
(2011) 05 PAT CK 0021
In the Patna High Court
Case No : CWJC No. 9560 of 2006

Anjali Jain

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Citation : (2011) 05 PAT CK 0021

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—These two writ Petitioners raise a common issue of law and are similar on facts as well. Pleadings being complete, with consent of parties, these writ petitions have been heard for final disposal at this stage itself.

2. The issue that arises for determination of this Court is whether State is competent to impose its reservation policy in respect of selection and appointment of staff, teacher in present cases, in respect of a recognized minority educational institution like, Schools as in the present cases, where such School is receiving Government aid?

3. The facts are not in controversy and, therefore, the facts, as appearing in the first writ petition, is being noted.

4. In the district of Bhojpur in the State of Bihar at Ara, there is a Middle School which was established in the year 1907 by the Jain Community which is a Minority Community known as Shri Jain Kanya Madhyamik Pathshala. It is not in dispute that it is duly recognized by the State as a minority educational institution. It is governed by its Managing Committee whose members are pre-dominantly of the Jain Community.

5. It appears that pursuant to a vacancy caused amongst the Teachers as against a duly sanctioned post, pursuant to advertisement issued and interview held, Petitioner was selected for being appointed Teacher in the said School by the Managing Committee. Petitioner was appointed with effect from 1.12.1994 and pursuant to the said selection and appointment, the Headmistress of the School

then sought approval of Petitioner's appointment from the District Inspector of Schools, Bhojpur on or about 5.4.1995. The District Inspector of Schools, Bhojpur at Ara granted approval to the appointment and then apparently recommended it to the District Superintendent of Education. The District Superintendent of Education, Bhojpur, on or about 16.12.2004, approved the appointment and fixed the pay scale as well as Metric Trained Assistant Teacher with effect from 1.12.1994. He then forwarded the same alongwith the case of second writ Petitioner whose appointment had also been subsequently made on vacant sanctioned post of Assistant Teacher to the Director, Primary Education, Government of Bihar. The Director, Primary Education, by his letter dated 15.11.2005, returned the matter for reconsideration-in view of a departmental letter dated 2.5.2005.

6. Thus, the matter of confirmation of Petitioners' appointments as Assistant Teachers having remained pending for such a long time, the Petitioners filed these two writ applications independently. During pendency of these writ petitions, the District Superintendent of Education, Bhojpur at Ara, by his communication dated 13.12.2006, passed an order that as per departmental directives issued in the year, 1993 and reiterated in 2005, as reservation policy was not followed nor reservation roster applied, as per orders of the Director, Primary Education, Government of Bihar, the approval granted by the District Superintendent of Education on 16.12.2004 was cancelled. It was directed that as Petitioners' School was receiving Government aid, it must follow the departmental Circulars with regard to reservation policy in all matters of appointment. By amendment application which was allowed, this was challenged. It may be noted that before the District Superintendent of Education had granted approval, he had made certain queries in which the Secretary of the Governing Body of the School clearly replied that in view of Articles 29 and 30 of the Constitution, the School of the Petitioners being a recognized minority School, it was competent to independently make appointments and reservation and roster clearances were not required.

7. Thus, though both the writ Petitioners had been working for a considerable period duly selected by the Managing Committee of the recognized minority educational institution, the result of the disapproval is that apart from the Petitioners not being paid their salary now even work has been stopped to be taken from them. It is in these situations the question as noted above, arises.

8. On the aforesaid facts, it would be seen that the selection and appointment of the Petitioners of the two writ petitions was disapproved not because they were not duly selected for appointment on a vacant sanctioned post nor because they were not academically qualified but solely on the ground that the Management did not conform to the departmental circulars extending and applying reservation policy and reservation roster while making the selection. Thus, it is clear that, but for non-compliance of the reservation policy, they were otherwise fit and qualified to be appointed as Assistant Teachers.

9. On behalf of Petitioners, Shri Baxi S.R.P. Sinha, learned Senior Counsel submits that in terms of Article 30(1) and Article 30(2) of the Constitution of India, Minorities have a fundamental right to establish and administer educational institution of their choice. This fundamental right is an absolute right and cannot be restricted unlike Article 19 of the Constitution where reasonable restrictions are permissible. With reference to Article 30(2), it is submitted that even in respect of educational institutions run by minority, State cannot, in granting aid, discriminate against them on the ground that they are minority institutions, meaning thereby, that if there be a policy of the State to grant aid to Schools then merely because an educational institution is a minority institution, aid, similar to other Schools, cannot be refused. In other words, it is submitted that no condition can be attached to grant of aid which would take away or interfere with the right to establish and administer the minority educational institution.

10. On the other hand, on behalf of the State, it is urged that the departmental circulars are clear. They do not discriminate between minority educational institutions or other educational institutions in matter of Government aid and similarly they do not discriminate between them in matters of implementation of reservation policy concerning employment in those institutions. Government is competent to impose reservation policy for the purposes of appointment of teaching and non-teaching staff even in minority institutions if they are receiving aid from the Government.

11. It is the correctness of these contradictory stands taken by either side that has to be decided.

12. The first thing that is to be noted is Article 30 of the Constitution is in Part-III of the Constitution and it deals with fundamental rights. It is not subject to reasonable restriction as is the case with Article 19(1). The second thing that has to be kept in mind is that the right of the State or for that matter, the Parliament to provide for reservations under Article 16(4) in matters of employment is an exception to the general rule of equal opportunity of employment to all citizens as enshrined under Article 16(1) of the Constitution and is limited to employment or appointment to any office under the State. Surely and rightly, it is not contended that employment of Petitioners in the minority educational institution governed by its own Governing Body is employment under the State.

13. The first case that I would refer is the case of Rev. Sidhajibhai Sabhai and Others Vs. State of Bombay and Another, being the judgment of the Constitution Bench of six Judges of the Supreme Court, relevant parts of paragraph-10 is quoted hereunder:-

Unlike Article 19, the fundamental freedom to establish and administer educational institutions by minorities guaranteed under Clause (1) of Article 30, is absolute in terms: it not made subject to any reasonable restrictions of the nature the fundamental freedoms enunciated in Article 19 may be subjected to.

All minorities, linguistic or religious have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void.

14. I may then refer to what their Lordships say and hold further in paragraph-15 of the reports which is quoted hereunder:-

The right established by Article 30(1) is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulatory measures conceived in the interest not of the minority educational institution but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institution the right guaranteed by Article 30(1) will be but a "teasing illusion", a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as a minority institution effective as an educational institution. Such 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 .

(emphasis supplied)

15. The above propositions clearly bring about distinction between Articles 19 and 30. It further clearly points out that though the administrative measures through regulation may be deemed to be in public or national interest but if it affects the right of Minority Institution in powers of administration, it would be bad. The third thing to be noticed is that the regulation may be lawfully imposed but the said regulation must be to regulate the educational character of the institution.

16. Then I deem it proper to refer the next decision of the Supreme Court upon presidential reference known as In re: The Kerala Educational Bill, 1957 since reported in In Re: The Kerala Education Bill, 1957. Reference Under Article 143(1) of The Constitution of India, First, in this connection, I may refer to what is said in paragraph-31 of the reports, relevant portions of which is quoted hereunder:-

The directive principles cannot ignore or override the fundamental rights but must, as we have said, sub serve the fundamental rights. We have already observed that Article 30(1) gives two rights to the minorities. (1) to establish, and (2) to administer, educational institutions of their choice. The right to administer cannot obviously include the right to mala-administer. The minority

cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reason, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided.... The State must not grant aid in such manner as will take away the fundamental right of the minority community under Article 30(1).... No educational institution can in actual practice be carried on without aid from the State and if they will not get it unless they surrender their rights they will, by compulsion of financial necessities, be compelled to give up their rights under Article 30(1). The legislative powers conferred on the legislature of the States by Arts. 245 and 246 are subject to the other provisions of the Constitution and certainly to the provisions of Part-III which confers fundamental rights which are, therefore, binding on the State legislature. The State legislature cannot, it is clear, disregard or override those provisions merely by employing indirect methods of achieving exactly the same result. Even the Legislature cannot do indirectly what it certainly cannot do directly.... Likewise CI. 11 takes away an obvious item of management, for the manager cannot appoint any teacher at all except out of the panel to be prepared by the Public Service Commission, which, apart from the question of its power of taking up such duties, may not be qualified at all to select teachers who will be acceptable to religious denomination and in particular sub-cl. (2) of that clause is objectionable for it thrusts upon educational institutions of religious minorities teachers of Scheduled Castes who may have no knowledge of the tenets of their religion and may be otherwise weak educationally.

17. Then in paragraph-32, it has been observed thus:-

...Without recognition, the educational institutions established or to be established by the minority communities cannot fulfill the real objects of their choice and the rights under Article 30(1) cannot be effectively exercised. The right to establish educational institutions of their choice must, therefore, mean the right to establish real institutions which will effectively serve the needs of their community and the scholar?} who resort to their educational institutions. There is, no doubt, no such thing as fundamental right to recognition by the State but to deny recognition to the educational institutions except upon terms tantamount to the surrender of their constitutional right of administration of the educational institutions of their choice is in truth and in effect to deprive them of their rights under Article 30(1). The legislative power is subject to the fundamental rights and the legislature cannot indirectly take away or abridge the fundamental rights which it could not do directly and yet that be the result if the said Bill containing any offending clause becomes law.

18. Then I may refer to the submission as referred to in the judgment in paragraph-41 of the reports which is quoted hereunder:-

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

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

19. Thus, from the judgments aforesaid, it would be seen that any infringement on the right of the minority to establish or administer their educational institution would be bad if they are not restricted to regulating and enforcing excellence in education and efficiency in management. No strings can be attached to grant of aid which would take away the vitahright to administer a minority educational institution.

20. Next, I may refer to the Constitution Bench judgment of the Apex Court in the case of D.A.V. College, Vs. State of Punjab and Others, In that case, the Court was considering the validity of the provisions of Guru Nanak University Amritsar Act, 1969 and the statutes made thereunder. Statute 2(1)(a) deal with constitution of the Managing Committee of a College seeking affiliation to the University. It, inter alia, provided for approval of the constitution of Governing Body by the Senate which Governing Body would also include University representatives. Clause 17 provides that staff initially appointed shall be by approval of the Vice-Chancellor and all subsequent changes shall be with the approval of the Vice-Chancellor. The consequence of non-compliance of these conditions was disaffiliation. The Court unanimously held in paragraph-37 of the report that these conditions decidedly interfered with the right of Management and, thus, provisions would, therefore, not be made condition of affiliation. They were, accordingly, struck down as offending Article 30(1) of the Constitution but when it came to Clause 18 of the Regulations which provided that non-Government Colleges shall comply with the requirement laid down in the Ordinances governing service and conduct of Teachers as may be framed by the University, Court upheld the validity thereof. Paragraph-38 of the reports is quoted hereunder:-

Clause 18, however, in our view does not suffer from the same vice as Clause 17 because that provision in so far as it is applicable to the minority institutions empowers the University to prescribe by regulations governing the service and conduct of teachers which is enacted in the larger interests of the Institutions to ensure their efficiency and excellence. It may for instance issue an ordinance in respect of age of superannuation or prescribe minimum qualifications for teachers to be employed by such Institutions either generally or in particular subjects. Uniformity in the conditions of service and conduct of teachers in all non-Govt. Colleges would make for harmony and avoid frustration. Of course while the power to make ordinances in respect of the matters referred to is

unexceptional the nature of the infringement of the right, if any, under Article 30(1) will depend on the actual purpose and import of the ordinance when made and the manner in which it is likely to affect the administration of the educational institution, about which it is not possible now to predicate.

(emphasis supplied)

21. Thus, it is clear that the Apex Court pointed out that in matters of constitution of the Managing Committee, State could not interfere in so far as minority institutions were concerned. In respect of staff, it could interfere but in a limited manner that is with regard to service conditions.

22. Next we come to the case of The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, In this case, which was decided by Constitution Bench of nine Judges, the question was with regard to various amendments being made to the Gujarat University Act, 1949 as offending Article 30(1) of the Constitution and, as such, not applicable to minority institutions. In paragraph-41 of the reports, the Court held thus:-

Autonomy in administration means right to administer effectively and to manage and conduct the affairs of the institutions. The distinction is between a restriction on the right of administration and a regulation prescribing the manner of administration. The right of administration is day to day administration. The choice in the personnel of management is a part of the administration. The university will always have a right to see that there is no maladministration. If there is maladministration, the university will take steps to cure the same. There may be control and check on administration in order to find out whether the minority institutions are engaged in activities which are not conducive to the interest of the minority or to the requirements of the teachers and the students.

(emphasis supplied)

23. In paragraph-103, the Court held thus:-

Another conclusion which follows from what has been discussed above is that a law which interferes with a minority'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)

(emphasis supplied)

24. From the aforesaid, it would be clear that so far as choice of qualified

Teachers for appointment is concerned, that would be the prerogative of minority institution and anything which restricts or interferes with that would be void as being violative of Article 30(1) of the Constitution affecting the right to administer the institution.

25. Now we come to a more pertinent observation which is to be found in paragraph-177 of the said judgment with regard to institutions which receive Government grants:-

...If, besides recognition or affiliation, an educational institution conducted by a religious minority is granted aid, further regulations for ensuring that the aid is utilized for the purpose for which it is granted will be permissible. The heart of the matter is that no educational institution established by a religious or linguistic minority can claim total immunity from regulations by the legislature or the University if it wants affiliation or recognition; but the character of the permissible regulations must depend upon their purpose. As we said, such regulations will be permissible if they are relevant to the purpose of securing or promoting the object of recognition or affiliation. There will be borderline cases where it is difficult to decide whether a regulation really subserves the purpose of recognition or affiliation. But that does not affect the question of principle. In every case, when the reasonableness of a regulation comes up for consideration before the Court, the question to be asked and answered is whether the regulation is calculated to subserve or will in effect subserve the purpose of recognition or affiliation, namely, the excellence of the institution as a vehicle for general secular education to the minority community and the other persons who resort to it. The question whether a regulation is in the general interest of the public has no relevance, if it does not advance the excellence of the institution as a vehicle for general secular education as, ex-hypothesis, the only permissible regulations are those which secure the effectiveness of the purpose of the facility, namely, the excellence of the educational institutions in respect of their educational standards. This is the reason why this Court has time and again said that the question whether a particular regulation is calculated to advance the general public interest is of no consequence if it is not conducive to the interests of the minority community and those persons who resort to it.

(emphasis supplied)

26. From the above passage, it is clear that even so far as Government aided institutions are concerned, no regulation can be made in general public interest if it is of no consequence to the excellence of educational standards or to the efficiency in management thereof. This is further clarified in paragraph-183 of the reports which is quoted hereunder:-

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 qualification 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.

(emphasis supplied)

27. From this, it would be seen that imposing members from outside the Management Committee in the selection process would be bad and the choice of qualified Teachers, the qualification being prescribed, would be on the Management exclusively.

28. Now, I may refer to the decision of the Apex Court in the case of All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, which is a case arising from Bihar challenging the provisions of the Bihar Non-Government Secondary Schools (Taking Over of Management and Control) Act which were held to be constitutionally valid. Before proceeding to note what is said in the judgment, it is pertinent to note that School of the Petitioners is covered by the provisions of the said Act but being Minority Institution, they were not taken over. I may refer to what was stated in paragraph-9, relevant portion whereof is quoted hereunder:-

...While the State has every right to prescribe conditions for granting recognition or disbursing aid, it cannot under the guise of that power prescribe onerous conditions compelling the minority institutions to surrender their rights of administration to the Government. On the one hand the State is under an obligation to ensure that educational standards in the recognized institutions must be according to the need of the society and according to standards which ensure the development of personality of the students in turning out to be civilized, useful members of the society, and to ensure that the public funds disbursed to the minority institutions are properly utilized for the given purpose. On the other hand the State has. to respect and honor minority rights under Article 30(1) in the matter of establishing and carrying of administration of institution of their choice. In order to reconcile these two conflicting interests the State has to strike a balance and statutory provisions should serve both the objects and such statutory provisions have to withstand the rest of Article 30(1) of the Constitution. These principles have to be borne in mind in considering the question of validity of statutory provisions relating to minority educational institutions.

(emphasis supplied)

29. Then I may refer to the case of Yunus Ali Sha Vs. Mohamed Abdul Kalam and Others, which case dealt with provisions of the Orissa Education Act. In paragraph-6 of the reports, their Lordships have held thus:-

Section 10-A of the Orissa Education Act which requires prior approval of the Director before termination of the services of a teacher of an aided institution, therefore, has no application to a minority institution such as the Appellant's institution. While the Directorate of Education, Orissa may have power to supervise the functioning of the said school in order to ensure that it does not malfunction or is not mal-administered, in view of Article 30(1) of the Constitution the Directorate has no control over the actual management of the school including hiring or termination of services of teachers. This is entirely within the control of the Managing Committee of the minority institution.

(emphasis supplied)

30. Here, the Court specifically held that the Directorate has no control over the hiring or termination of services of Teachers which is exclusively for the Managing Committee of the Minority Institution. Their Lordships also referred to another Bihar case being the case of Bihar State Madrasa Education Board v. Anjuman Ahle Hadees, : 1994 Supp.(2) SCC 509 where certain provisions with regard to right of Minority Institution to discharge or dismiss from service Teachers without prior approval of the Madrasa Board was held to be constitutionally invalid.

31. I may then refer to the case of Brahmo Samaj Education Society and Others v. State of West Bengal and Others since reported in AIR 2004 SC 3358 wherein in paragraphs-7 and 8, the Court held as under:-

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

8. Argument on behalf of the State that the appointment through 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 the NET/SLET. Similarly, receiving aid from State coffers can also not be treated as a justification for imposition of any restrictions that cannot be imposed otherwise.

(emphasis supplied)

32. From this, it is clear that Court once again emphasised that institutions receiving aid from the State coffers cannot be treated as a justification for imposing any restriction which they cannot otherwise impose. The right of the Mjnority Institution to appoint Teachers of its choice amongst qualified candidates is absolute.

33. Now, I must, refer to another decision of the Apex Court in the case of Secretary, The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others, . Here, the question of applicability of some of the provisions of the Kerala University Act to Government aided minority institutions was considered. It appears the High Court had rejected the similar challenge by the minority institution on the ground that the eleven Judges' Bench of the Supreme Court in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, has held that receipt of aid by a Minority Institution removes the protection under Article 30(1) by taking away its right to claim immunity from interference and, therefore, all regulations made by the State governing the manner of making appointment etc. would be binding on such aided institution. The High Court held that aid carries "price" to surrender a part of its freedom and independence in the matter of administration. The Apex Court examined the judgment and held that the High Court was clearly wrong. They held that the observations in the case of TMA Pai on which the High Court relied, were in respect of non-Minority Institutions. This is to be found in the words of the Apex Court itself in paragraph-17, relevant part whereof is contained hereunder:-

In TMA Pai (supra), 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 the proper utilization of the aid by an educational institution can be imposed. The High Court, however, wrongly construed TMA Pai 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 TMA Pai (supra).

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 observation in Para 73 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).

(emphasis supplied)

34. The Court then in paragraphs-19 and 21 of the reports summed up the general propositions, the relevant portions whereof are quoted hereunder:-

19. The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:-

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

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

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

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

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

(ii)

(iii)

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

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

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 crystallized in TMA Pai. The State can prescribe:-

(i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments.

(ii) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.

(iii) A mechanism for redressal of the grievances of the employees.

(iv) the conditions for the proper utilization of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

28. 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.

(emphasis supplied)

35. Now, I may come to a decision, as cited on behalf of Petitioners, which is directly on the issue though not decided by the Apex Court. It is the case of *St. Frances de Sales Education Society, Nagpur and Another v. The State of Maharashtra and Another* being a Full Bench decision of the Bombay High Court since reported in 2001 Lab IC 3415. There, the question that directly arose for consideration was whether reservation of post in favour of backward classes could be imposed on Minority Institution receiving aid and whether such a provisions would be inconsistent with Article 30(1) of the Constitution. The Full Bench of the Bombay High Court reviewed the case law as then was available and clearly held that if the provisions of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 were made applicable in so far as reservation policy is concerned to Minority Institution, it would violate the fundamental rights guaranteed to such Minority Institutions under Article 30(1) of the Constitution. While doing so, the Full Bench also considered that the regulations for social welfare measures could not be taken to be measures intended to advance the interest of minorities and the fundamental right granted to them and guaranteed under Article 30(1) would be violative.

36. Let it be noted, in fairness to the learned counsel for the State, that he has not been able to show that the said judgment of the Bombay High Court has either been reversed or disapproved in any case by the Apex Court till date. I am in respectful agreement with the Full Bench decision of the Bombay High Court in this regard which is consistent with the judgments of the Apex Court, as noted above.

37. In my view, the principles that emerged from the above referred decisions is that so far as minority educational institutions are concerned, the State has the power to regulate its functioning in a limited sense which should not contravene the fundamental rights which has been guaranteed to them under Article 30(1) of the Constitution. A Minority Institution cannot be denied aid on the ground

that it is not agreeable to conform to Government directives which are not for the purposes of enforcing excellence in education and efficiency in Management. The intrusion by regulation of State into the right to establish and administer educational institution of their choice is permissible only to that extent and not beyond. Even though the regulation made, otherwise be in general public interest, by receiving aid, they cannot be forced or asked to surrender their autonomy as guaranteed under Article 30(1) of the Constitution. Enforcement of reservation policy may be of general public importance and benefit but it cannot be applied to aided minority educational institutions who are free to choose and appoint Teachers and staff subject to minimum educational and academic qualifications being complied with. The requirement of grant of approval would only be limited to evaluating that they meet the educational and academic qualifications required for the post and not beyond that. These considerations by the State cannot take decades, as in the present cases, as this can be easily evaluated in matter of moment and, hence, approval cannot be kept pending for a long time, longer than necessary to evaluate the qualifications. Subject to the minimum standards of educational and academic, the approval of appointment would be as a matter of right.

38. The net effect of this would be that any law, any regulation or any departmental circular which provides to the contrary would not be applicable to minority educational institutions even if they are recipients of Government aid nor can grant of Government aid be made subject to acceptance of such conditions as they would be void and unenforceable in view of the fundamental rights guaranteed to minorities in respect of establishing and administering educational institution of their choice under Article-30 of the Constitution.

39. In view of the aforesaid, the situation in the present cases that emanates is that only because the Management of the recognized Minority's Educational Institution failed to comply with Government decision and departmental circulars in respect of conforming to the State's reservation policy, the disapproval cannot be upheld. It must, therefore, be held that the disapproval is unconstitutional and invalid. It would, thus, follow that there being no other impediment, the selection and appointment of the two writ Petitioners cannot be disapproved and have to be approved from the date when they were selected and appointed with all consequential benefits. To clarify, if the Petitioners had been working consequent to their selection and appointment and consequently, had their appointment been approved, they became entitled to be paid out of Government aid, now they would be so paid and the Government would be obliged to make provision for it immediately after grant of approval of their selection and appointment which could be done by the concerned officers including the Director, Primary Education, Government of Bihar within a period of three months from today. It shall be the responsibility of the Director to see that the orders of this Court are complied with in all respects within the time fixed.

40. In view of the aforesaid facts and in view of the directions issued, the writ

petitions are allowed.