

PETITIONER:
GOVERNING BODY, ST. ANTHONY'S COLLEGE, SHILLONG & ORS.

Vs.

RESPONDENT:
REV. FR. PAUL PETTA OF SHILLONG EASTKHASI HILLS.

DATE OF JUDGMENT 18/08/1988

BENCH:
RAY, B.C. (J)
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RAY, B.C. (J)
THAKKAR, M.P. (J)

CITATION:
1988 AIR 2005 1988 SCR Supl. (2) 507
1988 SCC Supl. 676 JT 1988 (3) 531
1988 SCALE (2) 526

ACT:
St. Anthony's College-Whether Salesian Provincial/President of the Governing Body of the College could order transfer of the Principal of the College or whether the governing Body could pass such an order of transfer-Whether an opportunity of hearing was to be given to the Principal to show cause against the proposed transfer.

HEADNOTE:

The respondent had been appointed Principal of St. Anthony's College by Salesian Provincial and his appointment had been approved by the Director of Public Instruction (D.P.I.) on the recommendation of the governing body of the College. Due to differences between the Principal and the Church authorities, and particularly, the appellants Nos 2, 3 and 4, i.e. the President and the members of the governing body of the College, the appellant No. 2, the President of the governing body and the Salesian Provincial intimated to the respondent of his transfer from the post of Principal of the College. The respondent contended that the appellant No. 2 had no authority to appoint or dismiss or transfer the Principal, as the Principal of the College belonging to minorities was to be selected by the governing body and to be approved by the D.P.I. in accordance with the government instructions contained in its Memo dated December 7, 1979. But the Salesian Provincial proposed another person as Principal, to which the governing body agreed and his appointment was approved by the D.P.I. The respondent filed a writ petition in the High Court, contending that the Salesian Provincial had no power to transfer him, as he had been appointed Principal by the governing body of the College with the approval of the D.P.I., and so the Governing Body with the approval of the D.P.I. could transfer him under the statutory rules. and that the order of transfer, having been passed without giving him any opportunity to show cause, was arbitrary, illegal and mala fide and violative of the principle of natural justice. The High Court held that there was no reason why the respondent's removal from the post of Principal should not

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have been by the governing Body and subject to the approval of the D.P.I., and directed inter alia that the impugned order of transfer be kept in abeyance and that the governing body would give the respondent an opportunity to show cause why he should not be transferred as stated in the impugned transfer order, and decide the matter of transfer after hearing him. Aggrieved by the order of the High Court, the governing body and others moved this Court by special leave.

It was contended by the appellants inter alia that the respondent could not have any grievance against the order of transfer as he had no statutory right to remain as Principal and that he, being ordained as priest according to the Articles of the constitution of the Society of St. Francis de Sales, the Salesian Provincial could transfer him to serve in any of the institutions of the Society as his service was transferable, and he could not question the transfer.

Dismissing the appeal, the Court,
HELD: The St. Anthony's College was a minority institution within the meaning of Article 30 of the Constitution, and the instructions contained in the Government Memo dated 7th December, 1979, laying down the procedure of appointment of Principal, vice-Principal, etc, in religious minority Colleges in the State would apply to this Institution. [514E-F]

The impugned order of transfer was passed without asking the respondent to show cause against the transfer and giving him an opportunity of hearing. The impugned order purported to transfer the respondent from the post of Principal of the College to the post of Teacher in a school. This order of transfer prejudicially affected the status of the respondent. [515E-F]

The main question for consideration was whether the Salesian Provincial, appellant No. 2 was competent to transfer the respondent who had been appointed by the governing body of the college and approved by the D.P.I. as per the Government instructions applicable to a minority college. [515G]

According to the Government instructions aforesaid, the Principal whose appointment had been approved by the D.P.I., could work as Principal in the minority college till the age of superannuation as determined by the Government. The impugned order of transfer amounted to removal of the respondent from the post of Principal. The principles of natural justice and fair play mandate that in administrative actions the audi alteram partem rule is applicable; the person affected by the order had to be given an opportunity

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of hearing against the purported order apart from the question whether the Assam Aided College Management Rules and Assam Aided College Employees, Rules are applicable to minority institutions. [516B-D]

The appellants contended that Salesian Provincial, appellant No. 2, was the appointing authority of the respondent and as such he had the right to make the impugned order of transfer though there was no express provision conferring such a power. [516F]

The question was whether the Salesian Provincial was the appointing authority of the respondent, or the governing body of the College appointed the respondent and recommended his appointment for approval to the D.P.I. The D.P.I. had approved the appointment of the respondent pursuant to the recommendation of the governing body. So this question had to be gone into and determined by the governing body, as had

been directed by the order of the High Court. In so far as the respondent was transferred in his capacity as a priest from one division of the religious order to another, the matter pertained to the internal management of the religious order and it was not justiciable, but in so far as the order of transfer had been made, transferring the respondent from the post of Principal of the College to the post of Teacher of a school in another State, the respondent could complain against it. Since the respondent had not been given an opportunity of hearing against the purported transfer which seriously affected his status, judgment of the High Court which directed the governing body to give the respondent an opportunity to show cause against the impugned order of transfer and to give him a hearing and decide the transfer matter in accordance with law, could not be faulted. [516G-H; 517A-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: CIVIL Appeal No. 3717 of 1986.

From the Judgment and Order dated 12.9.1986 of the Gauhati High Court in Civil Rule No. 428 of 1986.

Ms. Lira Goswami and D.N. Mishra for the Appellant.

Shankar Ghosh, S.K. Hom Choudhary and S.K. Nandy for the Respondent.

The Judgment of the Court was delivered by

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RAY, J. The respondent, Rev. Fr. Paul Petta was appointed as Principal of St. Anthony's' College by Salesian Provincial on April 16, 1982 and on the recommendation of the Governing Body of the College, the Director of Public Instruction, Meghalaya, Shillong accorded approval to his appointment with effect from 1st May, 1982. St. Anthony's College was established by Salesian Congregation, a Catholic religious Society of imparting general education. It is a religious minority institution under Article 30 of the Constitution of India and it is receiving Government grants-in-aid since the scheme of deficit grant-in-aid colleges was introduced by the government of Assam in 1959. After creation of Meghalaya it has been grants-in-aid under the same system as adopted by the Government of Meghalaya. By Memo No. EDN. 75/74/280 dated 4th November, 1976 the Government of Meghalaya, Education Department conveyed to the Director of Public Instruction, the sanction of the Government of Meghalaya to the implementation of the Instruction. scales of pay, as indicated thereunder to all the deficit college teachers including the Principals, Professors in the State with effect from 1st April, 1975. By Memo No. EDN> 75/74/51 dated December 7, 1979 the Government of Meghalaya laid down the procedure for appointment of Principals, Vice-Principals and Lecturers and other staff in Religious Minority Colleges in the State with reference to Article 30 of the Constitution. Paragraph 1 which is relevant is quoted below:

"In the matter of appointment of Principals and Vice-Principals in the colleges belonging to the religious minorities, the governing Body of the College concerned shall select a Principal and Vice-Principal from a panel of names submitted by the sponsoring Church Organisation concerned subject to the condition that the educational qualifications of the persons selected shall be in accordance with the conditions laid down in the Government's letter No. EDN/75/74/280 dated 4.11.76. Other conditions in respect of age of super-annuation etc. shall be as

prescribed by the State Government from time to time."

The respondent after his appointment had been working as Principal of the College. While working as such, differences arose between him and the church authorities more particularly the appellant Nos. 2,3 and 4 i.e. the President and the members of the Government Body of the College regarding certain matters relating to the management of the college.

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On December 14, 1985, Fr. John Kalapura, SDB, the Appellant No. 2, President, Governing Body of St. Anthony's College and Salesian Provincial sent a letter to the respondent intimating him of his transfer from the power of Principal of the College. The letter states :

"After due consultation with the Provincial Council I am transferring you from the post of Principal of St. Anthony's College, Shillong and am appointing Rev. Fr. J. Kenny as Acting Principal of the same college with effect from 2 f. 12. 85.

Kindly hand over the charge to Rev. Fr. J. Kenny by 21st Dec. 1985."

On receiving the said letter the respondent on that very day sent a letter to the appellant No. 2 stating that he had no authority to appoint or dismiss or transfer the Principal of the College as the Principal and Vice-Principal in the College belonging to the minorities are to be selected by the Governing Body and to be approved by the Director of Public Institution in accordance with Government instructions mentioned in its letter dated December 7, 1979. The respondent sent a letter to the Director of Public Instruction (in short D.P.I.) intimating that he had been removed from the Principalship of St. Anthony's College by the appellant No. 2, the Salesian Provincial of Cauhati Province and Rev. Fr. Kenny had been appointed as the Acting Principal and requested him to intimate if the Government has given any power to Sponsoring Authority for St. Anthony's College in contravention of the Memo dated December 7, 1976. The D.P.I. has informed the respondent by his letter dated 23rd December, 1985 that "this office is not aware of any such power given to the Church Authority concerned". The Salesian Provincial by its letter dated March 7, 1986, proposed the name of Fr. Stephen Mavely as Principal of the said College. The Governing Body at its meeting held on 17th March, 1986 resolved that Fr. Stephen Mavely be appointed Principal-cum-Secretary of St. Anthony's College with effect from March 10, 1986. The said appointment was approved by D.P.I., Meghalaya with effect from 10th March, 1986.

The respondent filed a suit being T.S. No. 1 (T) of 1986 in the Court of the Assistant District Commissioner with a prayer for temporary injunction. An interim order of maintaining status quo was obtained. But as in the meantime the office of the Principal was and taken possession of, the suit was withdrawn and a writ petition being Civil Rule No.

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428 of 1986 was filed challenging that Salesian Provincial has no power to transfer the respondent, viz. the Principal of the College to Don Bosco Technical School, Maligaon, Gauhati. The respondent was appointed as Principal of the said College by the Governing Body of the College with the approval of D.P.I. and so the Governing Body with the approval of D.P.I. can transfer him under the statutory rules. It was also contended that the respondent acquired a statutory right to hold the post of Principal till his attaining the age of super-annuation. The purported order of

transfer is illegal and without jurisdiction It has also been contended that the purported order of transfer tantamounts to removal of the respondent from the post of Principal and the said order being issued without recording any reason and without giving any opportunity to show cause to him is arbitrary, illegal and mala fide. The purported order of transfer is thus violative of principles of natural justice and as such it is liable to be quashed.

An affidavit in opposition was filed on behalf of appellant Nos. 2, 3 and 4 denying that the administration and management of the said college including the appointment, discipline etc. are governed by the Assam Aided College Management Rules, 1965, Assam Aided College Employees' Rules, 1960 for appointment of Principals and Vice-Principals and conditions of grants-in-aid aided colleges in 1956. It has been stated that St. Anthony's College is a minority institution and the Salesians Provincial is the only Competent Authority to make any appointment to the rank of Principal in the said College and no advertisement before making any appointment is necessary. This relaxation of restriction in regard to Minority College availing of deficit grants-in-aid has been made by Memo dated December 7, 1979. The petitioner is a member of the Salesian of Don Bosco and his appointment to the said post of Principal could never have been permanent. As a priest he is transferable from time to time different institutions of the Society. The Constitution of the Salesians of Don Bosco provides that such transfer is binding on the petitioner as a priest and a member of the Salesian Don Bosco. The transfer of the petitioner and other priests are matters of normal routine as members of Salesian Society. It has also been stated that any money drawn by a priest has to be given to the order of Salesian of Don bosco and no priest maintains any private fund. It is the responsibility of the Salesian Society to look after the needs and requirements of any member of the community and is responsible for the upkeep of such members. The petitioner has taken a vow of obedience when he was ordained as a priest and was admitted as a member of Don bosco. The petition is liable to be dismissed as no statutory right of the petitioner has been violated.

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After hearing the learned counsels for the parties as well as considering the facts and circumstances the High Court held that the Governing Body of the College was not a Statutory Body. The Court further held that:

"To our mind there is violation of the principles of natural justice in dislodging the petitioner from his post of Principal without hearing him."

The High Court further held that:

"So long as the members of the Salesian Body obeyed the rules and regulation of the Body, accepted transfers in good spirit this Court would have nothing to do. But if the petitioner having been appointed as Principal feels aggrieved that his transfer is not in accordance with the rules of the body and comes to the Court, this Court has to look and listen to him. By appointing the petitioner as Principal of the College, the organisation has exposed the petitioner to the judicial gaze of the Court and if the petitioner makes grievances, it is for the Court to redress it."

"..... The petitioner was appointed by the Governing Body and that was subject to the approval of the D.P.I. There is no reason as to why his removal from the post of the Principal should not have been made by the Governing Body

and subject to the approval of the D.P.I. However, the College Governing Body has got no control over the School whereto the petitioner has been transferred."

The High Court therefore made the rule absolute to the extent indicated in the directions quoted below:

"We accordingly keep the impugned order in abeyance forthwith and direct the Governing Body of the College to give the petitioner an opportunity to show cause as to why he should not be transferred as stated in the impugned transfer order dated 14.12.1985 (Annexure-10) and after hearing the petitioner on the cause shown, shall decide the matter of transfer within one month from receipt of this order, and act according to the decision so taken and in

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conformity with the Government instructions (Annexure-8). If the impugned order is revoked, the petitioner shall automatically be reinstated in his post of principal of the College, and shall be given all the emoluments and benefits thereof. The Respondent No. 11 shall correspondingly cease to be Principal of the College, but shall not be disentitled to the pay and allowances for the services already rendered by him to the College prior to this date. In case the Governing Body decides to give effect to the impugned transfer order it shall revive and the petitioner shall be free to pursue his remedies under the law. In the interest of fair hearing and reasonable opportunity, we direct the Governing Body to make available to the petitioner all the records which he may need for the purpose of his defence; the petitioner shall, not, however function as Principal during the period of one month pending decision. The decision shall be taken within a month from today."

Aggrieved by the said order made in Civil Rule No. 428 of 1986, a special leave petition has been filed by the Governing Body and some of the members of the Governing Body of the College. After hearing the learned counsel for the parties special leave was granted.

The St. Anthony's College is admittedly a minority institution within the meaning of Article 30 of the Constitution and as such the Salesian Don Bosco Society is competent to administer the said college. This College is getting deficit grants-in-aid from the Government of Meghalaya and the instructions contained in Memo No. EDN. 75/74/S1 issued by the Government of Meghalaya on 7th December, 1979 laying down the procedure of appointment of Principal, Vice-Principal, Lecturers and other staff in religious minority colleges in the State will apply to this Institution. The respondent who was a lecturer of St. Anthony's College was sponsored by Salesian Provincial, the appellant No. 2 for appointment of Principal of the College and the Governing Body of the College recommended the same to the Director of Public Instruction, Meghalaya for approval as required under the above instructions. The D.P.I. duly approved the appointment of the respondent, Rev. Fr. Paul Petta as Principal of the College with effect from May 1, 1982. The appellant worked as Principal of St. Anthony's College since the date of his appointment till the impugned order of transfer made by the appellant No. 2 Rev. Fr. John Kalapura as Salesian-Provincial from the post of Principal of the said College to the post of Teacher, Don Bosco Technical School, Maligaon, Gauhati on December 21,

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1985 without asking him to show cause against the order of transfer and without giving him any opportunity of hearing. It has been urged that the respondent being ordained as a priest of the society has taken vow of servie to any post

where he will be asked by the Society to work. As a priest he was sponsored by the Church Authority for appointment as Principal and the Governing Body of the College also recommended his appointment as made by Salesian Provincial for approval. The petitioner cannot have any grievance against the order of transfer as he has no statutory right to remain as Principal of the College. It has also been contended by referring to certain Articles of Constitution of the Society of St. Francis de Sales that the respondent being ordained as priest of the Society took the vow of service and the Salesian Provincial can transfer him to serve in any of institutions of the Society as his service is transferable. It has also been submitted that as a priest the respondent cannot keep any money with him and whatever salary he gets will have to be given to the Society which will look after him and meet his needs. The respondent questions the order of transfer. The respondent so long as he obeys the order of transfer and complies with it, the court has nothing to do. But if he does not comply with it and questions it before the Court, the Court will have to consider his grievances and to decide if the impugned order of transfer is legal and valid.

The respondent was appointed as Principal of St. Anthony's College by the Governing Body of the College and the same was duly approved by the Director of Public Instruction, Meghalaya in accordance with the procedure laid down in the Government's letter dated December 7, 1979. The impugned order of transfer purports to transfer the respondent from the post of Principal of the College to the post Teacher in the Don Bosco Technical School at Maligaon within the State of Gauhati over which the Governing Body of St. Anthony College has no control. This order of transfer has prejudicially affected the status of the respondent as Principal of St. Anthony's College. The main question that arises for consideration in this appeal is whether the Salesian Provincial, the appellant No. 2, is competent to transfer the petitioner who has been appointed as Principal of the College by the Governing Body of the College and approved by the D.P.I. as per Government instructions applicable to minority college. There is no dispute that the respondent is a member of Salesian Don Bosco Society as a priest. It is also not in dispute that as a priest of the society he was sponsored by the Church Authorities for the post of Principal of the College and the Governing Body of the College recommended to the D.P.I. for approval of his appointment as Principal of the College. In such

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circumstances it is required to be considered whether the Salesian Provincial has power to transfer him from the post of Principal of the College to the post of Teacher in a Technical School of the Society. It is apparent from the aforesaid Government instructions that the Principal whose appointment has been duly approved by the D.P.I. can work as Principal in the minority college till he attains the age of super-annuation as determined by the Government. The impugned order of transfer in substance amounts to removal of the respondent from the post of Principal of the College. It has been held by the High Court that the respondent has been condemned unheard as he was not given any opportunity to show cause for the purported order of transfer which seriously prejudiced him. The principles of natural justice and fair play mandate that in administrative actions the audi alterum partem rule is applicable and the person affected by the order to be given an opportunity of hearing against the purported order apart from the question whether

the Assam Aided College Management Rules, 1965 and Assam Aided College Employees' Rules, 1965 are applicable to minority institutions. We do not consider it necessary for the purposes of this appeal to make any observations on the question whether the Assam Aided College Management Rules, 1965 and Assam Aided College Employees' Rules, 1960 are applicable to minority institutions or to consider the question whether the rules concerning the terms and conditions of appointment as well as prescribing qualification for appointment the post of lecturers and principals as well as prescribing condition for service are regulatory in nature and they do not contravene the fundamental right guaranteed under Article 31 of the Constitution to the minority institutions at has been observed in the case of Frank Anthony Public School Employees Association v. Union of India & Ors., [1987] I SCR 238. It has been contended on behalf of the learned counsel for the appellants that the appellant No. 2, Salesian Provincial is the appointing authority of the respondent and as such he has the right to make the impugned order of transfer though there is no express provision conferring such power. The case of Kutoor Vengayil Rayarappan Nayanar v. Kutoor Vengayil Valia Madhavi Amma and Ors., AIR 1950 (Federal Court) 140 has been cited at the bar for the proposition that the power to terminate flows naturally and as a necessary sequence from the power to create. This proposition is a well established proposition but the question is whether the Salesian Provincial is the appointing authority of the respondent or the Governing Body of the said College appointed the respondent and recommended his appointment for approval to the D.P.I. As stated earlier D.P.I. pursuant to the recommendation of the Governing Body approved the appointment of the respondent as

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Principal of the said College. So this question has to be gone into and determined by the Governing Body as has been directed by the order of the High Court. It has been contended that the impugned order of transfer has seriously affected the status of the respondent as Principal of the College and this has been made by the appellant No. 2, Salesian Provincial without giving him any opportunity of hearing. Now in so far as the Respondent is transferred in his capacity as priest from one division of the religious order to another the matter pertains to the internal management of the religious order and it is not justiciable. However, in so far as the order of transfer has been made by the Governing Body of the St. Anthony's College transferring the respondent from the post of Principal of the College to the post of Teacher of Don Bosco Technical School which is in another State the respondent can complain against it. Since the respondent has not been given any opportunity of hearing against the purported order of transfer outside the State which seriously affected his status, the High Court, in the facts and circumstances of the case has directed the Governing Body of the College to give the respondent an opportunity to show cause against the impugned order of transfer dated 14. 13. 1985 and to give him a hearing and decide the transfer matter in accordance with law. The judgment and order passed by the High Court in the circumstances of the case cannot be faulted.

We therefore, uphold the order passed by the High Court and the appeal is dismissed with costs quantified at Rs. 5,000.

S.L.

Appeal dismissed.

JUDIS