

CASE NO.:
Writ Petition (civil) 9683-84 of 1983

PETITIONER:
Brahmo Samaj Education Society & Ors.

RESPONDENT:
State of West Bengal & Ors.

DATE OF JUDGMENT: 05/05/2004

BENCH:
CJI & G.P. MATHUR.

JUDGMENT:
J U D G M E N T

RAJENDRA BABU, CJI. :

Role of State in the appointment of a teacher at a State aided educational institution is the matter for settlement here.

Facts that lead to the present case are as follows.

The State of West Bengal passed the West Bengal College Teachers (Security of Service) Act, 1975 (the Security of Service Act) and West Bengal College Service Commission Act, 1978 (the College Service Commission Act). Latter mainly provides for the constitution of a College Service Commission in West Bengal. Vide section 7 of the College Service Commission Act, the Commission is vested with the duty to select persons for appointment to the post of teachers of a college. By virtue of which, the power of appointment of a teacher in a college or institution affiliated to a University in West Bengal became vested in the Government appointed College Service Commission. Pursuant to the College Service Commission Act, the West Bengal College Service Commission (Manner of Selection of Persons for Appointment to the posts of Teachers including Principals) Regulations, 1980 was also made. Appointments of teachers were made under this scheme thereafter.

Brahmo Samaj Education Society / Petitioners challenge this procedure of appointing teachers. Petitioners case is that they are a religious minority and a religious denomination within the meaning of Articles 25, 26, and 30(1) of the Constitution; that the appointment of teachers by the College Service Commission under the College Service Commission Act and other Orders/Rules is unconstitutional; that they alone have the right to appoint teachers and enforce discipline amongst them; that therefore they prayed to prohibit the State of West Bengal / Respondents from enforcing the Security of Service Act and the College Service Commission Act.

Stand maintained by the Respondents is that the Petitioner society does not belong to a minority religious community; that the Institutions run by them are receiving funds from the state coffers and the State is under an obligation to maintain a uniform standard of education throughout the State; that the Petitioner's demand not to abide by the recommendation of an

independent statutory authority (College Service Commission) would amount to denying opportunity of appointment to the best available qualified persons as teachers; that therefore they prayed to dismiss the Petition.

The main question for consideration is - whether the appointment of teachers through the selection of College Service Commission is permissible or not, in other words, to decipher the role of State in the matter of appointment of teachers. To establish and administer an educational institution is held to be a right coming under Article 19(1)(g) of the Constitution as enunciated in T M A Pai Foundation v. State of Karnataka (2002) 8 SCC 481 [at pages 533 \026 535, paragraphs 18 \026 25]. According to Article 19(6) of the Constitution, the right to establish and maintain an educational institution is subject to the reasonable restrictions imposed by the State in the interest of general public. At the same time, subject to public order, morality and health, every religious denomination or any section thereof can establish and maintain educational institutions under Article 26(a) of the Constitution. (See T M A Pai \026 cited supra at page 535, paragraph 26). Reading Articles 19(1)(g) and Article 26(a) of the Constitution together, the petitioners have a right to establish and maintain educational institutions and hence we do not think it is necessary to decide the issue of minority / denominational status of Brahmo Samaj to decide the issue in hand. In our view this issue does not arise in the context of present case.

The question now before us is to decide whether the appointment of teachers in an aided institution by the College Service Commission by restricting the Petitioner's right to appointment is a reasonable restriction in the interest of general public or not. The Petitioner has a right to establish and administer educational institution. Merely because the petitioners are receiving aid, their autonomy of administration cannot be totally restricted and institutions cannot be treated as a government owned one. Of course the State can impose such conditions as are necessary for the proper maintenance of standards of education and to check maladministration. It is stated in T M A Pai that :

"While giving aid to professional institutions, it would be permissible for the authority giving aid to prescribe by rules or regulations, the conditions on the basis of which admission will be granted to different aided colleges by virtue of merit, coupled with the reservation policy of the State. The merit may be determined either through a common entrance test conducted by the university or the Government followed by counselling, or on the basis of an entrance test conducted by individual institutions \026 the method to be followed is for the university or the Government to decide. The authority may also devise other means to ensure that admission is granted to an aided professional institution on the basis of merit. In the case of such institutions, it will be permissible for the Government or the university to provide that consideration should be shown to the weaker sections of the

society."
[at p. 550, para 71]

"Once aid is granted to a private professional educational institution, the Government or the State agency, as a condition of the grant of aid, can put fetters on the freedom in the matter of administration and management of the institution. The State, which gives aid to an educational institution, can impose such conditions as are necessary for the proper maintenance of the high standards of education as the financial burden is shared by the State. The State would also be under an obligation to protect the interest of the teaching and non-teaching staff. In many States, there are various statutory provisions to regulate the functioning of such educational institutions where the States give, as a grant or aid, a substantial proportion of the revenue expenditure including salary, pay and allowances of teaching and non-teaching staff. It would be its responsibility to ensure that the teachers working in those institutions are governed by proper service conditions. The State, in the case of such aided institutions, has ample power to regulate the method of selection and appointment of teachers after prescribing requisite qualifications for the same. Ever since, in *Re. Kerala Education Bill, 1957* [1959 SCR 995] this Court has upheld, in the case of aided institutions, those regulations that served the interests of students and teachers. Checks on the administration may be necessary in order to ensure that the administration is efficient and sound and will serve the academic needs of the institutions. In other words, rules and regulations that promote good administration and prevent maladministration can be formulated so as to promote the efficiency of teachers, discipline and fairness in administration and to preserve harmony among affiliated institutions. At the same time it has to be ensured that even an aided institution does not become a government-owned and controlled institution. Normally, the aid that is granted is relatable to the pay and allowances of the teaching staff. In addition, the management of the private aided institutions has to incur revenue and capital expenses. Such aided institutions cannot obtain that extent of autonomy in relation to management and administration as would be available to a private unaided institution, but at the same time, it cannot also be treated as an educational institution departmentally run by Government or as a wholly owned and controlled government institution and interfere with constitution of the governing bodies or thrusting the staff without reference to management."

[pp. 550, 551, para 72]

"There are a large number of educational

institutions, like schools and non-professional colleges, which cannot operate without the support or aid from the State. Although these institutions may have been established by philanthropists or other public-spirited persons, it becomes necessary, in order to provide inexpensive education to the students, to seek aid from the State. In such cases, as those of the professional aided institutions referred to hereinabove, the Government would be entitled to make regulations relating to the terms and conditions of employment of the teaching and non-teaching staff whenever the aid for the posts is given by the State as well as admission procedures. Such rules and regulations can also provide for the reasons and the manner in which a teacher or any other member of the staff can be removed. In other words, the autonomy of a private aided institution would be less than that of an unaided institution.
[p 551, para 73]

But that control cannot extend to the day-to-day administration of the institution. It is categorically stated in T M A Pai (cited supra at page 551, paragraph 72) that the State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. The State can very well provide the basic qualification for teachers. Under the University Grants Commission Act, 1956, the University Grants Commission (UGC) has laid down qualifications to a teaching post in a University by passing Regulations. As per this Regulations UGC conducts National Educational Testing (NET) for determining teaching eligibility of candidates. UGC has also authorized accredited States to conduct State Level Eligibility Test (SLET). Only a person who has qualified NET or SLET will be eligible for appointment as a teacher in an aided institution. This is the required basic qualification of a teacher. Petitioner's right to administer includes the right to appoint teachers of its choice among the NET / SLET qualified candidates.

Argument on behalf of the State that the appointment through College Service Commission is to maintain the equal standard of education all through out the state of West Bengal does not impress us. The equal standard of teachers are already maintained by the NET / SLET. Similarly, receiving aid from State coffers can also not be treated as a justification for imposition of any restrictions that cannot be imposed otherwise. Both sides rely on the passages quoted above from the judgment in T M A Pai to project their respective contentions.

When a larger Bench consisting of 11 Judges of this Court in T M A Pai has declared what the law on the matter is, we do not want to dilute the effect of the same by analysing various statements made therein or indulge in any dissection of the principles underlying it. We would rather state that the State Government shall take note of the declarations of law made by this Court in this

regard and make suitable amendments to their laws, rules and regulations to bring them in conformity with the principles set out therein.

In this view of the matter, it is unnecessary to examine whether the present rules are valid or not. Until such time as such rules are framed in terms of the order made by us now, the interim orders made by this Court in these proceedings will be operative.

These petitions shall stand allowed in terms of what is stated above.

JUDIS