have been fulfilling their duties as Assistant Professors, they should not be deprived or penalized, especially when they are not at fault.



Contention on behalf of the University

6. *Per contra*, Mr. Siddhartha Prasad, learned counsel appearing for the Magadh University submitted that Mirza Ghalib College, Gaya is an affiliated college under the Magadh University and a Minority Institution. The said college is getting benefit of deficit grant in aid by the State Government and employees of the college are being paid salary as like as the employees of constituent colleges.

6.1. It is further submitted that prior to 2007, Section 57 A of the Bihar State Universities Act provided for appointment of teacher in Affiliated College including Minority Institution "Appointment of teacher of affiliated college not maintained by the State Government shall be made by the Governing Body on the recommendation of College Service Commission, Dismissal, Termination, Removal from service or demotion in rank of teacher of such college shall be done by the Governing Body in consultation with the College Service Commission in the manner prescribed by the Statutes. Provided that the Governing Body of Affiliated Minority Colleges based on religion and language shall Appoint, Dismiss, Remove or Terminate the services of teacher or take disciplinary action against them with the approval of the College Service Commission".



6.2. Mr. Prasad further submitted that in the year 2007, the College Service Commission was abolished and Section 57 A of the Bihar State Universities Act was amended whereby the College Service Commission was substituted by "University Service Commission" and procedure was also prescribed as to how Managing Committee will be constituted. In the year 2013, again amendment has been made in the Bihar State Universities Act and new Section 57 A and 57 B has been introduced. The new Section 57 A deals with the procedure of appointment in Affiliated Colleges including Minority Institution, whereas Section 57 B deals with the Constitution of Selection Committee.

6.3. It is further submitted that from perusal of Section 57 A and 57 B of the Bihar State Universities Act, it is evident that appointment of teachers in Affiliated College is to be done by the Governing Body on the recommendation of Selection Committee constituted under Section 57(B) of amended Act. Section 57 B of the said Act provides that the Chairman of the Governing Body shall be Chairman of the Selection Committee and two members from the college i.e. Principal of the College and Head of Department of faculty shall also be a member of the Selection Committee.



6.4. In case of Minority Institution, Chairman of the College has right to nominate, three experts out of the list of five persons preferably from Minority Community and who have been recommended by the Vice- Chancellor from the panel of experts proposed by the Academic Council of the University. Therefore, the Governing Body of the College has vital role in constitution of Selection Committee. According to the said Act, the University has only role to provide a list of qualified experts out of which the Chairman of the Governing Body will nominate three persons from the list of five persons i.e. the preferably from the Minority Community. Thus, even after introduction of new Section 57 A and 57 B in Bihar State Universities Act, the Selection Committee is predominantly of persons from the college itself.

6.5. He further submitted that in the year 2018, the college in question came out with advertisement for appointment of Assistant Professor in different subjects and in pursuance of said advertisement selection process was completed as claimed by the writ petitioners. In the meantime, New Governing Body of the college in question has been constituted. The newly constituted Governing Body cancelled the selection made by the erstwhile Governing Body and came out with fresh



advertisement dated 06.10.2019, as contained in Annexure-9 to the writ application. Thereafter, selection process was completed and appointments were made accordingly.

6.6. Mr. Prasad mainly harped on non-compliance of the provisions enshrined in Section 57 B of the Bihar Universities Act and submitted that Selection Committee for appointment of Assistant Professor as such was not constituted in terms of Section 57 B of the Bihar State Universities Act amended in the year 2013 in either of the two transactions for selection of candidates. The Selection Committee was constituted by the College on its own in contravention of statutory provisions of the Bihar State Universities Act, therefore, the appointment of Assistant Professors in different subjects in Mirza Ghalib College, Gaya is illegal. In fact, no information was given to the University regarding the entire selection process and everything has been done in an arbitrary manner. In support of his submission, learned counsel relied upon the judgement passed in CWJC No. 14793 of 2017 (Noor Alam Khan Vs. State of Bihar & Ors) and submitted that a challenge was made to the vires of Section 57 A of the Bihar State Universities Act and the same has been upheld by Hon'ble Division Bench of this Court.

6.7. Mr. Prasad, learned counsel for the University further



submitted that if the college selects an expert for being a member of selection committee from the panel of experts approved by the Academic Council, the same by any stretch of imagination, cannot be termed as interference in the administration of affairs of the college. It is the bare minimum participation of the University which has to face audit of allocation of funds by State and other agencies.

6.8. In support of his submissions, Mr. Prasad relied on various judgments some of which are mentioned herein below:

(i) **Sk. Md. Rafique Vs. Managing Committee, Contai Rahamania High Madrasah and Others** reported in (2020) 6 SCC 689.

(ii) **T.M.A. Pai Foundation and others Vs. State of Karnataka & ors.** reported in (2002) 8 SCC 481.

(iii) **The Ahmedabad St. Xaviers College Society and Anr. Vs. State of Gujarat and Anr.** reported in 1974 AIR 1389 : (1974) 1 SCC 717.

Submission on behalf of Respondent Nos.6 to 8

7. Mr. Abhinav Shrivastava, learned Advocate, appearing for respondent nos.6 to 8, has argued almost in line with the submissions made on behalf of respondent nos.10 and 11. He submitted that the writ petitioners have no locus standi to



maintain this writ application. Inasmuch as they have on their own volition, voluntarily, with their eyes wide open and without any protest whatsoever with regard to the constitution of the Five Member Selection Committee having participated in the selection process and their individual interviews was held on 04.02.2021 and 05.02.2021 and having not being successful, are precluded in law in questioning the said selection process held in February, 2021, pursuant to newspaper publication made on 06.10.2019.

7.1. He further submitted that when a candidate willingly and voluntarily participates in the selection process and is not successful, cannot thereafter turn around and claim that the said selection process is vitiated on any count.

7.2. He further submitted that it is well settled that a litigant cannot approbate and reprobate at the same time. It is admitted position that the writ petitioners participated in the earlier round of interviews held on 24.02.2019 and 17.02.2019 respectively. The said selection process was conducted only by two experts and in complete violation of Section 57 B (1) of the Bihar Universities Act, 1976 (as amended). They cannot claim to have any vested right for appointment pursuant to the said selection process of February, 2019. The Two Member Expert Committee



had no jurisdiction to make any recommendations in favour of the petitioners. It is further admitted position that the writ petitioners having participated in the said interviews held on 04.02.2021 and 05.02.2021 and having not been selected, are precluded in law to maintain the instant writ application.

7.3. He further submitted that the college is recognized minority education institution in terms of Article 30(2) of the Constitution of India and it has been conferred upon with the right to establish and administer an educational institution which, inter alia, includes the powers to make appointments against the posts of teachers and other members of staff at the College against the sanctioned posts while adhering to the prescriptions laid down with respect to educational qualification and other eligibility criteria under the relevant Acts and Statutes. He further submitted that certain baseless and misconceived assertions have been made on behalf of respondent nos. 3 to 5, with respect to violation of the provisions contained under Section 57A and the Section 57 B of the Bihar State Universities Act, 1976, whereas as a matter of fact, while conducting the process of selection in furtherance of advertisement dated 06.10.2019 issued by the College, all necessary steps have been taken and the provisions contained under the Section 57A and



the Section 57 B of the Bihar State Universities Act, 1976 have been strictly adhered to.

7.4. It is further submitted that the College is a minority educational institution and affiliated to Magadh University, Bodh Gaya, the prescription with respect to educational qualifications and process of selection laid down under the Bihar State Universities Act, 1976, as amended up to date and the statutes framed thereunder, are to be followed. However, the management of the College has the right to make appointments without any interference from the side of the University.

7.5. It is further submitted that on the basis of a decision taken by the governing body of the college, the earlier process of selection conducted for making appointment against the posts of Assistant Professor in different subjects in which the writ petitioners had also participated was cancelled for just and valid reasons and without any objection ever having been raised by the writ petitioners, they participated in the subsequent process of selection conducted by the management of the respondent College pursuant to advertisement dated 06.10.2019 and it was only after they were declared to be unsuccessful in the said process of selection that the connected writ petition was filed and as such, on this count alone, the writ petition under reply is



fit to be dismissed by this Court. In so far as the role of the University and the extent to which any control may be exercised by it are concerned, the same have to be in accordance with the provisions contained under Section 57A and the Statutes framed in terms of Section 57B of the Bihar State Universities Act, 1976 as amended from time to time. He referred to an order and judgement dated 14.01.2020 passed in CWJC No.10283 of 2019, wherein identical issues were involved with respect to the extent to which the University could exercise control in the matter of appointment against the posts of teachers at a College which was affiliated to a University incorporated and established under the Bihar State Universities Act, 1976.

7.6. In view of the submission as made above, Mr. Shrivastava lastly submitted that the writ petition filed by the petitioners is completely misconceived and devoid of any merit in the eyes of law and the same is fit to be dismissed.

Issues for consideration

8. Having heard learned counsel for the parties at length and on perusal of the case record, in my considered opinion, two issues arise for consideration in this case:

- I. Whether the petitioners have locus standi to present this Petition?
- II. Whether the selection committee was



constituted as per the provisions of Section 57 B
of the Bihar Universities Act?

Issue No.I

9. It is further observed that in India, there are four categories of persons for locus standi: first category is individual standing; second category is statutory standing or in other words, when statute has provided standing to a person or a class of persons and on the strength of the standing conferred by the statute, one may move the Court; third category is public interest litigation; fourth category of locus standi is representative action or class action. However, over a period of time, there may have been a lowering of the barrier imposed by the standing requirement or taking a liberal approach in the matter. But, it is necessary to follow certain principles having regard to the law. Thus, the doors of the court could be made open at the instance of the persons or authorities under certain categories and every other person cannot move a writ petition challenging actions of the State Government or its instrumentalities. Otherwise, the doctrine of locus standi or a standing requirement would be rendered meaningless and thereby introduce a procedure which is not judicially recognised.

9.1. Firstly, I would like to emphasise that cases may arise where there is undoubtedly public or personal injury by the act



or omission of the State or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a person having sufficient interest can certainly maintain an action challenging the legality of such act or omission.

9.2. The Hon'ble Supreme Court, in series of judgments, has in clearest terms laid down that if a challenge to arbitrary or mala fide administrative action, which seriously affects Rule of Law is disallowed, disrespect for law would be the consequence, which would strike a severe blow to Rule of Law and force the people to fight out the matter in the streets. Therefore, citizens must be allowed to resort to a legal remedy in the Courts and should not be forced to go to the streets to resort to unconstitutional methods to express their protest against such Governmental decisions. Any such situation created by taking a narrow, pedantic view about locus standi, even in situations in which arbitrary or capricious or mala fide exercise of power is alleged and the extent and gravity of such unlawful action is such as would make a mockery of Rule of Law, the consequence would be disastrous in that it might mark the beginning of the end of the faith of the people in the Rule of Law.

9.3. Secondly, a person aggrieved is one who is directly and



adversely affected by an act, law or decision of the State or its instrumentalities, which infringes any constitutional or statutory right of the person and thereby entitles him to sustain a petition under Article 226 of the Constitution. The petitioner must be in a position to demonstrate before the Court, that he has personally suffered an infringement of a right on account of something done by the State or its instrumentalities. This would authorise such a person to prefer and sustain a writ petition.

9.4. I may rely on dictum of the Hon'ble Apex Court in the case of **Calcutta Gas Company (Proprietary) Ltd. v. State of West Bengal**, AIR 1962 SC 1044, and in particular para-5, the Apex Court has held as under:

"...Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental rights can also approach the court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. In State of Orissa v. Madan Gopal Rungta, (1952) SCR 28 : (1951 SCC 1024 : AIR 1952 SC 12) this Court has ruled that the existence of the right is the foundation of the exercise of jurisdiction of the



Court under Article 226 of the Constitution. In Charanjit Lal Chowdhuri v. Union of India, (1950) SCR 869 : (1950 SCC 833 : AIR 1951 SC 41, it has been held by this Court that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief. We do not see any reason why a different principle should apply in the case of a petitioner under Article 226 of the Constitution. The right that can be enforced under Article 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified..."

9.5. Further in the case of **Mani Subrat Jain v. State of Haryana**, (1977) 1 SCC 486 : AIR 1977 SC 276, in para 9 the Hon'ble Supreme Court has held as under:

"..It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by some one who has a legal duty to do something or to abstain from doing something...."

9.6. Further in the case of **Ghulam Qadir v. Special Tribunal**, (2002) 1 SCC 33, in para 38, the Hon'ble Supreme Court has held as under:



“38. There is no dispute regarding the legal proposition that the rights under [Article 226](#) of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his having not the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.”

9.7. Further the expression "aggrieved person" has come up for consideration before the Supreme Court on many occasions wherein the Hon'ble Supreme Court has held, aggrieved person would mean who has suffered legal injury. In this regard reference can be made to its opinion in **Babu Ram v. State of**



U.P., (1995) 2 SCC 689 wherein, in paragraph 17, it observed as under:

"17. In Collins English Dictionary, the word 'aggrieved' has been defined to mean 'to ensure unjustly especially by infringing a person's legal rights'. In Webster Comprehensive Dictionary, International Edition at page 28, aggrieved person is defined to mean 'subjected to ill-treatment, feeling an injury or injustice. Injured, as by legal decision adversely infringing upon one's rights'. In Strouds Judicial Dictionary, Fifth Edn., Vol. 1, pages 83-84, person aggrieved means 'person injured or damaged in a legal sense'. In Black's Law Dictionary, Sixth Edn. at page 65, aggrieved has been defined to mean 'having suffered loss or injury; damnified; injured' and aggrieved person has been defined to mean:

"One whose legal right is invaded by an act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. One whose right of property may be established or divested. The word 'aggrieved' refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation."

9.8. The person aggrieved, therefore, must be one who has suffered a legal injury. Further the Supreme Court in the case of **Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed**, (1976) 1 SCC 671 : AIR 1976 SC 578, while dealing with the expression "aggrieved person", has in paragraphs 12, 25, 29 and 38 observed as under:

"12. According to most English decisions, in order to



have the locus standi to invoke certiorari jurisdiction, the petitioner should be an "aggrieved person" and in a case of defect of jurisdiction, such a petitioner will be entitled to a writ of certiorari as a matter of course, but if he does not fulfill that character, and is a "stranger", the Court will, in its discretion, deny him this extraordinary remedy, save in very special circumstances. This takes us to the further question : Who is an "aggrieved person"? And what are the qualifications requisite for such a status? The expression "aggrieved person" denotes an elastic, and, to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person".

25. Emphasising the 'very special circumstances' of the case, the court read into the statute, a duty to act fairly in accordance with the principles of natural justice. Thus, a corresponding right to be treated fairly was also imported, by implication, in favour of the applicants. Viewed from this standpoint, the applicants had an interest recognised in law, which was adversely affected by the impugned action. They had suffered a wrong as a result of the unfair treatment on the part of the corporation.

29. ...Salmon J. quoted with approval these observations of James LJ in James LJ in Sidebotham [L.R.] 14 Ch.D. 458 at p. 465 The words 'person aggrieved' do not really mean a man



who is disappointed of a benefit which he might have received if some other order had been made. A 'person aggrieved' must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something.

9.9. Before, I part with this discussion, I may note that a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, but if the person or specific class or group of persons who are primarily injured as a result of such act or omission do not wish to claim any relief and accept such act or omission willingly and without protest, the member of the public who complains of a secondary public injury cannot maintain the action, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want.

9.10. In light of the ratio of aforesaid discussions, the only conclusion that can be drawn is that petitioners have locus standi to file the present petition seeking a writ of certiorari or writ of mandamus as petitioners have been able to demonstrate that a legal right has been violated and/or they have suffered a legal injury. These are the weighty reasons which have



persuaded this Court to hold that the petitioners have the locus standi to prosecute the petition and I hold accordingly.

Issue No.II

10. Before dealing with the issue in hand, I think it appropriate to first deal Article 30 of the Constitution of India, which has been elaborately debated by different parties in the present case. Article 29 and 30 of the Constitution have increasingly engaged the attention of the Supreme court. A survey of the law on this subject would be necessary and can start with **Kerala Education Bill,1957, Re v.,1959 SCR 995**. In the said case a question arose whether State maintained, State aided and State recognized educational institution can be dealt with differently and if minority institution within the meaning of Article 30 of the Constitution should have a fundamental right in the matter of recognition of their educational institution. The Supreme Court answered the said query in following terms:-

"Para 36,The right which the minorities now claim is something more. They want not merely freedom to manage their own affairs, but they demand that the State should actively intervene and give to their educational institutions the imprimatur of State recognition. That, in my opinion, is not within Article 30 (1). The true intention of that article is to equip minorities with a shield whereby they could defend themselves against attacks by majorities, religious or linguistic, and not to arm them with a sword whereby



they could compel the majorities to grant concessions. It should be noted in this connection that the Constitution has laid on the States various obligations in relation to the minorities apart from what is involved in Article 30 (1). Thus, Article 30 (2) provides that a State shall not, when it chooses to grant aid to educational institutions, discriminate against institutions of minorities based on language or religion. Likewise, if the State frames regulations for recognition of educational institutions, it has to treat all of them alike, without discriminating against any institution on the ground of language or religion. The result of the constitutional provisions bearing on the question may thus be summed up:

(1) The State is under a positive obligation to give equal treatment in the matter of aid or recognition to all educational institutions, including those of the minorities, religious or linguistic.

(2) The State is under a negative obligation as regards those institutions, not to prohibit their establishment or to interfere with their administration."

10.1. After a decade Supreme court was again called upon to answer similar question in slightly different context in the case of **State of Kerala v. Very Rev. Mother Provincial, (1970) 2 SCC 417**, the Supreme court while considering the rights of Minorities to establish the institutions of their choice, was concerned with the standard of education, it held thus: at page 421 :

"10. There is, however, an exception to this and it is that the standards of education are not a part of



management as such. These standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish the syllabi for examinations they must be followed, subject however to special subjects which the institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others."

10.2. A Constitution Bench of nine Hon'ble Judges in the case of **Ahmedabad St. Xavier's College Society v. State of Gujrat, (1974) 1 SCC 717**, highlighted the need for maintaining high standard of excellence in education in the minority institution and it opined that some State made regulations can be applied to achieve the said objective. The relevant observations of the Supreme Court are as under at page 745 :-

"20. The right conferred on the religious and linguistic minorities to administer educational institutions of their choice is not an absolute right. This right is not free from regulation. Just as regulatory measures are necessary for maintaining



the educational character and content of minority institutions similarly regulatory measures are necessary for ensuring orderly, efficient and sound administration. Das, C.J., in the Kerala Education Bill case summed up in one sentence the true meaning of the right to administer by saying that the right to administer is not the right to mal-administer." , at page 748 :

"Para 30..."An educational institution runs smoothly when the teacher and the taught are engaged in the common ideal of pursuit of knowledge. It is, therefore, manifest that the appointment of teachers is an important part in educational institutions. The qualifications and the character of the teachers are really important. The minority institutions have the right to administer institutions. This right implies the obligation and duty of the minority institutions to render the very best to the students. In the right of administration, checks and balances in the shape of regulatory measures are required to ensure the appointment of good teachers and their conditions of service. The right to administer is to be tempered with regulatory measures to facilitate smooth administration. The best administration will reveal no trace or colour of minority. A minority institution should shine in exemplary eclecticism in the administration of the institution. The best compliment that can be paid to a minority institution is that it does not rest on or proclaim its minority character.

31. Regulations which will serve the interests of the students, regulations which will serve the interests of the teachers are of paramount importance in good administration. Regulations in the interest of efficiency of teachers, discipline and fairness in administration are necessary for preserving harmony among affiliated institutions.



32. Education should be a great cohesive force in developing integrity of the nation. Education develops the ethos of the nation. Regulations are, therefore, necessary to see that there are no divisive or disintegrating forces in administration." at page 784 :

"95. It has not been disputed on behalf of the petitioners that if the State or other statutory authorities make reasonable regulations for educational institutions, those regulations would not violate the right of a minority to administer educational institutions. We agree with the stand taken by the petitioners in this respect. It would be wrong to assume that an unrestricted right as in Article 30 postulates absence of regulations. Regulations can be prescribed in spite of the unrestricted nature of the right. The unrestricted nature of the right connotes freedom in the exercise of the right. Even the words "freedom" and "free" have certain limitations. In James v. Commonwealth 16 the Privy Council dealt with the meaning of the words "absolutely free" in Section 92 of the Constitution of Australia. It was said:

"Free" in itself is vague and indeterminate. It must take its colour from the context. Compare for instance, its use in free speech, free love, free dinner and free trade. Free speech does not mean free speech; it means speech hedged in by all the laws against defamation, blasphemy, sedition and so forth; it means freedom governed by law...."

10.3. The Supreme Court further considered this issue in **Lily Kurian v. Lewina (1979) 2 SCC 124**. It followed the Kerala Education Bill in paragraph 28 of this report which is extracted here under below :-



"We have already observed that Article 30 (1) gives two rights to the minorities, (1) to establish and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to maladminister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided." (emphasis supplied)

at page 135 :

"29. Thus, a contention based on the absolute freedom from State control of the minorities' right to administer their educational institutions was expressly negated in this case. The Court clearly laid down a principle, namely, a regulation, which is not destructive or annihilative of the core or the substance of the right under Article 30 (1), could legitimately be imposed."

10.4. In the case of Frank Antohony Public School Employees' Association v. Union of India, (1986) 4 SCC 707,
the Court observed as under :-

"The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers.



Conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental right guaranteed by Article 30 (1) of the Constitution. The management of a minority Educational Institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30 (1) of the Constitution, to oppress or exploit its employees any more than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is bound to lead, inevitably, to discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it. The management of minority institution cannot complain of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of Article 30 (1) which is to make the institution an effective vehicle of education.

10.5. The Constitution Bench of Eleven Hon'ble Judges again considered this issue along with the admission in the professional colleges in **T.M.A. Pai Foundation and others v. State of Karnataka and others, (2002) 8 SCC 481**. The following paragraphs are relevant in the present controversy:-

"The right to establish an educational institution can be regulated; but such regulatory measures must, in general, be to ensure the maintenance of proper academic standards, atmosphere and infrastructure



(including qualified staff) and the prevention of maladministration by those in charge of management. The fixing of a rigid fee structure, dictating the formation and composition of a governing body, compulsory nomination of teachers and staff for appointment or nominating students for admissions would be unacceptable restrictions."

10.6. Subsequently, the Supreme Court again considered the same issue in **P.A. Inamdar and others v. State of Maharashtra and others, (2005) 6 SCC 537**. Paragraph 103 is relevant in the present case which is extracted here under below:-

"To establish an educational institution is a fundamental right. Several educational institutions have come up. In Kerala Education Bill "minority educational institutions" came to be classified into three categories, namely, (i) those which do not seek either aid or recognition from the State; (ii) those which want aid; and (iii) those which want only recognition but not aid. It was held that the first category protected by Article 30 (1) can "exercise that right to their hearts' content" unhampered by restrictions. The second category is most significant. Most of the educational institutions would fall in that category as no educational institution can, in modern times, afford to subsist and efficiently function without some State aid. So it is with the third category. An educational institution may survive without aid but would still stand in need of recognition because in the absence of recognition, education imparted therein may not really serve the purpose as for want of recognition the students passing out from such educational institutions may not be entitled to admission in other educational institutions for higher



studies and may also not be eligible for securing jobs. Once an educational institution is granted aid or aspires for recognition, the State may grant aid or recognition accompanied by certain restrictions or conditions which must be followed as essential to the grant of such aid or recognition."

10.7. In the case of Secretary, Malankara Syrian Catholic College v. T. Jose, (2007) 1 SCC 386, the Supreme Court reiterated the earlier law in following terms:-

"The general principles relating to establishment and administration of educational institution by minorities may be summarised thus:

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

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

(b) to appoint teaching staff (teachers/lecturers and Headmasters/Principals) as also non-teaching staff, and to take action if there is dereliction of duty on the part of any of its employees;

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

d) to use its properties and assets for the benefit of the institution.

(ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis-à-vis the majority. There is no reverse discrimination in favour of minorities. The



general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation, etc. applicable to all, will equally apply to minority institutions also.

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

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

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

"Aided institutions give instruction either in secular education or professional education. Religious education is barred in educational institutions maintained out of the State funds. These aided



educational minority institutions providing secular education or professional education should necessarily have standards comparable with non-minority educational institutions. Such standards can be attained and maintained only by having well-qualified professional teachers. An institution can have the services of good qualified professional teachers only if the conditions of service ensure security, contentment and decent living standards. That is why the State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Consequently, any law intended to regulate the service conditions of employees of educational institutions will apply to minority institutions also, provided that such law does not interfere with the overall administrative control of the management over the staff."

" 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 T.M.A. 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.*



10.8. Thus, in the light of the above referred dictum, in my considered opinion, 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."

10.9. In the case of **Sindhi Education Society v. Chief Secretary, Government of NCT of Delhi, (2010) 8 SCC 49**, the Supreme Court observed as under :-

"Last of the judgments, which has some bearing on the subject in question, is on the principle reiterated by a Bench of this Court in Malankara Syrian Catholic College, where the Court again dealt with the aided minority educational institutions and terms and conditions of services of employees. The Court in para 12 of the judgment framed the following two questions: (SCC p. 393)

"12. The rival contentions give rise to the following questions:

(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?

(ii) Whether the right to choose a Principal is part of



the right of minorities under Article 30 (1) to establish and administer educational institutions of their choice. If so, would Section 57 (3) of the Act violate Article 30 (1) of the Constitution of India?"

10.10. The answer to Question (i) was provided in para 21 while Question (ii) was answered in paras 27 and 28 of the judgment which read as under: (SCC pp. 400 & 404)

"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 T.M.A. 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.

10.11. A common thread running through all these judgments, in my considered opinion, under the umbrella of Article 30 (1) the minority Institutions do not have absolute right. The State may regulate service condition of teaching staff. In absence of job security, talented teachers, even of their own religion will



not like to serve in an institution where Damascus sword is always hanging over their head. A minority institution which receives aid out of the State Fund owes a greater responsibility to the society as the children of the minority are entitled to get same standard of education like in the State run or other private institution, otherwise the students belonging to minority would not be able to compete with other students who are fortunate enough to get quality education in the other institutions. If the law gives free hand to the management of a minority institution to appoint and remove the teachers in an autocratic way then it will tend to adopt hire and fire policy under the protection of Article 30 (1) of the Constitution. In such situation, the ultimate sufferer would be the students of the minority institution. If a sizable section of society is left behind and they are unable to join the mainstream of the country. Then the task of the nation building which was envisaged by the founding fathers of the Constitution will remain a mirage.

10.12. Therefore, it must be prime concern of the state to apply the regulations to minority institution to achieve the objectives discussed in above noted decisions of the Supreme Court. Only then we can build a modern, progressive and secular Country. Thus seen, 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. 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.

10.12. It is not in dispute that the college in question is a recognized minority educational institution in terms of Article 30 of the Constitution of India and it has been conferred upon with the right to establish and administer an educational institution which, inter alia, includes the powers to make appointments against the post of teachers and other members of staff at the college against the sanctioned post but it has to adhere to the prescriptions laid down with respect to educational qualification and other eligibility criteria under the relevant Acts



and Statutes.

10.13. Now, I come to the issue in hand. Section 57 of the Bihar State Universities Act, 1976 provides for appointment to the post of Teachers in Universities and their constituent colleges. Section 57A of the Act provides for procedure of selection to be prescribed by the Statute for appointment of Teachers in such affiliated colleges which are not governed by the State Government or not funded by the Universities. The selection is to be processed by the Selection Committee constituted by the University under section 57B of the Act.

10.14. The Bihar State Universities (Amendment) Act, 2013 ('Amendment Act, 2013' in short) published in the Bihar Gazette (Extraordinary) on 14.8.2013, by clause (4) thereof provided that section 57A of the Act shall be substituted by the following which is extracted herein below:

“57 A-Procedure of selection to be prescribed by the statute.- (1) Subject to the provisions of this Act and Statutes made thereunder, for appointment of teachers in such affiliated Colleges, which are not governed by the State Government or not funded by the Universities, the applications from the candidate fulfilling the qualifications prescribed under clause (iii) of sub-section (1) of section 57 of this Act shall be invited by the Governing Body of the College concerned. The selection shall be processed by



the Selection Committee constituted by the University under the provisions contained in section 57B of this Act.

(2) In making recommendations on the basis of interview of the candidates holding the above mentioned qualifications the rules or reservation shall be adhered by the Selection Committee.

(3) The recommendation made by the Selection Committee shall remain valid for one year from the date of the recommendation. Within six months from the date of recommendation of the Selection Committee; the College administration shall process the appointment/promotion in order of preference laid down by the Selection Committee.

(4) With regard to the appointment, promotion, dismissal, discharge, removal from service and termination of service or demotion of teachers in affiliated Colleges, the action shall be taken in the manner prescribed after making consultation with the above mentioned Selection Committee.

(5) The appointments, promotions, dismissal, removal and termination of service of teachers in the minority colleges affiliated on the basis of religion and language may be made and disciplinary action against them shall be taken by the governing body of those colleges with with the approval of the Selection Committee constituted by the University;

Provided that, where the order concerned is limited to only ensure, withholding increment, against a teacher or his/her suspension till the investigation of charges, in such cases the consultation with the Selection Committee shall not be necessary.”

10.15. By clause (5) of the said Amendment Act, 2013,



section 57B of the Act which deals with constitution of Selection Committee was substituted by the following:

"57B. Constitution of Selection Committee.

(1) The Selection Committee for appointment to the posts of Assistant Professor, Principal in affiliated colleges shall be constituted by the University as follows:-

(i) The Chairman of the governing body of the college or the person nominated by the governing body, who being one of its members, shall be the Chairman of the Selection Committee.

(ii) Principal of the College.

(iii) Head of the department of the faculty concerned in the College.

(iv) Three experts, not below the rank of professor and two out of them should be experts of the subject, shall be nominated by the Vice-chancellor of the concerned University. In case of such colleges, which have been notified/declared as minority educational institution, three persons nominated on behalf of the Chairman of the College who shall be from the list of five persons preferably from the minority community and who have been recommended by the Vice-Chancellor of the University concerned from the panel of experts proposed by the Academic Council of the University concerned and three persons out of them should be subject experts.

(v) The Governing body of the College may nominate two such subject experts who are not connected with that college and those persons have been recommended by the Vice-



Chancellor out of the panel of Subject Experts approved by the Academic Council of the University Concerned.

(vi) An academician representing SC/ST/OBC/Minority/Women/Differently-abled categories, if any of candidates representing these categories it the applicant, to be nominated by the Vice-Chancellor, if any of the above members of the selection committee do not belong to that category.

(vii) presence of five members of the Selection Committee, which shall include three subject experts, shall form the quorum for the meeting or the Selection Committee.”

10.16. Thus, from the above provisions, it would transpire that Section 57A(1) dealt with appointment of Teachers of affiliated colleges not maintained by the State Government by a Selection Committee, Section 57A (2) dealt with the quorum of the Selection Committee and the manner in which it has to make its recommendation. The newly added Section 57B (by the Amendment Act, 2007) provided that the Selection Committee constituted shall be bound by the procedure of selection prescribed by the Statute to be framed by the University. This view has recently been affirmed by a Division Bench of this Court vide judgment dated 23.08.2023 passed in C.W.J.C. No.14793 of 2017 (**Noor Alam Khan v. State of Bihar & Ors.**).



10.17. It is pertinent to point out here that in the case of **Noor Alam (supra)**, a challenge was made to the vires of Section 57 (A) of the Act and the same has been upheld by the Hon'ble Division Bench of this Court and it has been held in para-15, which is reproduced herein below:

“15. As seen above, though the constitution of the Selection Committee is predominantly of persons from college itself, nevertheless by introducing as many as six nominated persons in the Selection Committee (under the newly amended section 57B) and further by making the decision of the Governing Body of the minority colleges subject to the approval of the said Selection Committee, in the opinion of the Court, the same infringes with the rights of the minorities (as provided under Art 30) to establish and administer educational institutions of their choice. It may also be noted here that while section 57A(4) which deals with the teachers in affiliated colleges talks about ‘consultation’ with the Selection Committee, section 57A(5) which deals with the teachers in the minority colleges talks about actions being taken in their case by the governing body with the ‘approval’ of the Selection Committee. In the opinion of the Court, by use of the word ‘approval’ in sec 57A(5) the intention could not have been to violate the constitutional provision as contained in Art 30, but it would be an effective consultation as contemplated under sec 57A(4). Thus in the opinion of this Court the word ‘approval’ will have to be read down accordingly.”

10.18. On bare perusal of the judgment passed in the case of



Noor Alam (supra), it appears that the Hon'ble Division Bench has nowhere said that the selection committee will not be constituted as per the mandate of Section 57B of the Act, rather the University has been given the responsibility to verify the qualifications of members of the selection committee and the selected teachers.

10.19. Prior to the judgment passed in the case of **Noor Alam (supra)**, in the case of S.M. Zaheer Alam Vs. National Council for Teacher Education (NCTE) and others (C.W.J.C. No.10283 of 2019) vide judgment dated 14.10.2020, the Division of this Court has also considered the aforesaid aspect of the matter, after considering catena decisions of the Hon'ble Supreme Court and in para-25 thereof has been pleased to hold as under:

*“Section 57B of the Bihar State Universities Act, 1976, is the impugned provision having been challenged on the ground that this provision infringes upon the right of the minorities to administer the institution as they cannot ask the minority institution as to whether the selection has been done on the guidelines provided under Section 57B of the Bihar State Universities Act, 1976. In the case of **The Ahmedabad St. Xaviers College Society and another (supra)** it has been held that minority institution has a right to select the persons of their choice and it includes the constitution of the management. The constitution of Selection Committee is one of the most important facets and concomitant of running the administration of private institution. So, the University under the*



regulatory provision would ensure that the members of the selection Committee did have requisite qualification but, cannot control the activities of the management of the institution. So, Section 57B of the University Act should be read down in the manner that University Commission will have to verify as to whether those who have been members of the Selection Committee, satisfy the proper qualification as has been provided under Section 57B of the Bihar State Universities Act 1976, to ensure that a fair procedure has been followed in the matter of selection of teachers and it has also to be ensured that the teacher who have been appointed possess the necessary and proper qualification prescribed by the University in order to maintain the teaching standard of the college to ensure that the students who are being taught by those teachers, must be able to compete with the products of other institutions. So, the letter dated 27.04.2019 is to be read down in the manner that the college will be obliged to produce the records in order to show that the persons who were the member in the Selection Committee are qualified persons and those persons who have been selected as teachers are possessing the necessary and requisite qualification. The University cannot interfere with the management of the institution but, they have authority to regulate.”

10.20. On careful perusal of the above said judgment, it is apparent that the Hon'ble Division bench has nowhere said that selection committee will not be constituted as per the mandate of Section 57B of the Bihar State Universities Act, 1976. Rather the University has been given the responsibility to verify the qualifications of members of the selection committee and the



selected teachers.

10.21. It would not be out of place to state that none of the respondents has either whispered a single word during course of argument or brought on record that the Selection Committee of the college concerned was constituted in compliance of the provisions enshrined in Section 57A and 57B in Bihar State Universities Act.

10.22. At the cost of repetition, it needs to be clarified that if the minority institution has a better candidate available than the one nominated under a regulatory regime, the institution would certainly be within its rights to reject the nomination made by the authorities but if the person nominated for imparting education is otherwise better qualified and suitable, any rejection of such nomination by the minority institution would never help such institution.

10.23. From the above discussions, it is evident that in case of Minority Institution, Chairman of the College has right to nominate, three expert out of the list of five persons preferably from Minority Community and who have been recommended by the Vice-Chancellor from the panel of experts proposed by the Academic Council of the University. Therefore, the Governing Body of the College has vital role in constitution of Selection



Committee. According to the Act, the University has only role to provide a list of qualified experts out of whom the Chairman of the Governing Body will nominate from expert and i.e. the preferably of Minority Community. Thus, even after introduction of new Section 57A and 57B in Bihar State Universities Act, the Selection Committee is predominantly of persons from the college itself. In the present case, the Selection Committee was constituted and the entire selection process has been conducted in complete breach of Section 57 B of the Act as quorum required for Selection Committee was totally missing, rendering the constitution of interview board, illegal and arbitrary.

Conclusion

11. Considering the entire conspectus of the case and the discussions made in foregoing paragraphs as well as the fact that both issues have been decided in favour of the petitioners, the Advertisement published in the Hindi daily Hindustan dated 06.10.2019 issued by the Secretary, Governing Body, Mirza Ghalib College, Gaya is hereby quashed and this writ application is allowed but no order as to cost. The Governing Body, Mirza Ghalib College, Gaya is directed to issue fresh advertisement and constitute a Selection Committee afresh in



compliance of the provisions of the Bihar Universities Act and
take further necessary steps in accordance with law.

11.1. As a sequel to the aforesaid, Interlocutory Application (s),
if any, shall also disposed of accordingly.

(Anjani Kumar Sharan, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	28.08.2024
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