

(2017) 02 MP CK 0129
In the Madhya Pradesh High Court
Case No : 4367 of 2016

Gajendra Singh

APPELLANT

Vs

S.G.Motors

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

Constitution of India, Article 30, Article 30(1) - Right of minorities to establish and administer educational in-stitutions - Right of minorities to establish and administer educational in-stit

Citation : (2017) 02 MP CK 0129

Hon'ble Judges : P K Jaiswal, Virender Singh

Bench : Single Bench

Advocate : Anshuman Singh, Sunil Jain, Peyush Jain, Rashmi Pandit, Devi Ahilya Vishwavidyalaya, Sadhna Pathak, Ranjana Sehgal

Judgement

1. The petitioner before this Court "Indore School of Social Work", an Institution of the Church of North India, represented through the Secretary, Governing Body - Rev. Manoj Charan, has filed the present writ petition being aggrieved by order dated 17.05.2016 (Annexure P/17) by which respondent No.3 - Devi Ahilya Vishwavidyalaya, Indore has cancelled the appointment of the Principal of the Institution Dr. S.N. Sahay on the ground that Selection Committee was not constituted as per College Code Statute No.28. The Selection Committee was to be constituted / appointed by respondent No.3 and not by the petitioner - Institution. The petitioner is also challenging notice dated 13.05.2016 (Annexure P/16) issued by respondent No.2, stating therein that selected candidate Dr. S.N. Sahay does not fulfill all the req- uisite qualifications prescribed under the UGC Regulations, 2010 for the post of Principal of the petitioner - Institution by the respondent No.3 - University.

2. Facts of the case are that the petitioner is a private minority educational institution and is managed by the Church of North India, which is a religious organization of the protestant Christian Community. The petitioner has been duly

certified vide order dated 19.11.2001 (Annexure P/1) to be a Minority Educational Institution within the meaning of Article 30 of the Constitution of India by the Government of Madhya Pradesh.

3. Earlier one Dr. Jacob Thudipara was working on the post of Principal of the petitioner - Institution, having been duly appointed to that post. The post of Principal hitherto was a grant-in-aid post and this grant was co-terminus with the superannuation of Dr. Jacob Thudipara. Upon superannuation of the earlier Principal, the new incumbent on the post of Principal had to be paid remuneration by the management of the petitioner - Institution out of its own funds.

4. A letter of superannuation was issued to Dr. Jacob Thudipara on 28.01.2015. He challenged the said order by filing writ petition claiming continuation of service till the age of 65 years. On 30.10.2015 his writ petition was dismissed. The petitioner - Institution issued fresh advertisement for appointment on the post of Principal on 13.01.2016 and 22.02.2016 (Annexure P/4). The petitioner duly informed respondent No.3 - University about initiation of process of appointment and issuance of the advertisement and requested respondent No.3 - University to nominate its representatives for the Selection Committee (Annexure P/5). On 27.02.2016 (Annexure P/6), the petitioner - Institution issued a letter to Dr. Jacob Thudipara that immediately on appointment of the new Principal, he would be required to handover charge of the post to him. During pendency of the process of appointment, it was decided that Dr. Jacob Thudipara would continue to officiate as Principal on nongrant-in-aid post. However, one Dr. (Mrs.) Ranjana Sehgal (present intervener), who was working as a Professor in the petitioner - Institution, had earlier filed Writ Petition No.8198/2014 challenging the appointment of Dr. Jacob Thudipara. By order dated 03.03.2016 (Annexure P/7), learned Writ Court directed that Dr. Jacob Thudipara could not continue as Principal after dismissal of the writ petition and he be relieved forthwith and till the new incumbent is appointed, for which the process had already been initiated, the charge of the post of Principal be given as per law. This order has been upheld in the writ appeal.

5. The Executive Committee of the petitioner - Institution immediately conducted a meeting on 04.03.2016. The Secretary of the Governing Body, Rev. Manoj Charan was given the charge of the post of Principal (Officiating) till the process of appointment is completed. The Board of Governors in its meeting held on 12.03.2016 (Annexure P/12) passed a resolution for appointment of Dr. S.N. Sahay and issued an order of appointment of Dr. S.N. Sahay as Principal on the same date vide Annexure P/13.

6. In the writ petition, there was no direction to deliver the charge of the post of Principal to Dr. (Mrs.) Ranjana Sehgal, however, letter dated 04.03.2016 (Annexure P/11) was issued by respondent No.2 directing the petitioner - Institution to deliver the charge of the post of Principal to Dr. (Mrs.) Ranjana Sehgal.

7. On 05.03.2016, Dr. (Mrs.) Ranjana Sehgal tried to forcefully take over the charge of the post of Principal and when the management requested her not to do so, she got an FIR registered against the Chairman, the Official Principal and other persons exercising political clout on 05.03.2016. The aforesaid members of the management were compelled to approach this Court, seeking anticipatory bail and by order dated 10.03.2016, anticipatory bail was granted to them.

8. On 05.03.2016, Dr. Ranjana Sehgal was suspended from the post of Professor and thereafter, interview for the post of Principal was held on 12.03.2016 and one Dr. S.N. Sahay was recommended to be appointed as Principal of the petitioner - Institution by the Selection Committee.

9. Since the post of Dr. S.N. Sahay is a non-grant post, post retirement of Dr. Jacob Thudipara, therefore, the remuneration to Dr. S.N. Sahay is being paid by the management of the petitioner - Institution out of its own fund.

10. The appointment of Dr. S.N. Sahay was duly informed to respondent No.2 as well as respondent No.3. It was also informed that Selection Committee was duly constituted by the petitioner - Institution and the new incumbent was duly qualified and had already been appointed on the post of Principal by following due process of law. The petitioner is a minority educational institution and therefore, it was not required to have nominees of the University or the State in its Selection Committee.

11. On 13.05.2016 (Annexure P/16), respondent No.2 issued a letter to the petitioner - institution calling for the response of the petitioner on the process of appointment alleging that the appointment of Dr. Sahay was illegal. It was directed that the charge of the post of Principal be handed over to the senior most professor and to submit a reply with compliance to the direction, failing which, action for cancellation of recognition and withdrawal of grant would be initiated.

12. On 17.05.2016 (Annexure P/17) respondent No.3 - University issued a communication stating that the appointment of the Principal made by the petitioner - Institution through its own Selection Committee is illegal. It has thus been ordered to be rejected and cancelled. The petitioner has been issued a notice as to why action for cancellation of affiliation should not be taken for violation of College Code Statute No.28.

13. It is this action which has been challenged in the present writ petition.

14. Shri Anshuman Singh, learned counsel for the petitioner has submitted that the Principal was appointed by the Management of the School and the Principal was holding requisite qualifications, as per statutory provisions provided under the Madhya Pradesh Vishwavidyalaya Adhiniyam, 1973 and College Code Statute No.28. He has further stated that initially the State Government has issued a notice on 13.05.2016 directing the College to deliver charge to a particular person and later on University has issued notice on 17.05.2016 calling

explanation from the Institution as to why Principal has been appointed when a Committee has not been constituted by the University, keeping in view the College Code Statute No.28. The University by the impugned order dated 17.05.2016 has directed the College to remove the Principal appointed by the petitioner - Institution.

15. His contention is that a minority institution enjoys a freedom to choose a person of their choice to administer the educational institution, however, the only embargo is that the selected person must fulfill the qualifications required under the statute.

16. He has drawn our attention to Clause 16 and Clause 17 of Part-VI of College Code, Statute No.28, which deals with the teacher of the college, which read, as under: -

"Part-VI: The Teachers of the College:

16.(1) No appointment to any teaching post in the college, including the post of the Principal but excluding part-time appointments, temporary appointments which are not to continue for more than six months and appointments to post which are to be filled by promotion, shall be made except:

(a) After duly and widely advertising the post together with the minimum qualifications thereof and the emoluments of the post and allowing reasonable time within which the applicants may in response to the advertisement, submit their applications.

(b) On the recommendation of the Selection Committee constituted in accordance with the provisions of paragraph 17 below for the "Nongranttee Colleges" and the Rules framed under MP Ashasakiya Shikshan Sanstha (Adhyapakon tatha Karmachariyon ke vetano ka Sandya) Adhiniyam, 1978 for "Granttee Colleges".

(2) No appointment to the post of Principal shall be made except with the prior approval of the Executive Council.

(3) No person shall be appointed to any teaching post including that of the Principal unless he possesses the minimum qualifications prescribed for the post by the University Grants Commission and approved by the State Government and / or MP Uchcha Shiksha Anudan Ayon from time to time.

(4) Every change in the teaching staff of the college shall be immediately reported to the University by the Principal.

17.(1) The Selection Committee for teachers, principals and non-teaching employees for "nongranttee colleges" shall be:

(a) For Teachers:

(b) For Principals: -

- (i) Kulpati or his nominee not below the rank of University Professor - Chairman.
- (ii) Chairman of the Governing Body or his nominee from amongst its members who are not teachers of the College - Member
- (iii) One educationist nominated by the Executive Council - Member
- (iv) Coordinator / Dean / Director College Development Council or in his absence one of the Deans of Faculties in which instructions are imparted in the College nominated by Kulpati - Member
- (v) Principal of the College - Member Secretary.

Clause 15, Appendix, College Code, Statute No.28, Minimum Qualifications for Requirement to Teaching Position in the Institutions.

(A) For Lecturers in College:

- (a) A doctor's degree or published research work of an equivalent high standard; and
- (b) (i) A 2 nd Class Masters Degree in the concerned subject with at least 50% marks (b in the seven point scale) or an equivalent degree of a foreign University
- (B) Minimum Qualifications prescribed for recruitment to the posts of non Government College Professors.

- (a) A doctor's degree or published work of an equivalent high standard; and
- (b) (i) A 2 nd Class Masters Degree in the concerned subject with at least 50% marks (B in the seven point scale) or an equivalent degree of a foreign University; and

(C) For Principals

Academic qualifications as prescribed above for Professors plus two years experience of working as Professor in an institution of higher learning affiliated to University."

17. It is not in dispute that College Code No.28 would continue to apply to minority institutions only so far as it relates to minimum qualifications for staff including the Principal. Learned counsel for the petitioner / Institution has submitted that so far as minority educational institutions are concerned, the power and the authority of the University or the State is limited to the extent of prescribing minimum qualifications. However, selection of candidate, constitution of Selection Committee, and final appointment of the candidate selected for the post of Principal, are the exclusive choice of the minority educational institution; the State or the University has no power or authority to interfere on any aspect of the matter except for prescribing minimum qualifications.

18. It is submitted that no estoppel and waiver is applicable against law. The Eleven Judges decision of the Hon"ble Supreme Court in the case of T.M.A. Pai

Foundation and others v. State of Karnataka and others reported in (2002) 8 SCC 481 has categorically held that interference in the process of appointment of staff by nominating Members to the Selection Committee is an interference in the right of the minority educational institutions to manage its all affairs and is thus, violative of Article 30 (1) of the Constitution of India.

19. He submitted that in view of the law laid down by the Apex Court in the case of T.M.A. Pai Foundation and others v. State of Karnataka and others (supra), the University or the State Government can have no interference in the matter of appointment of a staff of an minority educational institution, nomination of Members of the Selection Committee and the process of Selection Committee by abrogating the right of the Institution and the Constitution of the Selection Committee by the University are complete illegal and arbitrary. They cannot compel the petitioner / Institution to cancel his appointment on the ground that the Selection Committee ought to have been constituted by the University. He further submitted that the remuneration of the newly appointed Principal is being paid out of the funds of the petitioner - Institution. The newly appointed Principal is on a non-grant post and the provisions of the University Grants Commission would not be applicable for the said post. As per College Code Statute No.28 for the post of Principal, a candidate should possess his academic qualifications prescribed for Professor plus two years experience of working as Professor in an institution of higher learning affiliated to the University. The minimum qualifications prescribed for the post of Professor of NonGovernment-College is a Doctor's Degree, or published work of equivalent high standard; and a Second Class Master's Degree in the concerned subject with at least 50% marks. The newly appointed incumbent (Dr. S.N. Sahay) fulfills the minimum eligibility criteria prescribed for appointment of a candidate to the post of Principal, as contained in College Code Statute No.28 and prayed that impugned orders 31.03.2016 (Annexure P/14), dated 13.05.2016 (Annexure P/16) and dated 17.05.2016 (Annexure P/17) be quashed and writ of mandamus be issued, directing the respondents not to interfere in the management of the petitioner - Institution and not to direct cancellation of appointment of the Principal (Dr. S.N. Sahay) made by the petitioner / Institution by resolution of the Governing Body dated 12.03.2016 (Annexure P/12).

20. The stand of respondents No.1 and 2 / The State of Madhya Pradesh is that the petitioner / Institution itself has placed on record advertisement (Annexure P/4 and Annexure P/5) in which it has been specifically stated that the qualifications and eligibility are as per University Grants Commission / Department of Higher Education, Bhopal / Norms of Selection under College Code Statute No.28. As per letter dated 24.02.2016 (Annexure P/5), the petitioner / Institution requested to respondent No.3 / University in respect of appointment of Principal under College Code Statute No.28 on a non-grant-post. As per the Governing Body meeting held on 02.12.2015, a resolution was passed in respect of appointment of Principal under College Code Statute No.28 in pursuance of which, an advertisement has been issued in various newspapers. As per the

impugned communication dated 17.05.2016 (Annexure P/17), respondent No.3 / University has specifically observed that in the process of appointment for the post of Principal, the petitioner / Institution has failed to comply with College Code Statute No.28 and as per minutes of the meeting dated 12.03.2016 (Annexure P/12), interviews were conducted 12.03.2016 at 11.30 AM and all the five candidates and the said procedure appears to have been completed at 12.30 PM. The whole process of interview and recording of minutes of Board of Governors of the petitioner / Institution was concluded at 12.30 PM within one hour. This shows the manner and method in which the petitioner / Institution proceeded for the appointment on the post of Principal.

21. The second ground of respondents No.1 and 2 / State of Madhya Pradesh is that the advertisement issued by the petitioner / Institution provides that qualifications and eligibility are as per the UGC / Department of Higher Education Bhopal Norms, which clearly postulates that the norms of College Code Statute No.28 are not applicable and accepted by the petitioner / Institution for making appointment in its Institute. Thus, the contention of nonapplicability of the College Code Statute No.28 is affected by the principle of estoppel and hence, in accordance with the prescribed procedure, the Selection Committee must consist the subject expert, so the candidature can be properly and transparently evaluated as per the Rules and Regulations, which is admittedly has not been done by the petitioner / Institution.

22. This third ground taken by respondents No.1 and 2 / State of MP is that the University Grants Commission Act was enacted by parliament in 1956 with object of making provision for the coordination and determination of standards in Universities and Colleges and Section 26 empowers the Commission to make Regulations consistent with the provisions of the Act and the Rules made there under, by notification in the Official Gazette in regard to defining the qualifications, that should ordinarily be required of any person to be appointed to the teaching staff of the University / College which is of statutory character.

23. As per Clause 4.2.0 of the University Grants Commission Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010, the Minimum Qualifications & Eligibility for appointment on the post of Principal is provided, as under: - "4.2.0 Principal

- i. A Master's Degree with at least 55% marks (or an equivalent grade in a point scale wherever grading system is followed) by a recognized University.
- ii. A Ph. D. Degree in concerned / allied / relevant discipline (s) in the institution concerned with evidence of published work and research guidance.
- iii. Associate professor / Professor with a total experience of fifteen years of teaching / research / administration in Universities, Colleges and other institutions of higher education.

iv. A minimum score as stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS), set out in this Regulation in Tables I to IX of Appendix III."

24. The Additional Director, Higher Education has asked the petitioner / Institution to furnish the details of the educational qualifications and work experience of Dr. S.N. Sahay. This information is significant to ascertain whether he fulfills the eligibility criteria as laid down by the University Grants Commission. The petitioner / Institution in spite of several reminders, failed to submit the same and as per the documents filed along with the writ petition, Dr. S.N. Sahay does not fulfill the requirement of minimum qualifications so as to appoint him on the post of Principal.

25. As per the Master's Degree Mark sheet, he is having 54.5% marks whereas at least minimum 55% marks of a recognized University is must. He is also not having experience of fifteen years" of teaching / research / administration in Universities, Colleges and other institutions of higher education. His total experience is eleven years", which is less than the minimum qualification for appointment on the post of Principal, as prescribed under Clause 4.2.0 of the University Grants Commission Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010.

26. The petitioner / Institution has not followed the prescribed procedure and Dr. S.N. Sahay, who has been appointed as the Principal of the petitioner / Institution does not possess the requisite minimum qualifications and eligibility for appointment on the post of Principal, as he does not possess the minimum teaching experience of fifteen years and never held post of Associate Profess / Professor in any college / Institute, in fact, had worked as the Guest Lecturer. He also does not possess the Master's Degree with minimum 55% marks and has no evidence of published work and research guidance and was conferred the Degree of Ph. D. in the year 2010 itself.

27. Respondent No.3 / Devi Ahilya Vishwavidyalaya, Indore supported the stand taken by respondents No.1 and 2 / the State of Madhya Pradesh and submitted that Dr. S.N. Sahay did not fulfill the requirement of requisite qualifications and eligibility for appointment on the post of Principal, as laid down by the University Grants Commission and upon number of reminders issued by the Higher Education Department as well as by the University, documents were provided by the petitioner / Institution and as per the aforesaid documents, Dr. S.N. Sahay does not fulfill the requirement of minimum qualifications so as to make him eligible for appointment on the post of Principal; and prayed for dismissal of the writ petition.

28. The Constitutional Bench of Eleven Judges of the Hon"ble Supreme Court in the case of T.M.A. Pai Foundation and others v. State of Karnataka and others (supra) has held that the right to administer is not absolute and so regulatory

measures can be imposed for ensuring educational standards and maintaining excellence thereof especially in professional institutions. It is also held that in case of aided minority educational institutions, regulations can be provided for conditions of service of teaching and other staff, without interfering with the overall administrative control. In aided and unaided minority educational institutions, management must evolve a rational procedure for selection of teaching staff and for taking disciplinary action. The State or the Controlling Authority can always prescribe the minimum qualifications, experience and other conditions bearing on the merit of an individual for being appointed as a Teacher or a Principal of any educational institution. Any regulation framed in the national interest must necessarily apply to all educational institutions, whether run by the majority or the minority. Such a limitation must necessarily be read into Article 30. The right under Article 30 (1) of the Constitution cannot be such as to override the national interest or to prevent the Government from framing regulations in that behalf. It is, of course, true that Government Regulations cannot destroy the minority character of the institution or make the right to establish and administer a mere illusion; but the right under Article 30 of the Constitution is not so absolute as to be above the law. Regulations or conditions concerning, generally, the welfare of students and teachers may be made applicable in order to provide a proper academic atmosphere, as such provisions do not in any way interfere with the right of administration or management under Article 30 (1) of the Constitution.

29. In the case of *T.M.A. Pai Foundation and others v. State of Karnataka and others* (supra), the Apex 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. Receipt of aid does not alter the nature or character of the minority educational institution receiving aid. Article 30 (1) of the Constitution 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. 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 fact of administration.

30. In the case of *The Secretary, Malankara Syrian Catholic College v. T. Jose & Others* reported in 2007 (1) SCC 386, the Apex Court held that extent of regulation by the State, permissible in respect of employees of minority educational institutions receiving aid from the State, is the following: - "(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.

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."

31. In the case of Board of Secondary Education v. Joint Director, Public Instructions, Sagar, reported in (1998) 8 SCC 555, the Apex Court held that the State has undoubtedly power to regulate the aforesaid minority educational institution also in the interest of discipline and excellence. But in that process, the aforesaid right of the management cannot be taken away, even if the Government is giving hundred percent grant.

32. In the case of Sindhi Educational Society v. Chief Secretary, Government of NCT of Delhi reported in (2010) 8 SCC 49, the Apex Court held in paragraph No.19, as under: - "19.Section 2(o) of the DSE Act defines "minority school" as follows:-

"2. (o), "minority school" means a school established and administered by a minority having the right to do so under clause (1) of Article 30 of the Constitution."

Once an institution satisfies the above ingredients, it has to be given the status of a minority institution."

33. In the case in hand, it is not in dispute that the petitioner / Institution is a minority educational institution. The right of aided institution does not alter the nature or character of the petitioner - a minority educational institution. The petitioner - a minority educational institution / its governing body has a right to choose / appoint teaching staff (Teachers, Lecturers and Headmasters / Principals) as also non-teaching staff and to take action, if there is any dereliction of duty on the part of any of its employees. The the right conferred on the petitioner / Institution under Article 30 of the Constitution of India is to ensure equality with the majority and not intended to place the minority in a more disadvantageous position vis-a-vis majority. The general laws of the land relating to national interest, national security, taxation, sanitation, social welfare, economic regulation, public order and morality etc. applicable to all persons will equally apply to minority institutions also. The 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 nonteaching), 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). 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.

34. In view of the law laid down by the Apex Court in the case of T.M.A. Pai Foundation and others v. State of Karnataka and others (supra) and in the case of The Secretary, Malankara Syrian Catholic College v. T. Jose & Others (supra), the eligibility criteria prescribed by College Code Statute No.28 and UGC Norms are applicable to the petitioner / Institution. The petitioner / Institution accepted the same and published advertisement for appointment on the post of Principal, as per UGC Norms, College Code Statute No.28 and the Rules framed by the State Government. As per the UGC regulations, minimum qualifications for appointment on the post of Principal is Master's Degree with at least 55% marks by a recognized university. Ph.D. Degree in concerned / allied / relevant discipline and a total experience of fifteen years of teaching / research / administration in Universities, Colleges and other institutions of higher education.

35. Admittedly, the petitioner is not having fifteen years of teaching experience as per Clause 4.2.0 of the University Grants Commission Regulations on Minimum Qualifications for Appointment of Teachers and other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010, nor he is having minimum 55% marks in Master's Degree. Thus, the contention of the respondents that Dr. S.N. Sahay did not fulfill the requirement of requisite qualifications and eligibility for appointment on the post of Principal, as laid down by the University Grants Commission, and therefore, his appointment is contrary to the regulations appears to be correct. It is true that in view of the law laid down by the Apex Court in the case of T.M.A. Pai Foundation and others v. State of Karnataka and others (supra) and in the case of The Secretary, Malankara Syrian Catholic College v. T. Jose & Others (supra), final appointment of the candidate selected for the post of Principal, are the exclusive choice of the minority educational institution and the minority educational institution has availed the same in the matter of selection of a candidate, constitution of Selection Committee and the final appointment of the candidates selected for the post of Principal. The power and the authority of the State is limited to the extent of prescribing minimum qualifications.

36. In respect of prescribed eligibility conditions, the stand of the minority institution is that no show cause notice was issued by the respondents and by the impugned communications, their objection is that Selection Committee has to be constituted by respondent No.3 / University and not by the petitioner / Institution and since no permission has been taken from the State Government, the appointment of Dr. S.N. Sahay in the petitioner / Institution is illegal. So far as the petitioner / Institution is concerned, the law laid down by the Apex Court in the case of T.M.A. Pai Foundation and others v. State of Karnataka and others (supra) and in the case of The Secretary, Malankara Syrian Catholic College v. T.

Jose & Others (supra) are very clear and specific. The State Government or the University has no authority to question Selection Committee constituted by the petitioner / Institution for appointment of Principal, nor any permission from the State Government and / or approval from the State Government is required, but the appointment has to be made in compliance to the UGC Regulations laying down conditions of eligibility criteria and qualifications. Here also, the petitioner / Institution has not satisfied us on the question of appointment of Dr. S.N. Sahay, as Principal as per the prescribed UGC Norms.

37. During the course of arguments, when we asked about non-filling of educational qualifications of Dr. S.N. Sahay, learned counsel for the petitioner has made a statement at Bar that no show cause notice has been issued by the respondents and if proper show cause notice is issued in respect of qualifications prescribed by the UGC Norms regarding appointment of the Principal, then the petitioner / Institution will satisfy them on the aforesaid point.

38. As per the communications dated 31.03.2016 (Annexure P/14), dated 13.05.2016 (Annexure P/16) and dated 17.05.2016 (Annexure P/17), the contention of the learned counsel for the petitioner / Institution, that no show cause notice has been issued, appears to be correct.

39. The petitioner has also challenged the vires of College Code 28 asking the Court to "hold and declare paragraph No.16 and 17 of the College Code No.28 to be illegal / inapplicable to the petitioner - minority educational institution, but no arguments were made by the learned counsel and he gave the aforesaid relief. Admittedly, Dr. S.N. Sahay does not fulfill the requisite qualifications as prescribed under the UGC Regulations / Statute No.28. The contention of the learned counsel was that in all fairness, they could have issued "show cause notice to the petitioner / Institution and thereafter authority competent to determine whether he prescribe the requisite qualifications or not. The action is in violation of the principle of natural justice.

40. Every violation of a fact of natural justice may not lead to the conclusion that the action taken is null and void. There may be situation where a hearing would not change the ultimate conclusion reached by the decision - maker; then no legal duty to supply a hearing arises. In such situations, fair procedure appears to serve no purpose, since the right result can be secured without according such treatment to the individual. Further, it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Thus, we are of the view that the procedure adopted by the minority educational institution for appointment of Principal is as per law laid down by the Apex Court in the case of T.M.A. Pai Foundation and others v. State of Karnataka and others (supra). However, Dr. S.N. Sahay is not having the minimum qualifications and eligibility for appointment on the post of Principal, as provided under Clause 4.2.0 of the UGC Regulations, 2010 / College Code No.28 and as he

was appointed on probation for a period of one year by order dated 12.03.2016 (Annexure P/13), and this issue is taken for the first time by respondents No.1, 2 and 3 in their reply / vacating of stay application, we direct the authorities to grant one opportunity of hearing to the petitioner / Institution and thereafter, Competent Authority of respondents No.1 and 3 shall decide the same by passing a detail order, in accordance with law and till then the appointment of Dr. S.N. Sahay shall be kept in abeyance and senior more teaching staff of the institution will hold the charge of the Principal, subject to the order passed by the respondents.

41. With the aforesaid, Writ Petition No.4367/2016 is allowed in part to the extent, as indicated herein above, without any order as to costs.