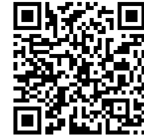

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 13.09.2023

% **Judgment delivered on: 10.10.2023**

\+ **<u>LPA 691/2019 & CM APPL. 47943/2019</u>**

KIRAN JAIN ..... Appellant

Through: Mr. Romy Chacko, Mr. Prashant Kumar and Mr. Sachin Singh Dalal, Advocates.

Versus

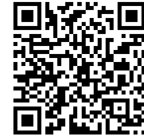
GOVT OF NCT OF DELHI & ORS. ..... Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel with Mrs. Taniya Ahlawat, Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates for R-1 & 2.
Mr. Asheesh Jain, CGSC with Mr. Prajesh Kumar Srivastava, GP.
Ms. Meenakshi Midha and Mr. Garv Singh, Advocates for R-3.

\+ **<u>LPA 709/2019 & CM APPL. 48578/2019, CM APPL. 48579/2019</u>**

THE MANAGER, HIRA LAL JAIN SENIOR SECONDARY SCHOOL ..... Appellant

Through: Ms. Meenakshi Midha and Mr. Garv



Singh, Advocates

Versus

KIRAN JAIN & ORS. ..... Respondents

Through: Mr. Romy Chacko, Mr. Prashant Kumar and Mr. Sachin Singh Dalal, Advocates for R-1.
Mrs. Avnish Ahlawat, Standing Counsel with Mrs. Taniya Ahlawat, Mr. Nitesh Kumar Singh, Ms. Laavanya Kaushik, Ms. Aliza Alam and Mr. Mohnish Sehrawat, Advocates for R-2 & 3.

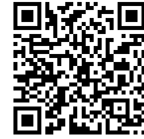
CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present appeal(s) arise out of a common judgment dated 01.10.2019, passed by the learned Single Judge in W.P.(C.) No. 10549/2018 (the "**Impugned Judgement**").

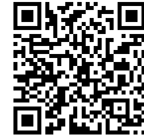
2. The facts of the case reveal that the Appellant in LPA 691/2019 holds the requisite qualification for the post of Trained Graduate Teacher ("**TGT**") in Hindi (hereinafter referred to as "**TGT (Hindi)**") i.e., (i) a B.Ed obtained in 2013-14; (ii) successfully cleared the Central Teacher Eligibility Test ("**CTET**") in 01.04.2015; and (iii) served as a guest teacher in Rajkiya Sarvodaya Kanya Vidyalaya between 2014 and 2017. The facts of the case



further reveal that an advertisement dated 26.08.2017 was issued by the Respondent No. 3 / Manager, Hira Lal Senior Secondary School i.e., a minority institution having been granted minority status by the National Commission for Minority Educational Institutions, New Delhi inviting applications for *inter alia* the post of TGT (Hindi) (the "**Advertisement**"). The Appellant, in response to the Advertisement submitted an application for the post of TGT (Hindi).

3. A total of 20 (twenty) candidates were shortlisted for an interview to be conducted by Respondent No. 3's Selection Committee (the "**SC**") wherein the candidates were to be evaluated on the basis of a marking scheme which was formulated on the basis of the Recruitment Rules (*defined below*) and approved by Respondent No. 3's Executive Committee (the "**EC**"). For ease of reference the key parameters of the marking scheme qua appointment of teachers as TGT (Hindi) are reproduced as under (the "**Evaluation Matrix**"):

XII	*Graduate / B.A./ B.Com/ B.Sc*	*B.Ed.*	*Addl. Qualifications M.A., M.Com/ M.Sc./ M.Phil/ Ph.D.*	*Exp.*	*CTET*	*Total*	*Interview*	*Total*
10	*20*	*20*	*10*	*10*	*10*	*80*	*20*	*100*

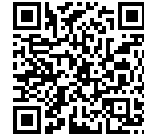


4. Thereafter, the Appellant's candidature for appointment to the post of TGT (Hindi) was accepted and the Appellant was called to appear before the SC for *inter alia* (i) verification of documents; and (ii) a personal interview (the "**Evaluation**").

5. On the basis of the Evaluation, the Appellant was recommended by the SC for the post of TGT (Hindi). Subsequently, Respondent No. 3's Managing Committee (the "**MC**") in a meeting dated 13.12.2017, affirmed the recommendation made by the SC. Accordingly, the Appellant was issued a letter of appointment on 18.12.2017, appointing the Appellant on the post of TGT (Hindi) (the "**Appointment Letter**").

6. In response to the Appointment Letter, the Appellant conveyed her acceptance *vide* a letter dated 28.12.2017 and, thereafter, reported on duty on 16.01.2018 i.e, the date of appointment under the Appointment Letter. On 16.08.2018, Respondent No. 3 issued an office order appointing the Appellant as a TGT (Hindi); and on the same day, intimated Respondent No. 2 about the appointment of the Appellant in compliance with Rule 98(3) of the Delhi School Education Rules, 1973 (the "**DSE Rules**") framed under the provisions of the Delhi School Education Act, 1973 (the "**DSE Act**"); and sought sanction of grant-in-aid in view of the appointment.

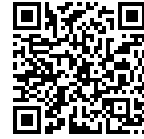
7. The Respondent No. 2 / Deputy Director, Directorate of Education, *vide* a letter dated 31.01.2018 raised certain queries; and sought clarifications in respect of the appointment of the Appellant. It is stated that the queries raised by Respondent No. 2 were satisfactorily answered by Respondent No. 3 / The Manager, Hira Lal Jain Senior Secondary School



vide a letter dated 05.02.2018. Thereafter, Respondent No. 2 *vide* a letter dated 28.04.2018 informed Respondent No. 3 that *inter alia* the Appellant was wrongly awarded marks in the category of 'additional qualifications' under the Evaluation Matrix as although the Appellant had obtained a M.A (English) degree, the post sought to be filled was that of a TGT (Hindi) accordingly, Respondent No. 2 held that the award of marks under the 'additional qualifications' was improper, and therefore the selection process must stand vitiated.

8. The Respondent No. 3 on 07.05.2018, promptly informed the Respondent No. 2 that the Recruitment Rules (*defined below)* for TGT (Hindi) did not specify whether *inter alia* the 'M.A Degree' under the 'additional qualifications' criteria under the Evaluation Matrix had to be in the same subject. Furthermore, it is stated that the circulars issued on the subject by Respondent No. 2 does not envisage the grant of additional marks only in case the candidate possesses a 'M.A Degree' in the concerned subject. In this context, on 10.08.2018, Respondent No. 2 directed Respondent No. 3 to take immediate action vis-à-vis the appointment of the Appellant and, accordingly, *vide* an order dated 18.08.2018, the services of the Appellant as a TGT (Hindi) were discontinued on account of the Appellant's appointment being rejected by Respondent No. 2.

9. Aggrieved, the Appellant immediately sought recourse before this Court by way of a Writ Petition i.e., W.P.(C.) No. 10549/2018 (the "**Writ Petition**"). Pertinently, the Ld. Single Judge dismissed the Writ Petition *vide* the Impugned Judgement observing *inter alia* that (a) aspects such as ascribing a minimum qualification; (b) a standards of prior experience; and



(c) other criteria for making appointments etc are the matters which will fall squarely within the power of the State to frame regulations; and (ii) that minority institutions cannot either (a) exercise a veto; or (b) command that a particular person be appointed in teeth of such regulatory framework under the garb that disallowing such an action would impinge on a minority institutions' rights under Article 30(1) of the constitution of India. The relevant extracts of the Impugned Judgement are reproduced as under:

> *"34. The Respondent No. 3 sent communication dated 16.01.2018 to Account's Officer of the Respondent No. 2 for sanctioning grant-in-aid towards salary of petitioner for the month of January & February, 2018. However, upon scrutiny, the illegality committed by Respondent No. 3 in collusion with petitioner was exposed whereupon Respondent No. 2 promptly informed Respondent No. 3, about the illegality in constituting Selection Committee being in violation to above said Rules and not following the marking scheme provided in Circular dated 26.02.2014. No formal communication was ever served upon the Directorate of Education about the appointment of petitioner as TGT (Hindi) by school management/ Respondent No. 3.*
>
> *35. Further, the appointment of petitioner was as TGT (Hindi) while her higher qualification was M.A. (English). Benefit of additional qualification was not admissible as per Circular No.F. DE/15/Act-II/2014/372-391 dated 26.02.2014. Serial No.2 of the circular dated 26.02.2014 states that "marks for additional qualification would be given for next immediate higher education above the essential one and that too in concerned subject relevant to the concerned post. No marks would be awarded for additional qualification of M. Ed."*
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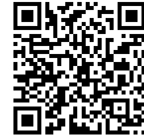
> *36. The selection committee constituted by Respondent No. 3 undeservingly granted 'additional marks for next immediate higher qualification above the essential one" to the petitioner*



which could not have been granted to her being inadmissible in terms of serial no.2 of circular dated 26.02.2014.

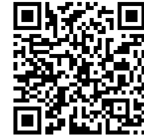
37. It is emphatically denied that Respondent No. 3 has unfettered right to choose and appoint teacher of its own choice by flouting the Recruitment Rules and other general norms, to the extent that they prescribe qualifications, experience, age and all other criteria for appointment. Further Rule 64(a) of the Delhi School Education Rules, 1973 explicitly provides:

> *"No school shall be granted aid unless its managing committee gives an undertaking in writing that it shall comply with the provisions of the Act and Rules."*

38. Selection Committee constituted by Respondent No. 3 undeservingly granted 'additional marks for next immediate higher qualification above the essential one" to the petitioner which could not have been granted to her being inadmissible in terms of serial no.2 of circular dated 26.02.2014. Additional marks could be given for higher qualification provided the teacher was being appointed for the subject in which the candidate attained higher qualification. Petitioner is M.A.(English) and had she been M.A. (Hindi) only then she could be granted additional marks for higher qualification. Thus, illegally constituted Selection Committee which committed further illegality in granting additional marks, which were not admissible to the petitioner.

39. Deputy Director Education vide letter dated 28.04.2018 informed Respondent No. 3, that on examination it was found that the marks given for additional qualification was for M.A.(Eng) whereas the applicant is selected for the post of TGT (Hindi), on the contrary, the marks given for the additional qualification should be in concerned subject i.e. M.A. (Hindi).

40. Since Respondent No. 3 brazenly flouted Recruitment Rules and other general norms, for appointment which they were required to adhere in terms of judgment of this Hon'ble Court in Queen Mary's School (supra), the grant in aid cannot be

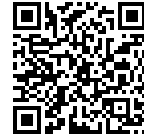


accorded to the petitioner & it is the responsibility of the Respondent No. 3 school, to pay the salary to the petitioner for the period it took work from her, since her selection was dehors the relevant rules, hence non-est and bad in law, as such it does not visit the Respondent No. 2 with any liability to bear towards grant in aid for illegal appointment of the petitioner by Respondent No. 3. Said respondent must bear the consequences of committing deliberate illegality in appointing the petitioner while tracking on the wrong side of law, in conflict therewith.

41. In addition, Hon'ble Supreme Court and this Court have held in a catena of judgments that the right to administer educational institutions would not include the right to mal-administer. It has been held that regulations could be lawfully imposed for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. It is permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. Directorate of Education issued Circular No.F.DE/1S/Act-II/2014/37-2-391 dated 26.02.2014 prescribing the marking scheme for recruitment of teachers in aided school as a secular condition and the same is applicable across all the schools and the same would not dilute its force and vigor for the minority run educational institutions. Conditions provided in Circular dated 26.02.2014 are applicable to all the educational institutions receiving grant and it is meant to safeguard and maintain teaching standards. Circular dated 26.02.2014 is not aimed at making any in roads into the managerial powers of the minority institutions.

42. Reliance was further placed on the judgment of eleven judges Constitution Bench of the Hon'ble Supreme Court in TMA Pai vs. State of Karnataka: 2002 (8) SCC 481 whereby it was held:

> *"143. This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such*

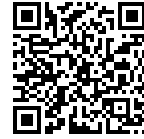


> *conditions attached to it, which will in any way dilute or abridge the rights of the minority institutions to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the utilization of the grant and fulfillment of the objective of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant. "*

43. The circular dated 26.02.2014 does not take away the right to appoint teachers and other personnel as per the choice of the institution, as safeguarded under Article 30(1) of the Constitution of India, but such right is not unfettered. Hon'ble Supreme Court has recognized the State's regulatory power to prescribe basic qualifications for filing the posts and the same was spelt out by the nine judges bench judgment in Ahmadabad St. Xavier's College Society vs. State of Gujarat: 1974 (1) SCC 717 .

44. In Pramati Educational & Cultural Trust vs. Union of India: (2014) 8 SCC 1, the Hon'ble Supreme Court, considering judgment in TMA Pai (supra) held:

> *"92. In T.M.A. Pai, the dual test is summed up as: ....It was permissible for the authorities to prescribe regulations, which must be complied with before a minority Institution could seek or, retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore a balance has to be kept upon the two objectives-that of ensuring the standard of excellence of the institution, and that*



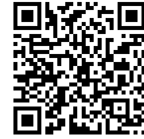
of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable ...”

93. It is submitted with respect that dual test applies to (a) unaided and aided minority institutions, (b) unaided non-minority institutions. But the principle will apply to the aided institutions.”

45. In Sindhi Education Society vs. Govt. (NCT of Delhi): 2010 (8) SCC 49, the Hon'ble Supreme Court held:

“91. In T.M.A. Pai case the right to establish an institution is provided. The Court held that the right to establish an institution is provided in Article 19(1)(g) of the Constitution. Such right, however, is subject to reasonable restriction, which may be brought about in terms of clause (6) thereof. Further, that minority, whether based on religion or language, however, has a fundamental right to establish and administer educational institution of its own choice under Article 30(1).

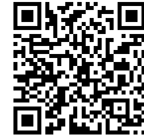
92. The right under clause (1) of Article 30 is not absolute but subject to reasonable restrictions which, inter alia, may be framed having regard to the public Interest and national interest of the country. Regulation can also be framed to prevent maladministration as well as for laying down standards of education, teaching, maintenance of discipline, public order, health, morality, etc. It is also well settled that a minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the



right of admission of students belonging to the minority group and, at the same time, would be required to admit a reasonable extent of non-minority students, to the extent, that the right In Article 30(1) Is not substantially Impaired and further, the citizen's right under Article 29(2) is not infringed.

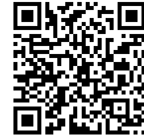
93. A minority institution may have its own procedure and method of admission as well as the selection of students but it has to be a fair and transparent method. The State has the power to frame regulations which are reasonable and do not impinge upon the basic character of the minority institutions'. This Court, in some of the decisions, has taken the view that the width of the rights and limitations thereof of even unaided institutions, whether run by a majority or by a minority, must conform to the maintenance of excellence and with a view to achieve the said goal indisputably, the regulations can be made by the State.

94. It is also equally true that the right to administer does not amount to the right to maladminister and the right is not free from regulations. The regulatory measures are necessary for ensuring orderly. efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institutions. The right of the State is to be exercised primarily to prevent maladministration and such regulations are permissible regulations. These regulations could relate to guidelines for the efficiency and excellence of educational standards. ensuring the security of the services of the teachers or other employees, framing rules and regulations governing the conditions of service of teachers and employees and their pay and allowances and



prescribing course of study or syllabi of the nature of books. etc. Some of the impermissible regulations are refusal to affiliation without sufficient reasons, such conditions as would completely destroy the autonomous status of the educational institution, by introduction of outside authority either directly or through its nominees in the governing body or the managing committee of a minority institution to conduct its affairs, etc. These have been illustrated by this Court in State of Kerala v. Very Rev. Mother Provincia, All Saints High School v. Govt. of A.P. and T. M.A. Pai case.

97. It is not necessary for us to examine the extent of power to make regulations, which can be enforced against linguistic minority institutions, as we have already discussed the same in the earlier part of the judgment. No doubt, right conferred on minorities under Article 30 is only to ensure equality with the majority but, at the same time, what protection is available to them and what right is granted to them under Article 30 of the Constitution cannot be diluted or impaired on the pretext of framing of regulations in exercise of its statutory powers by the State. The permissible regulations, as afore-indicated, can always be framed and where there is a maladministration or even where a minority linguistic or religious school is being run against the public or national interest, appropriate steps can be taken by the authorities including closure but in accordance with law. The minimum qualifications, experience, other criteria for making appointments, etc. are the matters which will fall squarely within the power of the State to frame regulations but power to veto or command that a particular person or class of persons ought to be appointed to the school failing which the grant-in-aid will be

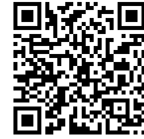


> *withdrawn, will apparently be a subject which would be arbitrary and unenforceable.*
>
> *46. The present writ petition filed by the petitioner is devoid of any cause of action and is arising out of complete misconceived interpretation of settled proposition of law as laid down by the Hon'ble Supreme Court and by this Court.*
>
> *47. The writ petition is dismissed, accordingly, with no order as to costs. "*

10. Aggrieved by the Impugned Judgement, the Appellant(s) preferred this LPA challenging the Impugned Judgement.

11. Mr. Romy Chacko, Ld. Counsel appearing on behalf of the Appellant in LPA 691/2019 has vehemently argued before this Court that pursuant to the Advertisement, the SC was constituted under the provisions of the DSE Act read with the DSE Rules. Thereafter, the SC interviewed the Appellant and other candidates as per the Evaluation Matrix in furtherance of the Evaluation. Further, Mr. Chacko submits that in accordance with the Appointment Letter, Respondent No. 3 issued an office order for the appointment of the Appellant on 16.01.2018 i.e., the date of joining. Thereafter, *vide* a letter dated 16.01.2018 intimated Respondent No. 2 of the appointment of the Appellant in compliance with the statutory provisions governing the field; and sought sanction of grant-in-aid vis-à-vis the appointment of the Appellant.

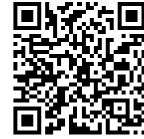
12. It has been brought to the attention of this Court that sanction of grant-in-aid was sought, as Respondent No. 3 was receiving the said grant from the State Government. Therefore, Respondent No. 2 was intimated about the appointment of the Appellant under Sub-Rule (3) of Rule 98 of the



DSE Rules. In response, Respondent No. 2 raised certain queries in relation to the Evaluation including but not limited to the procedure adopted and the requirement to conform to certain identified provisions of the DSE Act; and DSE Rules. The aforementioned queries were addressed by Respondent No. 3. However, on 10.08.2018, Respondent No. 2 informed Respondent No. 3 that the grant-in-aid vis-à-vis the appointment of the Appellant cannot be released as she had been wrongly awarded additional marks under the Evaluation Matrix. Consequently, on 18.08.2018, Respondent No. 3 informed the Appellant that her services were terminated.

13. The Ld. Counsel for the Appellant has further argued that Rule 96 of the DSE Rules does not apply to minority aided schools in view of the judgment of this Court ***in Queen's Mary's School Thru Its Principal v. U.O.I***, W.P.(C.) No. 2845/1992 wherein it was held *inter alia* that the Rules 47, 64(1)(b),(e) and 96 of the DSE Rules, 1973 are in applicable to aided minority institution.

14. Mr. Chacko has further contended that the Ld. Single Judge has erroneously observed that the Directorate of Education ("**DoE**") circular dated 26.02.2014 (the "**Circular**") does not dilute the rights enshrined under Article 30(1) of the Constitution of India. In this regard, he places reliance on ***Queen's Mary's School*** (***Supra***) wherein he contends that this Hon'ble Court has held that minority schools enjoy full autonomy in appointing the teachers of their choice which cannot be interfered with; and accordingly, Rule(s) 47, 64(1)(b),(e) and 96 of the DSE Rules do not apply to the minority aided schools. It is his contention that the rules identified above can

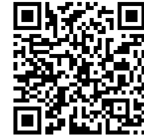


only be made applicable in respect of prescription of minimum qualifications pertaining to standards of education.

15. Ld. Counsel for the Appellant has vehemently argued before this Court that the judgment delivered by the Ld. Single Judge is contrary to the law laid down by the Hon'ble Supreme Court of India (the "**Supreme Court**") in ***Chandana Das (Malakar) v. The State of West Bengal & Ors***., (2020) 13 SCC 411; ***Ahmedabad St. Xavier's College Society v. State of Gujarat,*** (1974) (1) SCC 717; and ***T.M.A Pai Foundation v. State of Karnataka,*** (2002) 8 SCC 481.

16. Mr. Chacko has contended that a minority education institute is free to appoint any qualified person as a teacher subject to such person satisfying the minimum qualification prescribed by the State in relation to such a post. He has further argued that the Circular does not apply to aided minority schools; and that under Article 30(1) of the Constitution of India, minority schools are free to choose any qualified person as teacher for their institution subject to the limited criteria outlined above. In this context, it is submitted that the Appellant was appointed by a duly constituted SC in consonance with the Evaluation Matrix and, therefore, the Ld. Single Judge has erred in law and facts by holding that the Respondent No. 3 could not have granted the Appellant additional marks for next immediate higher qualification i.e. a 'M.A Degree'.

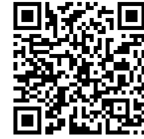
17. The Ld. Counsel for the Appellant has reiterated that Respondent No. 3 is a minority aided schools within the meaning of Section 2(o) of the DSE Act read with Rule 2(d) of the DSE Rules. Accordingly, he has contended



that the *Second Proviso* to Rule 98 of the DSE Rules clarified that that the rigors of Rule 98(2) of the DSE Rules i.e., prior approval of the DoE qua appointment of teachers, does not apply to minority aided schools. Therefore, as Respondent No. 3 is admittedly a minority aided school, the approval of the DoE cannot be insisted upon vis-à-vis appointment of staff and / or teachers. Reliance in this regard has been placed upon a judgment of this Court in ***Tabita Chand v. Director of Education & Ors***., LPA 165/2013, dated 21.03.2013.

18. The Ld. Counsel has vehemently argued before this Court that the Ld. Single Judges' observation qua the Appellant's selection not being in accordance with the procedure provided under Rule 96 of the DSE Rules is contrary to the documents on record and contrary to the decision of this Court in ***Queen's Mary's School (Supra)*** wherein it was categorically observed that Rule(s) 47, 64(1)(b), (e) & 96 of the DSE Rules do not apply to the minority aided schools, and accordingly, minority institutions are free to appoint teachers of its own choice.

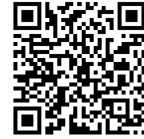
19. Mr. Chacko further argues that keeping in view Rule 98(4) of the DSE Rules, the DoE was deemed to have approved an appointment made by the MC of an aided school within 15 (fifteen) days from the date on which the particulars of such appointment are communicated to DoE under Rule 98(3). Therefore, it is submitted that as the DoE did not communicate its disapproval within the stipulated period of 15 (fifteen) days from 16.01.2018, the appointment of the Appellant is a case of deemed approval.



20. The Ld. Counsel for the Appellant has drawn the attention of this Court to Rule 127(3) of the DSE Rules, whereunder the SC is accorded with the ability to regulate its own procedure and, more importantly in case, a difference of opinion arises amongst the members of the SC on any matter, the same has to be decided by the trust or society running the school. In the case herein, it is the MC that has approved the appointment which is analogous to an appellate decision making authority as envisaged under Rule 127(3) of the DSE Rules.

21. The Ld. Counsel for the Appellant has also contended that as many as 20 (twenty) TGTs were appointed by way of the same Evaluation process following the same Evaluation Matrix. In this regard, he has drawn the attention of this Court to the case of one Ms. Sonal Bhardwaj who was appointed as a Post Graduate Teacher in Economic. Pertinently, in her case, she was awarded additional marks for a 'Masters in Education' which is evidently not related to Economics, however her appointment has not been interfered with by the DoE.

22. On the other hand, Respondent No. 3 has preferred LPA No. 709 of 2019 which is being disposed of by this common judgement. Pertinently, Respondent No. 3 has unreservedly supported the case of the Appellant and has adopted the arguments canvassed by Ld. Counsel appearing on behalf of the Appellant. The Ld. Counsel appearing on behalf of Respondent No. 3 has reiterated that it a minority institution and accordingly, has the right to select a teacher of its own choice, subject to fulfillment of the minimum qualifications prescribed by the DoE in respect of the said post. It has been argued that the Appellant before this Court fulfilled the requisite

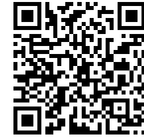


qualification for the post of TGT (Hindi) and was selected by a duly constituted SC and subsequently confirmed by the MC. Therefore, the DoE could not have set aside the Appellant's appointment in light of the provisions of the DSE Act and DSE Rules (as applicable to a minority institution). In this regard, the Ld. Counsel for respondent No. 3 has also relied upon ***Chandana Das (Malakar) (Supra)***, ***Ahmedabad St. Xavier's College Society (Supra)*** and ***T.M.A Pai Foundation (Supra)***.

23. The Ld. Counsel appearing on behalf of the Government of NCT of Delhi ("**GNCTD**") and the DoE has vehemently argued before this Court that, that Respondent No.3 could not have awarded the Appellant additional marks in respect of her 'M.A. Degree' in English in relation to her appointment as a TGT (Hindi) as per the Evaluation Matrix as the same would be contrary to the Circular. Accordingly, it is submitted that the Appellant's selection was not proper; hence, the DoE was left with no other choice except to disapprove the appointment made by the MC.

24. Furthermore, it has been argued before that the DSE Act read with DSE Rules specifies a procedure in relation to appointment of persons. Therefore, it has been submitted that the Ld. Single Judge was justified in upholding the order passed by the DoE in the light of Respondent No.3's departure from the specified procedure under the DSE Act read with the DSE Rules.

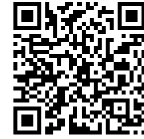
25. The Ld. Counsel has contended that Respondent No. 3 school does not have an unfettered right to select and appoint a person of its own choice as a teacher in disregard to the Recruitment Rules (*defined below)* and other



general norms. Moreover, it has been submitted that Rule 64(a) of the DSE Rules categorically states that no school shall be granted aid unless its managing committee undertakes in writing that it shall comply with the provisions of the DSE Act and the DSE Rules. Accordingly, as the Circular issued under the provisions of the DSE Act and / or DSE Rules was flouted by Respondent No. 3 as it awarded additional marks in respect of higher qualification i.e., 'M.A. Degree' in English even though the Appellant was seeking appointment as a TGT (Hindi), the SC erred in law and in fact in awarded such additional marks, hence, the DoE was justified in disapproving the appointment of the Appellant as a TGT (Hindi); and withholding the sanction of grant-in-aid in respect of Appellant's appointment.

26. In this regard, the Ld. Counsel for the Appellant has also placed reliance upon a judgment delivered in the case of ***T.M.A Pai Foundation (Supra)*** and has specifically drawn the attention of this Court to Paragraph 143 of the aforesaid judgment which reads as under:

> *"143. This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of the minority institution to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the educational institutions receiving the grant, must be related to the proper utilization of the grant and fulfilment of the objectives of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational*



institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant."

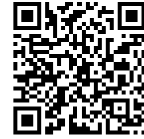
27. Accordingly, the Ld. Counsel for Respondent Nos 1 and 2 submitted that in light of ***T.M.A Pai Foundation (Supra)*** read with the Circular, the rights of Respondent No. 3 under Article 30(1) of the Constitution of India were although not infringed upon, but subjected to the GNCTD's regulatory powers to prescribe minimum qualifications for the persons to be appointed as teachers which has been held to be proper by the Supreme Court ***Ahmedabad St. Xavier's College Society (Supra)***.

28. Furthermore the Ld. Counsel for Respondent Nos 1 and 2 has placed reliance upon judgments delivered by the Supreme Court in ***Pramati Educational & Cultural Trust v. Union of India***, (2014) 8 SCC 1; and ***Sindhi Education Society vs. Govt. (NCT of Delhi***), 2010 (8) SCC 49 and reiterated that the award of additional marks to the Appellant in furtherance of the Evaluation was contrary to the DSE Act, DSE Rules and the Circular.

29. We have heard the Ld. Counsel(s) for the parties at length and perused the record. The matter is being disposed of at the admission stage itself with consent of the parties.

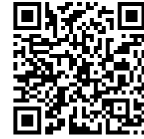
30. The undisputed facts of the case reveal that the Respondent No. 3 is a government recognized minority aided institution managed and controlled by Jain Siksha Pracharak Society. Furthermore, it would be pertinent to note that the minority status of Respondent No. 3 is not in question.

31. Admittedly, the appointment of teachers is governed under the provisions of the DSE Act read with the DSE Rules. Furthermore, the

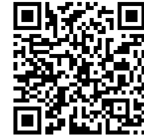


recruitment rules notified by the DoE *vide* a notification dated 17.07.2017 bearing no: F.No. DE.3(36)/ DR/ Notification/ 2017/4525 (the "**Recruitment Rules**") is reproduced as under:

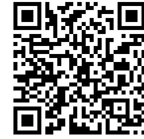
These posts are identified suitable for PH (OH-OA,OL, BL & VH-B.LV) candidate as per requisition of user department.		
R.No.		*F.No.DE.3(36)/DR/Notification/2017/4525*
Post Code:-	*Name of the post:-*	*Vacancies in Dte. Of Education*
69/17	*TGT (Bengali)-Female*	*(Total- 1) (UR-1)*
70/17	*TGT (Hindi)-Male*	*(Total-271) (UR-143, OBC-87, SC-24, ST-17) including PH-8 (VH-4, OH-4)*
71/17	*TGT (Hindi)-Female*	*(Total-151) (UR-93, OBC-14, SC-26, ST-18) including PH-5 (VH-2, OH-3)*
72/17	*TGT (Punjabi)-Male*	*(Total-88) (UR-45, OBC-24, SC-12, ST-7) including PH-3 (VH-1, OH-2)*
73/17	*TGT (Punjabi)-Female*	*(Total- 126) (UR-59, OBC-38, SC-18, ST-11) including PH-4 (VH-2, OH-2)*
74/17	*TGT (Sanskrit)-Male*	*(Total-114) (UR-57, OBC-39, SC-10, ST-8) including PH-3 (VH-1, OH-2)*
75/17	*TGT (Sanskrit)-Female*	*(Total-140) (UR-51, OBC-69, SC-12, ST-8) including PH-4 (VH-2, OH-2)*
76/17	*TGT (Urdu)-*	*(Total-78) (UR-39, OBC-20, SC-13, ST-6)*



	Male	*including PH-2 (VH-1, OH-1)*
77/17	*TGT (Urdu)-Female*	*(Total-135) (UR-63, OBC-38, SC-24, ST-10) including PH-4 (VH-2, OH-2)*
Educational Qualification:-	*Essential:-*	*(i) B.A. (Honours) in one of the Modern Indian Languages (MIL) concerned or BA with MIL concerned as one of the Elective subjects from a recognized University having 45% marks in aggregate with one additional language or one school subject at Degree Level.* *OR* *Equivalent Oriental Degree in MIL concerned from a recognized University having 45% marks in aggregate.* *OR* *(For appointment as Hindi Teachers only) Sahitya Rattan of Hindi Sahitya Sammelan Prayaga having secured at least 45% marks in aggregate with English in Matriculation provided further that the requirement as to the minimum of 45% marks in the aggregate shall be relaxable in the case of (a) Candidate who posses a Post Graduate Qualification in MIL concerned from a recognized University (b) candidates belonging to SC/ST (c) Physically handicapped candidates.* *(ii) Degree/ Diploma in teaching* *OR* *Senior Anglo Vernacular Certificate* *(iii) "Knowledge of Hindi is essential".*



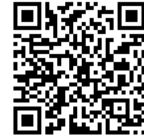
		(iv) Should have qualified CTET from CBSE. *N.B :- "The candidate should have studied the subject concerned as mentioned in the RR's for atleast 02 years during the Graduation course. The elective word may also include main subject as practiced in different Universities"*
Experience:-	*Desirable*	*NA*
	Essential	*NA*
	Desirable	*NA*
Pay Scale:-	*9300-34800 + Grade Pay 4600 Group: 'B' Non-gazetted*	
Age Limit:-	*Below 32 years, Age Relaxable to SC/ST/OBC/Exsm/PH in accordance with the instructions / orders issued by Govt. of India from time to time.* *Women Candidates & Departmental employees of Delhi Administration:- Relaxable upto 40 years.* *Kashmiri Migrant Teachers:- One time relaxation in the upper age limit for the numbers of years served as teacher in Dte. Of Education.* *Guest/Contract teachers:-Relaxation in upper age as a onetime measure upto the actual time spent as guest/contract teacher in Dte. Of Education, subject to a maximum of 5 years provided they have worked for atleast 120 working days in that particular year (this would be applicable to those guest/contract teachers who have worked for the academic years 2012-13, 2013-14,2014-15, 2015-16 & 2016- 17).*	



32. The Respondent No. 3 issued the Advertisement inviting applications for various teaching and non-teaching positions including *inter alia* the post of TGT (Hindi). As the Appellant fulfilled the requisite qualifications for the post of TGT (Hindi) i.e., the Appellant possessed (i) a B.A. Degree; (ii) B.Ed. Degree; and had successfully cleared the CTET, she applied for the position of a TGT (Hindi) while categorically disclosing that she is holding a post-graduate degree in English i.e., M.A Degree (English). Pertinently, under the DSE Act, DSE Rules or Recruitment Rules having a post-graduate degree is not an essential pre-requisite for eligibility of appointment as a TGT.

33. Furthermore, DoE issued a circular dated 07.02.2014 for implementation of order(s) dated 21.11.2021 passed by this Court in W.P.(C) No. 2845 of 1992; and W.P.(C) No. 4291/1993 in the matter titled '***Queen Mary's School Vs. Union of India***'; and '***B.M. Gange Girls Sr. Sec. School Vs. Union of India & Anr.***' (the "**2014 Notification**"). The 2014 Notification is reproduced as under:

> *"* ***CIRCULAR***
>
> *Sub: Implementation of Hon'ble High Court of Delhi order passed on 21.11.2011 in W.P.(C) No. 2845 of 1992 and W.P.(C) No. 4291/1993 in the matter of Queen Mary's School Vs. UOI and B.M. Gange Girls Sr. Sec. School Vs. Union of India & Anr. Respectively.*
>
> *WHEREAS, the operative part of the order dated 21.11.2011 passed by Hon'ble High Court of Delhi in Writ Petition (Civil) No.2845 of 1992 and Writ Petition (Civil) No.4201/1993 in the matter of Queen Mary's School Vs. UOI*



and B.M. Gange Girls Sr. Sec. School Vs. Union of India & Anr. Respectively reads as under:-

> *"we hold and declare that Rules 47, 64 (1) (b), (e) and 96 of the Delhi School Education Rules, are inapplicable to aided minority schools. Rule 64 (1) (g) is held inapplicable to the extent that it mandates such schools to fill the posts "without any discrimination or delay as per the Recruitment Rules prescribed for such posts"; it is clarified that the managements of such aided minority schools shall adhere to the Recruitment Rules, and other general norms, to the extent they prescribe qualifications, experience, age, and other such criteria, for appointment (as they are regulatory). "*

NOW, THEREFORE, all the Deputy Directors of Education of Districts are directed to ensure the compliance of the aforesaid directions of the Hon'ble High Court of Delhi, subject to the outcome of the Review Petition, if any, and also to ensure that henceforth no surplus employee/ employees of Govt. Aided Non-Minority Schools rendered surplus due to closure of a school/ institution change in post fixation due to revised enrolment shall be absorbed in Govt. Aided Minority School.

Sd/-

(Padmini Singla)

Director (Education)

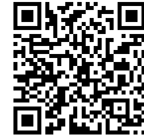
To

The Deputy Director of Education,

All the Districts under Directorate of Education,

Govt. of NCT of Delhi,

Delhi/ New Delhi."



34. In this background, the MC through the EC in a meeting dated 18.11.2017 constituted a SC and formulated the Evaluation Matrix for recruitment of *inter alia* TGTs and assistant teachers. The minutes of the EC meeting dated 18.11.2017 reads as under:

"MINUTES OF THE MEETING OF THE EXECUTIVE COMMITTEE

The Executive Committee constituted by the School Managing Committee at its meeting held on 09.11.2016 to take decision on its behalf, held its meeting on 18.11.2017 in the school premises of Hira Lal Jain Sr. Sec. School, Sardar Bazar, Delhi-110006. The following were present:

01 Dr. Shugan Chand Jain — *Chairman*

02 Shri S.P. Jain — *Vice-Chairman*

03 Shri O.P. Bansal — *Manager*

04. Miss Kanak Mala Jain — *Joint Manager*

(i) Constitution of Selection Committee for the post of TGTs and Assistant Teachers

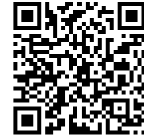
It was noted that applications received for various vacant posts against advertisement, during August, 2017 last date of submission of applications being 16.09.2017, are under process. The Executive Committee noted that as per order No. F.DE 15(Misc.) Act-II/2014/224-239 dated 07.02.2014 rule 96 of DSEA&R-1973 is inapplicable to Minority Aided Schools. In this background, the Selection Committee, as under was, constituted for TGTs and Assistant Teachers:-

01. Dr. Shugan Chand Jain — *Chairman*

02. Shri SP. Jain — *Vice-Chairman*

03. Shri O.P. Bansal — *Manager*

04. Miss Kanak Mala Jain — *Joint Manager*



05. Shri Padam Prasad Jain Member

06. Prof. Mrs. Vibha Jain Member

07. Principal/ In-charge of the School Head of the School

The Executive Committee further desired that to be more transparent DDE, Zone XXVII be invited to associate with the Selection Committee for TGTs and Assistant Teachers. For teacher's subject matters specialist, be decided in consultation with, Dr. Shugan Chand Jain, Chairman of the Selection Committee.

(ii) For TGTs and Assistant Teachers

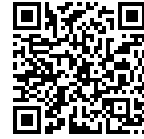
The Executive Committee took note of the various circulars mentioned on the subject in the clearance letter No. DDE/N/PB-462-466 dated 18.07.2017 and the fact that ours being a Minority School and decided the marking scheme as under:-

For TGT's

XII	Graduate BA/B.com / B.Sc.	B.Ed	Addl. Qualification M.A. M.Com/ M.Sc/ M. Phil/ Ph.D.	EXP	CTET	Total	Interview	Total
10	20	20	10	10	10	80	20	100

For Assistant Teachers

X	XII	JBT /ETT	Addl. Qualification BA/B.Com/ B.Sc./M.A./ M.Sc/M.Ph	EXP	CTET	Total	Interview	Total

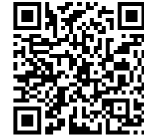


			il/Ph.D					
10	*20*	*20*	*10*	*10*	*10*	*80*	*20*	*100*

(iii) Minimum of 10 candidates by called for interview"

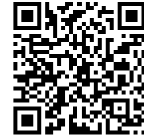
35. Thereafter, Respondent No. 3 addressed a letter dated 23.11.2017 to the Deputy Director of Education, Zone-XXVII i.e., a government nominee (the "**Deputy Director**"), communicating the proposed dates of interview to be conducted for the purpose of recruitment of *inter alia* a TGT (Hindi) and sought participation of the Deputy Director in the selection / recruitment process.

36. The interviews pursuant to the Advertisement took place on 04.12.2017 wherein candidates were evaluated on the basis of the Evaluation Matrix. The Appellant was awarded the highest marks for the post of TGT (Hindi) by the SC. Subsequently, in a meeting dated 13.12.2017, the MC confirmed the decision of the SC qua the recommendation to appoint the Appellant as TGT (Hindi). Thereafter, the Appellant was issued the Appointment Letter which substantiated the terms of appointment, including *inter alia* a probationary period extending to 2 (two) years from the date of joining, i.e., 16.01.2018. Pertinently, Respondent No.2 was also intimated about the appointment on the date of joining. *Vide* a letter dated 31.01.2018 raised certain queries; and sought clarifications in respect of the appointment of the Appellant. The said queries were responded to by Respondent No. 3 *vide* a letter dated 05.02.2018. Thereafter *vide* a letter dated 28.04.2018, Respondent No.2 informed Respondent No. 3 that *inter alia* the Appellant was wrongly awarded marks in the category of 'Additional Qualifications' under the



Evaluation Matrix as the Appellant did not possess a post-graduate degree in the underlying subject for which she was being appointed and accordingly, refused sanction of grant-in-aid qua the appointment of the Appellant. Nonetheless, the letter called upon Respondent No. 3 to clarify its position qua the appointment of the Appellant. In this regard, Respondent No. 3, *vide* a letter dated 07.05.2018 clarified that the Evaluation Matrix and / or the Recruitment Rules did not envisage the grant of additional marks only in case of a post-graduate degree in the concerned subject, thus the marks awarded in the category of 'Additional Qualifications' was proper. The relevant extracts of the letter dated 07.05.2018 are reproduced as under:

> *"The Dy. Director of Education,*
>
> *Distt. North, Lucknow Road*
>
> *Delhi 110054*
>
> *Through; The Dy. Director of Education, Zone VIII, Pratap Nagar, Delhi-110007*
>
> *Sub: Regarding grant in aid case of Smt. Kiran Jain, TGT (Hindi)*
>
> *Madam/Sir,*
>
> *With reference to your letter No. P.B./DDE (N)243/2018 dated 27.04.2018 received on 03.05.2018 on the subject cited above, I am to inform that the marks was given for additional qualification in M.A. to Mrs. Kiran Jain, TGT (Hindi). There is no mention in recruitment rule of TGT (Hindi), the mark given for additional qualification in the concerned subject.*
>
> *It is requested to kindly release the grant-in-aid at an early date.*
>
> *Yours faithfully*
>
> *Sd/-*



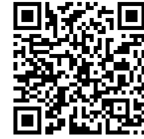
(Jaswant Singh Jain)

Hony. Manager"

37. Respondent No. 2 *vide* a letter dated 10.08.2018, directed Respondent No. 3 to take immediate action vis-à-vis the appointment of the Appellant and, accordingly, *vide* an order dated 18.08.2018, the services of the Appellant as a TGT (Hindi) were discontinued on account of the Appellant's appointment being rejected by Respondent No. 2 ("**Termination Order**"). Thereafter, the Appellant unsuccessfully challenged the Termination Order by way of the Writ Petition.

38. For the purpose of the dispute before this Court, it would be imperative to refer to the relevant statutory provisions governing the field enshrined under the DSE Rules. The same read as under:

> *"96. Recruitment*
>
> *(1) Nothing contained in this Chapter shall apply to an unaided minority school.*
>
> *(2) Recruitment of employees in each recognised private school shall be made on the recommendation of the Selection Committee.*
>
> *(3) The Selection Committee shall consist of:—*
>
> > *(a) in the case of recruitment of the head of the school,:-*
> >
> > > *(i) the Chairman of the managing committee;*
> > >
> > > *(ii) in the case of an unaided school, an educationist is nominated by the managing committee, and an educationist nominated by the Director;*



(iii) in the case of an aided school, two educationists nominated by the Director, out of whom at least one shall be a person having experience of school education;

(iv) a person having experience of the administration of schools, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the Director;

(b) in the case of an appointment of a teacher (other than the head of the school),:—

(i) the Chairman of the managing committee or a member of the managing committee nominated by the Chairman;

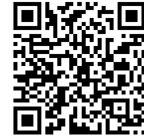
(ii) the head of the school;

(iii) in the case of a primary school, a female educationist having experience of school education;

(iv) in the case of an aided school, one educationist to be nominated by the Director, and one representative of the Director;

(v) in the case of appointment of a teacher for any class in the middle stage or any class in the higher secondary stage, an expert on the subject in relation to which the teacher is proposed to be appointed, to be nominated, in the case of an unaided school by the managing committee, or in the case of an aided school, by the Director.

(c) in the case of an appointment of any other employee, not being an employee belonging to 1 ["Group D"].



(i) the Chairman of the managing committee or a member of the managing committee, to be nominated by the Chairman;

(ii) head of the school;

(iii) a nominee of the Director;

(iv) in the case of an aided school, two officers having experience of the administration of school, to be nominated by the Director;

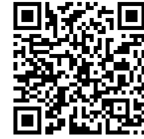
2 [(d) in the case of an appointment of a Group 'D' employee:—

(i) the Chairman of the Managing Committee or a member of the Managing Committee nominated by the Chairman;

(ii) the head of the school;]

3 [(3-A) Notwithstanding anything contained in sub-rule (3), in the case of an aided minority school, the educationists nominated under paragraph (iii) of clause (a) of sub-rule (3), persons nominated by the Director under paragraph (iv) of clause (a) of sub-rule (3), educationists nominated under paragraph (iv) of clause (b) of sub-rule (3), an expert nominated under paragraph (v) of clause (b) of sub-rule (3), a person nominated under paragraph (iii) of clause (c) of sub-rule (3), officers nominated under paragraph (iv) of clause (c) of sub-rule (3), a person nominated under paragraph (iii) of clause (b) of sub-rule (3), shall act only as advisers and will not have the power to vote or actually control the selection of an employee.

(3-B) Notwithstanding anything contained in sub-rule (3), the selection committee of a minority school shall not be limited by the number specified in the said sub-rule and its managing committee may fix such number.]



(4) Nomination of any educationist or expert as a member of the Selection Committee shall be made out of a panel prepared for the purpose by the Advisory Board.

(5) The Chairman of the managing committee, or, where he is not a member of the Selection Committee, the member of the managing committee who is nominated by the Chairman to be a member of the Selection Committee, shall be the Chairman to the Selection Committee.

(6) The Selection Committee shall regulate its own procedure.

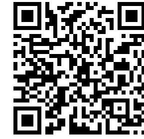
(7) Where any selection made by the Selection Committee is not acceptable to the managing committee of the school, the managing committee shall record its reasons for such non-acceptance and refer the matter to the Director for his decision and the Director shall decide the same.

(8) Where a candidate for recruitment to any post in a recognised school is related to any member of the Selection Committee, the member to whom he is related shall not participate in the selection and a new member shall be nominated, in the case of any aided school, by the Director, and in the case of any other school, by the managing committee, in place of such member.

(9) No managing committee shall entertain any application for employment from a person who is already serving as teacher in a recognised school, whether aided or not, unless the application from such person is duly forwarded by the manager of the school in which such applicant is serving:

Provided that every application from such person shall be forwarded by the manager, but any application in excess of three in a year shall not be forwarded unless the managing committee, for reasons to be recorded by it in writing, so directs:

Provided further that no such teacher shall be relieved of his duties except after the expiry of a period of:—



(i) three months, in the case of a permanent teacher, from the date on which notice of intimation to leave the school is given; and

(ii) one month, in the case of a teacher who is not permanent, from the date on which notice of intimation to leave the school is given:

Provided also where the managing committee is in a position to provide for a substitute for such teacher earlier than the respective period specified in the foregoing proviso, the managing committee may relieve the teacher of his duties on the expiry of such earlier period.

Footnote: 1. Subs. by DSE(A)R, 1990, R.21(1)(a) 2. Subs. by DSE(A)R, 1990, R. 21(1)(b). 3. Ins. by DSE(A)R, 1990, R. 21(2).

97. Relaxation to be made with the approval of the director

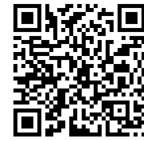
Where the relaxation of any essential qualification for the recruitment of any employee is recommended by the appropriate selection committee, the managing committee of the school shall not give effect to such recommendation unless such recommendation has been previously approved by the Director.

98. Appointing authority

(i) The appointment of every employee of a school shall be made by its managing committee.

1 [(2) Every appointment made by the managing committee of an aided school shall, initially, be provisional and shall require the approval of the Director:

Provided that the approval of the Director will be required only where Director's nominee was not present in the Selection Committee/DPC or in case there is difference of opinion among the members of the Selection Committee:—



Provided further that the provision of this sub-rule shall not apply to a minority aided school].

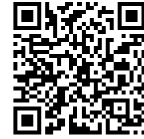
(3) The particulars of every appointment made by the managing committee of an aided school shall be communicated by such committee to the Director (either by registered post acknowledgment due or by messenger who will obtain an acknowledgment of the receipt thereof), within seven days from the date on which the appointment is made.

(4) The Director shall be deemed to have approved an appointment made by the managing committee of an aided school if within fifteen days from the date on which the particulars of the appointment are communicated to him under sub-rule (3), he does not intimate to the managing committee his disapproval of the appointment, 2 [and the person so appointed shall be entitled for his salary and allowance from the date of his appointment.]

(5) Where any appointment made by the managing committee of an aided school is not approved by the Director, such appointment may (pending the regular appointment to the post) be continued on an adhoc basis for a period not exceeding three months and the salary and allowances of the person so continued on an adhoc basis shall qualify for the computation of the aid to be given to such school.

Footnote: 1. Subs. by DSE (A)R, 1990, R. 22(a). 2. Added by DSE(A)R, 1990, R.22(b)."

39. Upon a perusal of the aforesaid statutory provision of law, it is amply clear that no marking scheme / evaluation matrix has been specified under Rule(s) 96, 97 or 98 of the DSE Rules. Thus, in the absence of any statutorily prescribed marking scheme / evaluation matrix to be followed in furtherance of recruitment, Respondent No. 3 was only mandated to ensure that a prospective candidate fulfilled the eligibility criteria corresponding to the post as per the Recruitment Rules. Traversing beyond the

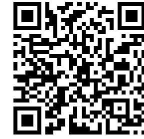


aforementioned position must be tested against the anvil of the rights bestowed upon a minority institution under Article 30(1) of the Constitution of India.

40. This Court is cognizant of the role of the DoE which undoubtedly includes the power to prescribe a minimum qualifications and mandate the constitution of a SC under the Recruitment Rules. The DoE cannot however test the sufficiency and / or propriety of the selection process which was undertaken by a duly constituted SC and thereafter recommend the termination of the services of the Appellant only on account of an interpretational dispute vis-à-vis the evaluation criteria / marking scheme.

41. In this regard, it would be pertinent to refer to a decision of a coordinate bench of this Court in ***Queens Mary's School (Supra)*** wherein this Court has held that Rule 47, 64(1)(b) and (e) and 96 of the DSE Rules do not apply to minority aided schools. Accordingly, the decision of the DoE to (i) object to the appointment of the Appellant as a TGT (Hindi); and (ii) withhold / reject the sanction of grant-in-aid in relation qua the Appointment of the Appellant is improper and contrary to the position laid down in ***Queens Mary's School (Supra)*** as undisputedly, the Appellant fulfilled the requisite eligibility criteria specified under the Recruitment Rules.

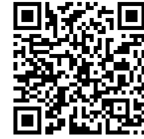
42. The marking scheme issued by the DoE *vide* the Circular cannot apply to an aided minority school as the latitude of rights enshrined under Article 30(1) of the Constitution of India entitle a minority school to choose any person satisfying the minimum eligibility criteria specified by the



Government. Furthermore, in the present case, the dispute does not pertain to the eligibility of the Appellant in relation to the minimum standards prescribed by the Government, but the dispute is limited to whether Respondent No. 2 could have recommended the termination of the appointment of the Appellant on the sole ground that the SC wrongly awarded marks to the Appellant on the basis of the Evaluation Matrix i.e., a marking scheme evolved by the management of Respondent No.3 as the Appellant herein obtained a post-graduate degree in a subject that was not corresponding to the post of TGT (Hindi).

43. Pertinently, Rule 98 of the DSE Rules prescribes the framework of authority for the appointment of an employee of the school by its managing committee. Sub-rule (2) of Rule 98 of the DSE Rules states that that every appointment made by the managing committee of an aided school shall be provisional and require the approval of the DoE. Although, under the proviso to Sub-rule (2) of Rule 98 of the DSE Rules, the approval of the DoE may be dispensed with in the event that (i) the DoE's nominee was present in the selection committee / departmental promotion committee (as the case may be); or (ii) the decision in respect of the appointment sought to be made was unanimous, however, the second proviso to Sub-rule (2) of Rule 98 of the DSE Rules categorically states that the rigors of Sub-rule (2) of Rule 98 of the DSE Rules shall not apply to a minority aided school.

44. Accordingly, in the considered opinion of this Court, on account of the exception provided under the second proviso to Sub-rule (2) of Rule 98 of the DSE Rules , the issue qua concurrent approval of the DoE in respect of the appointment of the Appellant is not worthy of further consideration

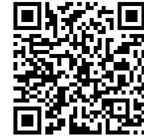


and could not have been agitated as a ground to withhold or reject the sanction of sanction of grant-in-aid in respect of the Appellant's appointment.

45. Furthermore, Rule 96 of the DSE Rules prescribes *inter alia* the composition of a selection committee constituted for the purpose of recruitment. In the present case, the SC was constituted as per Sub-rule (3) of Rule 96 of the DSE Rules however at the time of selection, the nominee of the DoE was not present in the SC. Furthermore, sub-rule (3A) of Rule 96 of the DSE Rules delineates the role of the DoE's nominee in a selection committee of an aided minority school wherein it is clarified that such nominees shall only act as advisors and have no power to vote or actually control the selection of an employee.

46. At this juncture, it would be relevant to refer to the decision of this Court in in the case of ***Queen Mary's School (Supra)*** wherein this Court has reiterated the observations of the Supreme Court in ***Brahmo Samaj Education Society v. State of West Bengal,*** *(2004) 6 SCC 224* vis-à-vis the degree of interference by the State including *inter alia* the right of a minority aided institution to maintain autonomy qua selection and appointment of teachers amongst candidate who are qualified i.e., who have satisfied the requisite eligibility criteria laid down by the State. The relevant extracts of ***Queen Mary's School (Supra)*** are reproduced as under:

> *"9. The essential or core management right to appoint teachers and other personnel of their choice, even while preserving the state's regulatory power to prescribe basic qualifications, for filling the post, was spelt out in the nine-Judge Bench in The Ahmedabad St. Xavier"s College Society*



case 1974 (1) SCC 717. The decision highlighted the importance of the role of the Principal of a college, and other teachers. In support of majority view in that decision K.K. Mathew, J. observed that:

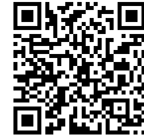
> *"182. It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution."*

H.R. Khanna, J. adopted a still broader view that even selection of teachers is of great importance in the right to manage a school. Learned Judge stated that:

> *"The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1)."*

The judgment in Sindhi Education Society v. Chief Secretary, Government of NCT of Delhi, (2010) 8 SCC 49, again interpreting various provisions of the Act, after exhaustively surveying the previous decisions on the interpretation of Article 30, stated that:

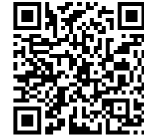
> *"100. The power to regulate, undisputedly, is not unlimited. It has more restriction than freedom particularly, in relation to the management of linguistic minority institutions. The rules, which were expected to be framed in terms of Section 28 of the DSE Act, were for the purpose of carrying out the provisions of the Act. Even, otherwise, it is*



a settled principle of law that rules must fall within the ambit and scope of the principal legislation. Section 21 is sufficiently indicative of the inbuilt restrictions that the framers of the law intended to impose upon the State while exercising its power in relation to a linguistic minority school.

101. To appoint a teacher is part of the regular administration and management of the school. Of course, what should be the qualification or eligibility criteria for a teacher to be appointed can be defined and, in fact, has been defined by the Government of NCT of Delhi and within those specified parameters, the right of a linguistic minority institution to appoint a teacher cannot be interfered with. The paramount feature of the above laws was to bring efficiency and excellence in the field of school education and, therefore, it is expected of the minority institutions to select the best teacher to the faculty. To provide and enforce any regulation, which will practically defeat this purpose would have to be avoided. A linguistic minority is entitled to conserve its language and culture by a constitutional mandate. Thus, it must select people who satisfy the prescribed criteria, qualification and eligibility and at the same time ensure better cultural and linguistic compatibility to the minority institution.

102. At this stage, at the cost of repetition, we may again refer to the judgment of this Court in T.M.A. Pai case8, where in para 123, the Court specifically noticed that while it was permissible for the State and its educational authorities to prescribe qualifications of a teacher, once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of the teachers. Further,



> *the Court specifically noticed the view recorded by Khanna, J. in reference to Kerala Education Bill, 1957 case7, and to Clauses 11 and 12 of the Bill in particular, where the learned Judge had declared that, it is the law declared by the Supreme Court in subsequently contested cases as opposed to the Presidential Reference, which would have a binding effect and said: (T.M.A. Pai case8, SCC p. 571, para 123)*
>
> > *"123. ... „... The words "as at present advised" as well as the preceding sentence indicate that the view expressed by this Court in Kerala Education Bill, 19577, in this respect was hesitant and tentative and not a final view in the matter."*"*
>
> *What the Court had expressed in para 123 above, appears to have found favour with the Bench dealing with T.M.A. Pai8. In any case, nothing to the contrary was observed or held in the subsequent judgment by the larger Bench.*

Although the court's observations were in the context of autonomy of a linguistic minority educational institution, the same principles would apply in the cases of institutions established and administered by religious minorities, i.e the state's effort to enforce regulations which would directly or indirectly give a decisive role or say (or even a veto) in the appointment of teachers, would violate the right guaranteed under Article 30 (1). This court notices that a previous single judge decision, in St. Anthony's Girls Senior Sec. School v. Govt. of NCT of Delhi, ILR (2005) 2 Del 52 did make observations about applicability of Rule 47, the judgment stopped short of pronouncing on the invalidity or inapplicability of the rule.

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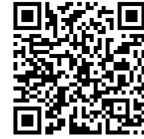
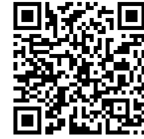


14. In the year 1975, immediately after the decision in The Ahmedabad St. Xavier (supra) a Division Bench of this court, had occasion to consider the (pre-amended) Rule 96. The relevant portion of the discussion, in the judgment S.S. Jain Sabha (of Rawalpindi) Delhi v. Union of India, ILR (1976) 2 Del 61 is as follows:

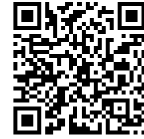
> *"27. This is also a part of the right of administration. Under rule 96 (3) the number of the members of Selection Committee is limited. Any such limitation may be placed only by the management.*
>
> *Rule 96 (3) (a) (iii). — The presence of two educationists nominated by the Director will be of great help to the Selection Committee. But we hold that in regard to minority schools they will act only as advisers and will not have the power to vote or actually control the selection of employees. The minority schools are not bound to give preference to persons recommended by the Employment Exchange.*
>
> *Rule 96 (3) (a) (iv). — The nominee of the Director will also act only as an adviser. The advisory capacity of the members nominated by the Director under clauses (iii) and (iv) of rule 96 (3) (a) in regard to minority schools may be made clear by appropriate amendment.*
>
> *The same kind of amendment is called for in rule 96 (3) (b) (iv) and (v). Clause (iii) of rule 96 (3) (b) will not apply to a minority school. Similarly, the nominees of the Director in clauses (iii) and (iv) in rule 96 (3) (c) will also act only as advisers."*

It was therefore, recognized long ago that Rule 96 in its un-amended form impinged on the rights of minority aided schools, to recruit teachers; the Court, in the state of law, then existing,



held that if nominees of the Director were permitted, they could only function in an advisory capacity. At the time, when the Court delivered its judgment, it was felt that participation, without voting rights, in the decision making process, was not intrusive. However, the argument of the Petitioners is that the choice of recruitment is an unfettered right, and subjected only to regulatory conditions such as fulfilling minimum educational and experience standards. The imposition of anyone in the recruitment process, in whatever capacity, is invasive. In this context, it would be useful to notice a recent judgment of the Supreme Court in Brahmo Samaj Education Society v. State of W.B., (2004) 6 SCC 224, where it was held that:

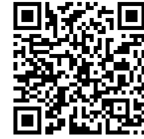
> *"control cannot extend to the day-to-day administration of the institution. It is categorically stated in T.M.A. Pai1 (SCC at p. 551, para 72) that the State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independence for the 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) had laid down qualifications to a teaching post in a university by passing Regulations. As per these Regulations UGC conducts National Eligibility Test (NET) for determining teaching eligibility of candidates. UGC has also ecognized 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 for a teacher. The petitioners' right to administer includes the right to appoint teachers of their choice among the NET-/SLET- qualified candidates.*



> *8. Argument on behalf of the State that the appointment through the College Service Commission is to maintain the equal standard of education all throughout the State of West Bengal, does not impress us. The equal standard of teachers are already maintained by 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"*

The state's argument that the rule mandating the inclusion of nominees whose participation is minimal, and whose views are not binding, is a harmless rule, seems attractive. Yet, this court cannot lose sight of the fact that the basic right to recruit personnel of its choice, is that of the minority aided school management. If, as in the case of Rule 47 and Rule 64 (1) (a) and ©, the management cannot be dictated upon about the actual candidate, to be recruited by it, there is no rationale why it should be made to suffer the participation of an outsider, whose presence is not wanted, in the first place, no matter whether that individual's views are not binding. This view is fortified by Rule 98, (which deals with approval of appointment); it does not apply to aided schools, as is evident from Rule 98 (2) proviso (2). Therefore, this Court sees no logic in the minority aided school being compelled to allow participation of nominee members in the selection committee, even if their views or votes are not binding. For these reasons, it is held that minority aided schools are not bound to adopt the composition of the recruitment committees indicated in Rule 96; they are to adhere to the rules applicable to unaided minority schools, i.e., Rules 127-128.

15. The right guaranteed under Article 30 (1) is not subject to any entrenched "reasonable restriction" provision- an aspect which has been repeatedly highlighted in various judgments. The character of permissible state action is therefore, necessarily different from those in relation to other fundamental rights, particularly as in Article 19. The Constitution makers in th ecognsdom, felt that this provision

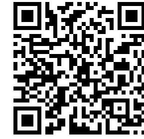


guaranteed minorities – both linguistic, and religious, the right to propagate their culture, and also ensure that the children of their communities could be assured some modicum of education, so that they could advance with the times. The provision is to be seen as a protective cover to preserve the multicultural fabric of the Indian identity, against possible onslaught resulting from political vicissitudes through hostile legislative majorities.

16. In view of the above discussion, we hold and declare that Rules 47, 64 (1) (b), (e) and 96 of the Delhi School Education Rules, are inapplicable to aided minority schools. Rule 64 (1) (g) is held inapplicable to the extent that it mandates such schools to fill the posts "without any discrimination or delay as per the Recruitment Rules prescribed for such posts"; it is clarified that the managements of such aided minority schools shall adhere to the Recruitment Rules, and other general norms, to the extent they prescribe qualifications, experience, age, and other such criteria, for appointment (as they are regulatory).

17. The writ petitions are allowed to the above extent. There shall however, be no order as to costs."

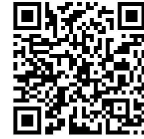
47. Accordingly, a coordinate bench of this Court in ***Queen Mary's School (Supra)*** appreciated the limited nature of interference that the State may prescribe in relation to the regulatory framework surrounding a minority-aided educational institution accordingly, this Court went on to hold that Rules 47, 64(1)(b) & (e) and 96 of the DSE Rules are inapplicable to aided minority schools and Rule 64(1)(g) is inapplicable to a minority aided school to a limited extent. Meaning thereby, the minority institutions, including specifically a minority aided school (as the case herein) enjoy the unfettered right to appoint any person as teacher subject to such person



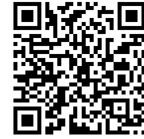
fulfilling the requisite eligibility criteria laid down by the State [and being appointed by the competent authority i.e., the SC].

48. The Supreme Court in ***Sindhi Education Society (Supra)*** has appreciated and reiterated the distinct roles that the State must play in relation to (i) the general class; and (ii) minority institutions, who enjoy protection under Article 29 and Article 30 of the Constitution of India. In this regard, the Supreme Court has observed that such minority institutions have the right to constitute its own managing committee and thereafter enjoy a degree of autonomy in its administration which would include the right to choose its teachers who possess the eligibility and qualifications as prescribed by the State. The relevant extracts of ***Sindhi Education Society (Supra)*** have been reproduced as under:

> *"87. There is no doubt, that there may be minority institutions which are receiving grant-in-aid from the Government. But, merely receiving grant-in-aid per se would not make such school or institution "State" within the meaning of Article 12 of the Constitution of India. Even this aspect we need not discuss in any great detail as the question stands settled by the judgment of this Court in V.K. Sodhi [(2007) 15 SCC 136 : (2010) 1 SCC (L&S) 688] , wherein this Court has dealt with the question whether the State Council of Education, Research and Training is not State or other authority within the meaning of Article 12. The Court returned the finding that though the finances were being provided by the State, the State Government does not have deep and pervasive control over the working of the Council and it was an independent society and thus, is not State. The Court held as under : (SCC pp. 143-46, paras 16-21)*
>
> > *"16. The two elements, one, of a function of the State, namely, the coordinating of education and*



the other, of the Council being dependent on the funding by the State, satisfied two of the tests indicated by the decisions of this Court. But, at the same time, from that alone it could not be assumed that Scert is State. It has to be noted that though finance is made available by the State, in the matter of administration of that finance, the Council is supreme. The administration is also completely with the Council. There is no governmental interference or control either financially, functionally or administratively, in the working of the Council. These were the aspects taken note of in Chander Mohan Khanna [Chander Mohan Khanna v. National Council of Educational Research and Training, (1991) 4 SCC 578 : 1992 SCC (L&S) 109 : (1992) 19 ATC 71] to come to the conclusion that Ncert is not State or other authority within the meaning of Article 12 of the Constitution of India. No doubt, in Chander Mohan Khanna [Chander Mohan Khanna v. National Council of Educational Research and Training, (1991) 4 SCC 578 : 1992 SCC (L&S) 109 : (1992) 19 ATC 71] the Bench noted that the fact that education was a State function could not make any difference. This part of the reasoning in Chander Mohan Khanna case [Chander Mohan Khanna v. National Council of Educational Research and Training, (1991) 4 SCC 578 : 1992 SCC (L&S) 109 : (1992) 19 ATC 71] has been specifically disapproved by the majority in Pradeep Kumar Biswas [Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 : 2002 SCC (L&S) 633] . The majority noted that the objects of forming Indian Institute of Chemical Biology was with the view of entrusting it with a function that is fundamental to the governance of the country and quoted with approval (Pradeep Kumar Biswas case [Pradeep



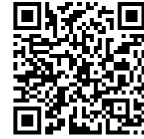
Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 : 2002 SCC (L&S) 633] , SCC p. 135, para 45) the following passage in Rajasthan SEB v. Mohan Lal [AIR 1967 SC 1857 : (1967) 3 SCR 377] : (AIR p. 1863, para 6)

'6. ... The State, as defined in Article 12, is thus comprehended to include bodies created for the purpose of promoting the educational and economic interests of the people.'

The majority then stated : (Pradeep Kumar Biswas case [Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 : 2002 SCC (L&S) 633] , SCC p. 136, para 4')

*'46. We are in respectful agreement with this statement of the law. The observations to the contrary in Chander Mohan Khanna v. Ncert [Chander Mohan Khanna v. National Council of Educational Research and Training, (1991) 4 SCC 578 : 1992 SCC (L&S) 109 : (1992) 19 ATC 71] relied on by the learned Attorney General in this context, do not represent the correct legal position***

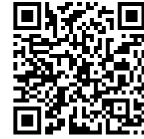
17. We also find substantial differences in the two set-ups. Sabhajit Tewary [Sabhajit Tewary v. Union of India, (1975) 1 SCC 485 : 1975 SCC (L&S) 99] , after referring to the rules of the Council of Scientific and Industrial Research which was registered under the Societies Registration Act, concluded that it was not State within the meaning of Article 12 of the Constitution. While overruling the said decision, the majority in Pradeep Kumar Biswas [Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 : 2002 SCC (L&S) 633] took the view that the dominant role played



by the Government of India in the governing body and the ubiquitous control of the Government in the Council and the complete subjugation of the Governing Body to the will of the Central Government, the inability of the Council to lay down or change the terms and conditions of service of its employees and the inability to alter any bye-law without the approval of the Government of India and the owning by the Central Government of the assets and funds of the Council though normally owned by the Society, all indicated that there was effective and pervasive control over the functioning of the Council and since it was also entrusted with a governmental function, the justifiable conclusion was that it was State within the meaning of Article 12 of the Constitution.

18. The majority in Pradeep Kumar Biswas [Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 : 2002 SCC (L&S) 633] also noticed that on a winding up of that Council, the entire assets were to vest in the Central Government and that was also a relevant indication. Their Lordships in the majority also specifically overruled as a legal principle that a society registered under the Societies Registration Act or a company incorporated under the Companies Act, is by that reason alone excluded from the concept of State under Article 12 of the Constitution.

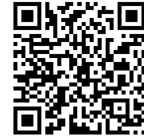
19. In the case of Scert, in addition to the operational autonomy of the Executive Committee, it could also amend its bye-laws subject to the provisions of the Delhi (sic) Societies Registration Act though with the previous concurrence of the Government of Delhi and that the proceedings of the Council are to be made available by the



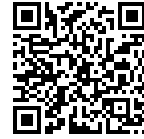
Secretary for inspection of the Registrar of Societies as per the provisions of the Societies Registration Act. The records and proceedings of the Council have also to be made available for inspection by the Registrar of Societies. In the case of dissolution of Scert, the liabilities and assets are to be taken over at book value by the Government of Delhi which had to appoint a liquidator for completing the dissolution of the body. The credit'rs' loans and other liabilities of Scert shall have preference and bear a first charge on the assets of the Council at the time of dissolution. This is not an unconditional vesting of the assets on dissolution with the Government.

20. It is also provided that the provisions of the Societies Registration Act, 1860 had to be complied with in the matter of filing list of office-bearers every year with the Registrar and the carrying out of the amendments in accordance with the procedure laid down in the Act of 1860 and the dissolution being in terms of Sections 13 and 14 of the Societies Registration Act, 1860 and making all the provisions of the Societies Registration Act applicable to the Society. These provisions, in our view, indicate that Scert is subservient to the provisions of the Societies Registration Act rather than to the State Government and that the intention was to keep Scert as an independent body and the role of the State Government cannot be compared to that of the Central Government in the case of the Council of Scientific and Industrial Research.

21. As we understand it, even going by para 40 of the judgment in Pradeep Kumar Biswas [Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 : 2002 SCC (L&S) 633] , which we have quoted above, we have to



consider the cumulative effect of all the facts available in the case. So considered, we are inclined to hold that Scert is not State or other authority within the meaning of Article 12 of the Constitution of India. As we see it, the High Court has not independently discussed the relevant rules governing the functioning and administration of Scert. It has proceeded on the basis that in the face of Pradeep Kumar Biswas [Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 : 2002 SCC (L&S) 633] decision, the decision in Chander Mohan Khanna [Chander Mohan Khanna v. National Council of Educational Research and Training, (1991) 4 SCC 578 : 1992 SCC (L&S) 109 : (1992) 19 ATC 71] must be taken to be overruled and no further discussion of the question is necessary. But, in our view, even going by Pradeep Kumar Biswas [Pradeep Kumar Biswas v. Indian Institute of Chemical Biology, (2002) 5 SCC 111 : 2002 SCC (L&S) 633] each case has to be considered with reference to the facts available for determining whether the body concerned is State or other authority within the meaning of Article 12 of the Constitution of India. So considered, we find that the Government does not have deep and pervasive control over the working of Scert. It does not have financial control in the sense that once the finances are made available to it, the administration of those finances is left to Scert and there is no further governmental control. In this situation, we accept the submission on behalf of the appellants and hold that Scert is not State or other authority within the meaning of Article 12 of the Constitution of India. After all, the very formation of an independent society under the Societies Registration Act would also suggest that the intention was not to make the body a mere



appendage of the State. We reverse the finding of the High Court on this aspect.”

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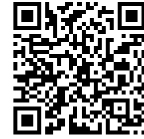
101. To appoint a teacher is part of the regular administration and management of the school. Of course, what should be the qualification or eligibility criteria for a teacher to be appointed can be defined and, in fact, has been defined by the Government of NCT of Delhi and within those specified parameters, the right of a linguistic minority institution to appoint a teacher cannot be interfered with. The paramount feature of the above laws was to bring efficiency and excellence in the field of school education and, therefore, it is expected of the minority institutions to select the best teacher to the faculty. To provide and enforce any regulation, which will practically defeat this purpose would have to be avoided. A linguistic minority is entitled to conserve its language and culture by a constitutional mandate. Thus, it must select people who satisfy the prescribed criteria, qualification and eligibility and at the same time ensure better cultural and linguistic compatibility to the minority institution.

102. At this stage, at the cost of repetition, we may again refer to the judgment of this Court in T.M.A. Pai case [(2002) 8 SCC 481], where in para 123, the Court specifically noticed that while it was permissible for the State and its educational authorities to prescribe qualifications of a teacher, once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of the teachers. Further, the Court specifically noticed the view recorded by Khanna, J. in reference to Kerala Education Bill, 1957case [AIR 1958 SC 956 : 1959 SCR 995] , and to Clauses 11 and 12 of the Bill in particular, where the learned Judge had declared that, it is the law declared by the Supreme Court in subsequently contested cases as opposed to the Presidential Reference, which would have a binding effect and said : (T.M.A. Pai case [(2002) 8 SCC 481] , SCC p. 571, para 123)



> *"123. ... '109. ... The words "as at present advised" as well as the preceding sentence indicate that the view expressed by this Court in Kerala Education Bill, 1957 [AIR 1958 SC 956 : 1959 SCR 995] , in this respect was hesitant and tentative and not a final view in the matter.' [**Ed.** : As observed in Ahmedabad St. Xav'er's College Society v. State of Gujarat, (1974) 1 SCC 717 at p. 792, para 109.] "*

What the Court had expressed in para 123 above, appears to have found favour with the Bench dealing with T.M.A. Pai [(2002) 8 SCC 481] . In any case, nothing to the contrary was observed or held in the subsequent judgment by the larger Bench.

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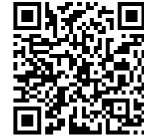
111. A linguistic minority has constitution and character of its own. A provision of law or a circular, which would be enforced against the general class, may not be enforceable with the same rigours against the minority institution, particularly where it relates to establishment and management of the school. It has been held that founders of the minority institution have faith and confidence in their own committee or body consisting of the persons selected by them. Thus, they could choose their managing committee as well as they have a right to choose its teachers. Minority institutions have some kind of autonomy in their administration. This would entail the right to administer effectively and to manage and conduct the affairs of the institution. There is a fine distinction between a restriction on the right of administration and a regulation prescribing the manner of administration. What should be prevented is the maladministration. Just as regulatory measures are necessary for maintaining the educational character and content of the minority institutions, similarly, regulatory measures are necessary for ensuring orderly, efficient and sound administration.



112. Every linguistic minority may have its own social, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus, it would have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being impressed by the fact of their religion and community. Its own limitations may not permit, for cultural, economic or other good reasons, to induct teachers from a particular class or community. The direction, as contemplated under Rule 64(1)(b), could be enforced against the general or majority category of the government-aided schools but, it may not be appropriate to enforce such condition against linguistic minority schools. This may amount to interference with their right of choice and, at the same time, may dilute their character of linguistic minority. It would be impermissible in law to bring such actions under the cover of equality which in fact, would diminish the very essence of their character or status. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers.

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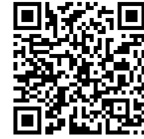
119. Besides that, State actions should ecogntio quaelibet it sua via and every discharge of its duties, functions and governance should also be within the constitutional framework. This principle equally applies to the Government while acting in the field of reservation as well. It would not be possible for the courts to permit the State to impinge upon or violate directly or indirectly the constitutional rights and protections granted to various classes including the minorities. Thus, the State may not be well within its constitutional duty to compel the linguistic minority institution to accept a policy decision, enforcement of which will infringe their fundamental right and/or protection. On the contrary, the minority can validly question such a decision of the State in law. The service in an aided linguistic minority school cannot be construed as "a service under the State" even with the aid of Article 12 of the Constitution. Resultantly, we have no hesitation in coming to

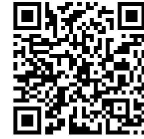


the conclusion that Rule 64(1)(b) cannot be enforced against the linguistic minority school. Having answered this question in favour of the appellant and against the State, we do not consider it necessary to go into the constitutional validity or otherwise of Rule 64(1)(b) of the Rules, which question we leave open"

49. Thereafter, the Supreme Court in ***Manager, Corporate Educational Agency v. James Mathew & Others***, (2017) 15 SCC 595 has following ***Malankara Syrian Catholic College v. T. Jose***, (2007) 1 SCC 386 observed in the context of the appointment of a principal / headmaster, although equally applicable to the case herein, that the autonomy of the management of a minority educational institution is sacrosanct and that the propriety of process or rationality of choice cannot be tested once such person is found to be qualified. The relevant extract(s) have been reproduced as under:

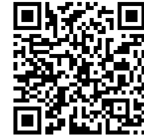
"3. In the impugned judgment [M.M.L.P. School v. V.B. Sajitha, 2014 SCC OnLine Ker 6522 : (2014) 2 KLT 367] , the Division Bench has taken the view that the management of a minority educational institution has no absolute freedom to appoint a person of their choice, and they cannot overlook the qualified and senior teachers belonging to the same community. It has also been held that declaration of minority status in the case of the appellant in Civil Appeals Nos. 826-27 of 2017 by the National Commission for Minority Educational Institutions is of no avail since the appellant was an already existing institution and that the certificate of the Commission is meant for minority educational institutions to be newly established. Still further, the court has taken the view that the declaration contained in the certificate of the authority cannot have any retrospective effect.

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



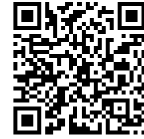
5. As far as the selection and appointment of the Headmaster or the Principal, as the case may be, is concerned, this Court in Malankara Syrian Catholic College v. T. Jose [Malankara Syrian Catholic College v. T. Jose, (2007) 1 SCC 386 : 5 SCEC 728] after referring to all the celebrated cases on minority rights, viz. T.M.A. Pai Foundation v. State of Karnataka [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] , P.A. Inamdar v. State of Maharashtra [P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537 : 2 SCEC 745] , State of Kerala v. Very Rev. Mother Provincial [State of Kerala v. Very Rev. Mother Provincial, (1970) 2 SCC 417] , Ahmedabad St. Xav'er's College Society v. State of Gujarat [Ahmedabad St. Xav'er's College Society v. State of Gujarat, (1974) 1 SCC 717 : 1 SCEC 125] , Frank Anthony Public School Employ'es' Assn. v. Union of India [Frank Anthony Public School Employ'es' Assn. v. Union of India, (1986) 4 SCC 707] , Sidhrajbhai Sabhai v. State of Gujarat [Sidhrajbhai Sabhai v. State of Gujarat, (1963) 3 SCR 837 : AIR 1963 SC 540] , D.A.V. College v. State of Punjab [D.A.V. College v. State of Punjab, (1971) 2 SCC 269], All Saints High School v. State of A.P. [All Saints High School v. State of A.P., (1980) 2 SCC 478] , St. Step'en's College v. University of Delhi [St. Step'en's College v. University of Delhi, (1992) 1 SCC 558 : 1 SCEC 404] , N. Ammad v. Emjay High School [N. Ammad v. Emjay High School, (1998) 6 SCC 674 : 1 SCEC 732] , Board of Secondary Education & Teachers Training v. Director of Public Instructions [Board of Secondary Education & Teachers Training v. Director of Public Instructions, (1998) 8 SCC 555] has held in Paras 27 to 29 that the management of a minority aided educational institution is free to appoint the Headmaster or the Principal, as the case may be, of its own choice and has no obligation to appoint the available senior qualified member from the same community. Paras 27, 28 and 29 are quoted hereunder : (Malankara Syrian case [Malankara Syrian Catholic College v. T. Jose, (2007) 1 SCC 386 : 5 SCEC 728] , SCC p. 404)

> *"27. It is thus clear that the freedom to choose the person to be appointed as Principal has always*



be ecognizedsed as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] . Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid will make no difference.

28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the per'on's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

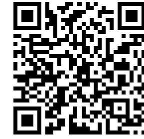


> *29. Section 57(3) of the Act provides that the post of Principal when filled by promotion is to be made on the basis of seniority-cum-fitness. Section 57(3) trammels the right of the management to take note of merit of the candidate or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority-run educational institutions even if they are aided." (emphasis supplied)*

6. The emerging position is that, once the management of a minority educational institution makes a conscious choice of a qualified person from the minority community to lead the institution, either as the Headmaster or Principal, the court cannot go into the merits of the choice or the rationality or propriety of the process of choice. In that regard, the right under Article 30(1) is absolute.

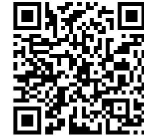
7. As far as the validity of the declaration of minority status is concerned, this Court in N. Ammad v. Emjay High School [N. Ammad v. Emjay High School, (1998) 6 SCC 674 : 1 SCEC 732] has held that the certificate of the declaration of minority status is only a declaration of an existing status. Therefore, there is no question of availability of the status only from the date of declaration. What is declared is a status which was already in existence. Paras 12 and 13 of the judgment are quoted hereunder : (SCC p. 679)

> *"12. Counsel for both sides conceded that there is no provision in the Act which enables the Government to declare a school as a minority school. If so, a school which is otherwise a minority school would continue to be so whether the Government declared it as such or not.*



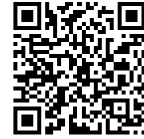
> *Declaration by the Government is at best only a recognition of an existing fact. Article 30(1) of the Constitution reads thu':*
>
> > *'30. Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.'*
>
> *13. When the Government declared the school as a minority school it h ecognizedsed a factual position that the school was established and is being administered by a minority community. The declaration is only an open acceptance of a legal character which should necessarily have existed antecedent to such declaration. Therefore, we are unable to agree with the contention that the school can claim protection only after the Government declared it as a minority school on 2-8-1994."*

50. The Supreme Court in the case of ***Ahmedabad St. Xavier's College Society (Supra)***, was called upon to outline the extent of the rights bestowed upon a minority institution under Article 30(1) of the Constitution of India including specifically the right to choose its own teachers. In this regard, the Supreme Court went onto observe that once a minority institution selects a teacher possessing the requisite qualifications, the State would have no right to veto and or interfere with such an appointment. The selection and appointment of teachers for an educational institution is an essential ingredient of th*e* right to manage an educational institution, which cannot be denied without infringing Article 30(1) of the Constitution of India. The



relevant extract in ***Ahmedabad St. Xavier's College Society (Supra)*** is reproduced as under:

> ***"19.*** *The entire controversy centres round the extent of the right of the religious and linguistic minorities to administer their educational institutions. The right to administer is said to consist of four principal matters. First is the right to choose its managing or governing body. It is said that the founders of the minority institution have faith and confidence in their own committee or body consisting of persons elected by them. Second is the right to choose its teachers. It is said that minority institutions want teachers to have compatibility with the ideals, aims and aspirations of the institution. Third is the right not to be compelled to refuse admission to students. In other words, the minority institutions want to have the right to admit students of their choice subject to reasonable regulations about academic qualifications. Fourth is the right to use its properties and assets for the benefit of its own institution.*
>
> *x x x x x x x x x x x*
>
> ***74.*** *Clause (1) of Article 30 gives right to all minorities, whether based on religion or language, to establish and administer educational institutions of their choice. Analysing that clause it would follow that the right which has been conferred by the clause is on two types of minorities. Those minorities may be based either on religion or on language. The right conferred upon the said minorities is to establish and administer educational institutions of their choice. The word "establish" indicates the right to bring into existence, while the right to administer an institution means the right to effectively manage and conduct the affairs of the institution. Administration connotes management of the affairs of the institution. The management must be free of control so that the founders or their nominees can mould the institution as they think fit and in accordance with their ideas of how the interest of the community in general and the institution in particular*



will be best served. The words "of their choice" qualify the educational institutions and show that the educational institutions established and administered by the minorities need not be of some particular class; the minorities have the right and freedom to establish and administer such educational institutions as they choose. Clause (2) of Article 30 prevents the State from making discrimination in the matter of grant of aid to any educational institution on the ground that the institution is under the management of a minority, whether based on religion or language.

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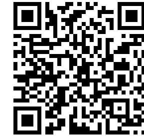
103. *Another conclusion which follows from what has been discussed above is that a law which interferes with a minor'ty's choice of qualified teachers or its disciplinary control over teachers and other members of the staff of the institution is void as being violative of Article 30(1). It is, of course, permissible for the State and its educational authorities to prescribe the qualifications of teachers, but once the teachers possessing the requisite qualifications are selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1). In the case of Rev. Father W. Proost this Court while dealing with Section 48-A of the Bihar Universities Act observed that the said provision completely took away the autonomy of the governing body of the college and virtually vested the control of the college in the University Service Commission. The petitioners in that case were, therefore, held entitled to the protection of Article 30(1) of the Constitution. The provisions of that section have been referred to earlier. According to the section, subject to the approval of University appointment, dismissals, removals, termination of service or reduction in rank of teachers of an affiliated college not belonging to the*



State Government would have to be made by the governing body of the college on the recommendation of the University Service Commission. The section further provided that the said Commission would be consulted by the governing body of a college in all disciplinary matters affecting teachers of the college and no action would be taken against or any punishment imposed upon a teacher of a college otherwise than in conformity with the findings of the Commission.

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***174.** We find it impossible to subscribe to the proposition that State necessity is the criterion for deciding whether a regulation imposed on an educational institution takes away or abridges the right under Article 30(1). If a legislature can impose any regulation which it thinks necessary to protect what in its view is in the interest of the State or society, the right under Article 30(1) will cease to be a fundamental right. It sounds paradoxical that a right which the Constitution makers wanted to be absolute can be subjected to regulations which need only satisfy the nebulous and elastic test of State necessity. The very purpose of incorporating this right in Part III of the Constitution in absolute terms in marked contrast with the other fundamental rights was to withdraw it from the reach of the majority. To subject the right today to regulations dictated by the protean concept of State necessity as con- ceived by the majority would be to subvert the very purpose for which the right was given.*

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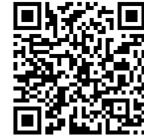
***182.** It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. We can perceive no*

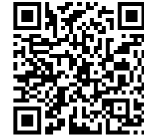


reason why a representative of the University nominated by the Vice-Chancellor should be on the Selection Committee for recruiting the Principal or for the insistence of head of the department besides the representative of the University being on the Selection Committee for recruiting the members of the teaching staff. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them."

51. The Supreme Court in ***T.M.A Pai Foundation (Supra)*** has authoritatively dealt with the scope of State regulatory supervision qua the appointment and selection of teachers vi-s-vis minority educational institutions. In this regard, the Supreme Court observed that right to establish and administer broadly encapsulated to right to *inter alia* appoint staff (teaching and non-teaching) furthermore, the Supreme Court opined that any regulation imposed by the State on a minority institution must satisfy a twin test that encompasses (i) a test of reasonableness; and (ii) a test that the proposed regulation is regulative of an educational character and conducive to bettering the educational standards of the institution. Accordingly, in this background, the Supreme Court reiterated that once a qualified teacher had been selected by the minority institution, any law that interfered with the minority institutions' choice of a qualified teacher would be violative of Article 30(1) of the Constitution of India. The relevant paragraphs in ***T.M.A Pai Foundation (Supra)*** are reproduced as under:

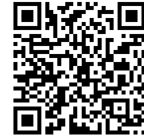
"50. *The right to establish and administer broadly comprises the following rights:*

(a) to admit students;



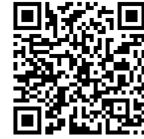
> *(b) to set up a reasonable fee structur©(c) to constitute a governing body;*
>
> *(d) to appoint staff (teaching and non-teaching)©nd*
>
> *(e) to take action if there is dereliction of duty on the part of any employees.*
>
> *x x x x x x x x x x x*

122. *The learned Judge then observed that the right of the minorities to administer educational institutions did not prevent the making of reasonable regulations in respect of these institutions. Recognizing that the right to administer educational institutions could not include the right to maladminister, it was held that regulations could be lawfully imposed, for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. The regulation "must satisfy a dual test — the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it". (SCC p. 783, para 92) It was permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore, a balance has to be kept between the two objectives — that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable. This, in our view, is the correct approach to the problem.*



123. *After referring to the earlier cases in relation to the appointment of teachers, it was noted by Khanna, J., that the conclusion which followed was that a law which interfered with a'minority's choice of qualified teachers, or its disciplinary control over teachers and other members of the staff of the institution, was void, as it was violative of Article 30(1). While it was permissible for the State and its educational authorities to prescribe the qualifications of teachers, it was held that once the teachers possessing the requisite qualifications were selected by the minorities for their educational institutions, the State would have no right to veto the selection of those teachers. The selection and appointment of teachers for an educational institution was regarded as one of the essential ingredients under Article 30(1). 'he Court's attention was drawn to the fact that in Kerala Education Bill, 1957 case [AIR 1958 SC 956 : 1959 SCR 995] this Court had opined that clauses 11 and 12 made it obligatory for all aided schools to select teachers from a panel selected from each district by the Public Service Commission and that no teacher of an aided school could be dismissed, removed or reduced in rank without the previous sanction of the authorized officer. At SCC p. 792, Khanna, J., observed that in cases subsequent to the opinion in Kerala Education Bill, 1957 case [AIR 1958 SC 956 : 1959 SCR 995] this Court had held similar provisions as clause 11 and clause 12 to be violative of Article 30(1) (sic in the case) of the minority institutions. He then observed as follows : (SCC p. 792, para 109)*

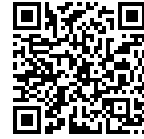
> *"The opinion expressed by this Court in Re Kerala Education Bill, 1957 [AIR 1958 SC 956 : 1959 SCR 995] was of an advisory character and though great weight should be attached to it because of its persuasive value, the said opinion cannot override the opinion subsequently expressed by this Court in contested cases. It is the law declared by this Court in the subsequent contested cases which would have a binding effect. The words 'as at*



> *present advised' as well as the preceding sentence indicate that the view expressed by this Court in Re Kerala Education Bill, 1957 [AIR 1958 SC 956 : 1959 SCR 995] in this respect was hesitant and tentative and not a final view in the matter."*

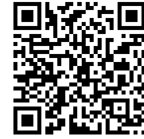
52. The Supreme Court in ***Secy. Malankara Syrian Catholic College (Supra)*** has pertinently reconciled the scope of interference by the State in an aided-minority institution. In this regard, while considering ***T.M.A Pai Foundation (Supra)***, it has observed that the State may regulate the administration and grant of aid subject to such regulations not interfering with *inter alia* the overall administrative control by the management over the staff. Furthermore, the Supreme Court went onto formulate the extent of regulation by the State in Paragraph 19 & 21 of ***Secy. Malankara Syrian Catholic College (Supra).*** The relevant paragraphs are reproduced as under:

> *"**17.** In T.M.A. Pai [(2002) 8 SCC 481] this Court made it clear that a minority institution does not cease to be so, merely on receipt of aid from the State or its agencies. In other words, receipt of aid does not alter the nature or character of the minority educational institution receiving aid. Article 30(1) clearly implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it which will in any way dilute or abridge the rights of the minorities to establish and administer educational institutions. But all conditions that have relevance to th ecognized ilisation of the aid by an educational institution can be imposed. The High Court, however, wrongly construed T.M.A. Pai [(2002) 8 SCC 481] and concluded that acceptance of aid by a minority institution takes away its right to claim immunity from interference and therefore the State can lay down any regulation governing the conditions of service of employees of aided minority institutions ignoring the constitutional*



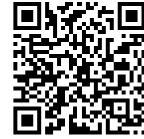
guarantee under Article 30(1). For this purpose, the High Court relied on the observations in paras 72 and 73 of T.M.A. Pai [(2002) 8 SCC 481] The said paragraphs are extracted below: (SCC pp. 550-51)

> *"72. 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 Kerala Education Bill, 1957, In re [AIR 1958 SC 956] , 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. …*
>
> *73. There are a large number of educational institutions, like schools and non-professional colleges, which cannot operate without the support of 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."*

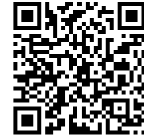
But the aforesaid observations in paras 72 and 73 were not made with reference to aided minority educational institutions. The observations in para 72 were intended for aided non-minority private professional institutions. The observations in para 73 were made in the context of aided non-minority non-professional private institutions. The position of minority educational institutions securing aid from the State or its agencies was considered in paras 80 to 155, wherein it was clearly held that receipt of State aid does not annihilate the right guaranteed to minorities to



establish and administer educational institutions of their choice under Article 30(1).

18. *The observations of the eleven-Judge Bench in T.M.A. Pai [(2002) 8 SCC 481] in respect of the extent to which the right of administration of aided minority educational institutions could be regulated, are extracted below: (SCC pp. 579-80, paras 141 & 144)*

> *"141. ... the State cannot, when it chooses to grant aid to educational institutions, deny aid to a religious or linguistic minority institution only on the ground that the management of that institution is with the minority. We would, however, like to clarify that if an abject surrender of the right to management is made a condition of aid, the denial of aid would be violative of Article 30(2). However, conditions of aid that do not involve a surrender of the substantial right of management would not be inconsistent with constitutional guarantees, even if they indirectly impinge upon some facet of adminision.*
>
> *****
>
> *144. It cannot be argued that no conditions can be imposed while giving aid to a minority institution. Whether it is an institution run by the majority or the minority, all conditions that have relevance to th ecognized ilisation of the grant-in-aid by an educational institution can be imposed. ... The conditions for grant or non-grant of aid to educational institutions have to be uniformly applied, whether it is a majority-run institution or a minority-run institution. As in the case of a majority-run institution, the moment a minority institution obtains a grant of aid, Article 28 of the Constitution comes into play. When an*

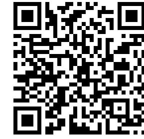


> *educational institution is maintained out of State funds, no religious instruction can be provided therein."(emphasis supplied)*

Among the questions formulated and answered by the majori ecognized mmarising conclusions, Q©tion 5(c) and the answer thereto have a bearing on the issue on hand©uestion 5(c) is extracted below: (SCC p. 589,©ra 161)

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

The first part of the an©r to Question 5(c) related to unaided minority institutions. With reference to statutory provisions regulating the facets of administration, this Court expressed the view that in case of an unaided minority educational institution, the regulatory measure of control should be minimal; and in the matter of day-to-day management, like the appointment of staff (both teaching and non-teaching) and administrative control over them, the management should have the freedom and there should not be any external controlling agency. But such institutions would have to comply with the conditions of recognition and conditions of affiliation to a university or board; and a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. This Court also held that fees to be charged by unaided institutions cannot be regulated but no institution should charge capitation fee. The second part of the answer to Question 5(c) applicable to aided minority institutions, is extracted below: (SCC pp. 589-90, para 161)

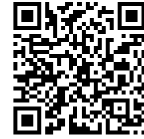


> *"For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a judicial officer of the rank of District Judge.*
>
> *The State or other controlling authorities, however, can always prescribe the minimum qualification, experience and other conditions bearing on the merit of an individual for being appointed as a teacher or a principal of any educational institution.*
>
> *Regulations can be framed governing service conditions for teaching and other staff for whom aid is provided by the State, without interfering with the overall administrative control of the management over the staff."(emphasis supplied)*

The position enunciated in T.M.A. Pai [(2002) 8 SCC 481] is reiterated in P.A. Inamdar v. State of Maharashtra [(2005) 6 SCC 537] .

***19.** The general principles relating to establishment and administration of educational institution ecognizedies 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;*



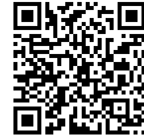
(b) to appoint teaching staff (teachers/lecturers and Headmasters/Principals) as also non-teaching staff, and to take action if there is dereliction of duty on the part of a©of its employees;

(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

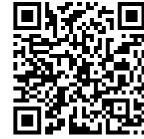


> *oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).*
>
> *(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the 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 ecognized nsure proper utilisation of the aid, without however diluting or abridging the right under Article 30(1).*

x x x x x x x x x

***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 [(2002) 8 SCC 481] . 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,*



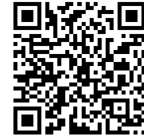
> *(iv) the co ecognized r the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.*

In other words, all laws made by the State to regulate the administration of educational institutions and grant of aid will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the management over the staff, or abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions.

x x x x x x x x x x

***27.** It is thus clear that the freedom to choose the person to be appointed as Pr ecognizeds always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai [(2002) 8 SCC 481] . Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid will make no difference.*

***28.** The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and*

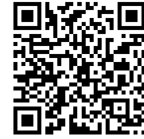


ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

> ***29.*** *Section 57(3) of the Act provides that the post of Principal when filled by promotion is to be made on the basis of seniority-cum-fitness. Section 57(3) trammels the right of the management to take note of merit of the candidate or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority-run educational institutions even if they are aided."*

53. Lastly, it would be pertinent to refer to a decision of this Court in ***Birpal Singh v. Nutan Marathi Senior Secondary School and Others***, 2022 SCC Online Del 2720 wherein the principles of interference and the rights enshrined under Article 30(1) of the Constitution of India have been summarized. Pertinently, this Court observed that the right to choose teachers who possess the requisite qualifications and satisfy the eligibility criteria may be done by a process defined by the school management. The relevant extracts of Birpal ***Singh (Supra)*** are reproduced as under:

> *"**32.** Article 30 of the Constitution of India upholds the rights of minority communities to establish and administer educational institutions of their choice. It ensures the rights of minorities which should be preserved. "minority" as defined under Article 30(1) of the Constitution of India reads as under:*

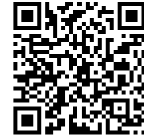


> *"All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice."*

33. *The rights of minority institutions are ecognized nder various specialised legislations and are also backed by assurance of enforcement. Being part of their rudimentary rights, the rights of minority institution are invested with sanctity and a position higher than that of the ordinary law and, consequently every legal provision or executive action must conform to the mandates implied for the welfare of the Community.*

34. *The Supreme Court has observed in T.M.A. Pai Foundation v. State of Karnataka [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481] , elaborating on the meaning and intent of Article 30 of the Constitution of India, the then Chief Justice further observed as follows:*

> *"12. The real reason embodied in Article 30(1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular education will open doors of*



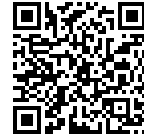
perception and act as the natural light of mind for our countrymen to live in the whole."

35. *The Supreme Court in State of Kerala v. Very Rev. Mother Provincial [State of Kerala v. Very Rev. Mother Provincial, (1970) 2 SCC 417 : AIR 1970 SC 2079] has observed and held as under:*

> *"8. Article 30(1) has been construed before by this Court. Without referring to those cases it is sufficient to say that the clause contemplates two rights which are separated in point of time. The first right is the initial right to establish inst'tutions of the minority's choice. Establishment here means the bringing into being of an institution and it must be by a minority community. It matters not if a single philanthropic individual with his own means, founds the institution or the Community at large contributes the funds. The position in law is the same and the intention in either case must be to found an institution for the benefit of a minority community by a member of that Community. It is equally irrelevant that in addition to the minority community others from other minority communities or even from the majority Community can take advantage of these institutions. Such other communities bring in income and they do not have to be turned away to enjoy the protection."*

36. *In Malankara Syrian Catholic College v. T. Jose [Malankara Syrian Catholic College v. T. Jose, (2007) 1 SCC 386] , the principal question that arose for consideration was whether right to choose a principal is part of the right of a minority institution under Article 30(1) of the Constitution. The Supreme Court held that:*

> *"19. The general principles relating to establishment and administration of educational instituti ecognizedrities 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;

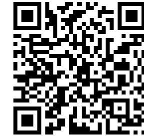
(b) to appoint teaching staff (teachers/lecturers and headmasters/principals) as also non-teaching staff, and to take action if there is dereliction of duty on the part o©ny of its employees;

(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,



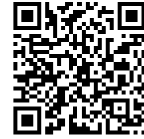
regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and non-teaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. 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 ecognized o ensure proper utilisation of the aid, without however diluting or abridging the right under Article 30(1).

*****

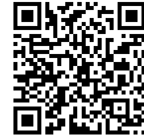
27. It is thus clear that the freedom to choose the person to be appointed as ecognized has always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai case [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481] . Having regard to the key role played by the principal in the management and administration of the educational institution, there can be no doubt that the right to choose the principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the



principal/Headmaster is also covered by State aid will make no difference.

28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same Community, senior to the person proposed to be selected, merely because the institution has the right to select a principal of its choice. But this contention ignores the position that the right of the minority to select a principal of its choice is with reference to t'e assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same Community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

29. Section 57(3) of the Act provides that the post of Principal when filled by promotion is to be made on the basis of seniority-cum-fitness. Section 57(3) trammels the right of the management to take note of merit of the candidate or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority-run educational institutions Even if they are aided."



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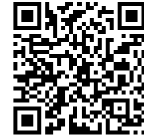
40. *It is right to conclude that decision of appointment of a teacher is part of the regular administration and management of the School. A linguistic minority is entitled to conserve its language and culture by constitutional mandate.*

41. *With respect to Issue 2, it is pertinent to reproduce Rules 97 and 98 of the Dsear, 1973:*

> *"97. Relaxation to be made with the approval of the director:*
>
> *Where the relaxation of any essential qualification for the recruitment of any employee is recommended by the appropriate Selection Committee, the Managing Committee of the School shall not give effect to such recommendation unless such recommendation has been previously approved by the Director.*
>
> *98. Appointing authority:*
>
> *(1) The appointment of every employee of a school shall be made by its Managing Committee.*
>
> *(2) Every appointment made by the Managing Committee of an aided school shall, initially, be provisional and shall require the approval of the Director:*
>
> *Provided that the approval of the director will be r'quired only where director's nominee was not present in the Selection Committee/DPC or in case there is difference of opinion among the members of the Selection Committee:*
>
> *Provided further that the provision of this sub-rule shall not apply to a minority aided school."*

42. *It is evident from the Dsear, 1973 that management of a minority aided school is free to choose any person as the staff or the head of the institution, provided he or she fulfils the*



qualification laid down by the State. As a result, Issue 2 is decided in the favour of the respondents.

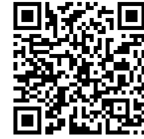
Conclusion

***43.** The emerging position is that once the management of the minority educational institution makes a conscious choice of a qualified person from the "minority community" to lead the institution, either as a Vice Principal or Principal, then court cannot go into the merits of the choice or the rationality or propriety of the process of choice. In that regard, the right under Article 30(1) is absolute.*

***44.** Every linguistic minority may have its own social, economic and cultural limitations. It has a constitutional right to conserve such culture and language. Thus, it would also have a right to choose teachers, who possess the eligibility and qualifications, as provided, without really being influenced by the fact of their religion and Community and the same can be done by the process defined by the school management. Linguistic and cultural compatibility can be legitimately claimed as one of the desirable features of a linguistic minority in relation to selection of eligible and qualified teachers."*

54. In the backdrop of the decisions referred to hereinabove, the only question now left for this Court to consider is whether the DoE could've rejected the appointment of the Appellant on the ground that the Appellant was Evaluated in consonance with the Evaluation Matrix as against the Circular. Accordingly, a preliminary question before this Court is whether the Circular issued by the DoE could be enforced against Respondent No. 3?

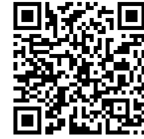
55. Undoubtedly, the Circular issued by Respondent No. 2 formulated a marking scheme / evaluation matrix to be followed for the recruitment of teachers in aided schools. In this regard, it would be necessary to analyze the scope of State interference in relation to appointment and selection of teachers vis-à-vis a minority institution.



56. Pertinently, this question has been repeatedly considered by the Supreme Court in a catena of decisions. In ***TMA Pai (Supra),*** the Supreme Court outlined 5 (five) distinct facets of the right to '*establish and administer'* under Article 30(1) of the Constitution of India which included *inter alia* the right to appoint staff (teaching as well as non-teaching). Thereafter in ***Brahmo Samaj Education Society (Supra)*** the right to prescribe requisite qualifications for the appointment of teachers was reiterated however, the Supreme Court stressed the importance of independence in the manner of selection of the teachers amongst such qualified candidates as such autonomy was observed to constitute a fundamental part of the academic and administrative autonomy of an aided minority institution enshrined under Article 30(1) of the Constitution of India.

57. This view has been recapitulated in ***Manager, Corporate Educational Agency (Supra)*** wherein the Supreme Court has categorically observed that the propriety or rationality of process of choice cannot be tested vis-à-vis the appointment of a teacher in a minority institution once the candidate is found to have satisfied the eligibility criteria and possessed of the requisite qualifications. In this context, the autonomy of the process of appointment of a qualified person by a minority institution was underscored by this Court in ***Birpal Singh (Supra).***

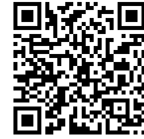
58. Accordingly, this Court is of the considered opinion that the Circular issued by Respondent No. 2 has inherently interfered with the management's control over Respondent No. 3 to the extent that the State would effectively wield an all-pervasive control over the selection of teachers of an aided



minority institution. The Circular by prescribing the marking scheme, has resulted in the State transgressing from prescription of the eligibility standards and / or requisite qualifications to also then decide the ranking of qualified persons and impliedly exercise control over the selection and appointment of qualified persons which would be contrary to settled law. The Supreme Court has repeatedly held the selection and appointment of qualified teachers to be an intrinsic limb of the autonomy of a minority educational institution and its rights enshrined under Article 30(1) of the Constitution of India. Moreover, the Circular would then give the DoE the ability to test propriety or rationality of the process of choice qua the appointment of a qualified candidate which the Supreme Court and this Court has held to be an independent process, free from even judicial scrutiny.

59. Furthermore, a coordinate bench of this Court in ***Queen Mary's School, (Supra)*** clarified that aided minority schools shall adhere to *inter alia* recruitment rules and other general norms to the extent they prescribe qualifications, experience, age and other such criteria for appointment (as they are regulatory).

60. Therefore, following the principles of law culled out above, we have no hesitation in holding that the Ld. Single Judge has erred in dismissing the Writ Petition by failing to appreciate that the prescription of a marking scheme / evaluation matrix must undoubtedly be viewed as interference with the manner of selection of qualified candidates and not merely the prescription of minimum standards of teaching in furtherance of an ever evolving and dynamic education system. Accordingly, the Circular and its



rigors cannot be applied to a minority institution such as Respondent No. 3 under the garb of a regulatory framework as the Circular and the actions following from the Circular would directly impinge on the rights of a minority institution which is protected under Article 30(1) of the Constitution of India and, accordingly, free to evolve its own marking scheme / evaluation matrix to evaluate qualified candidates.

61. Accordingly, as we find in favor of the Appellant on all counts, the Impugned Judgment of the Ld. Single Judge is hereby set aside and the LPAs are allowed.

62. The Appellant / Ms. Kiran Jain shall be entitled for appointment by virtue of the appointment letter dated 18.12.2017 and shall be treated in service from the date she reported on duty i.e., 16.01.2018. The Appellant shall also be entitled for seniority, notional fixation of salary, increments and all consequential benefits except backwages. The Respondent GNCTD / DoE is also directed to release the grant-in-aid in respect of the post in question.

63. There shall be no order as to costs.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

OCTOBER 10, 2023
N.Khanna