

(2005) 11 AHC CK 0027

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12979 of 1999

Gopal Ji Trivedi

APPELLANT

Vs

State of U.P. and District Inspector of Schools

RESPONDENT

Date of Decision : 11-11-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 30, 30(1)
Industrial Disputes Act, 1947 — Section 10, 11A, 12, 33A, 9A
Uttar Pradesh Intermediate Education Act, 1921 — Section 9(4)
Uttar Pradesh Intermediate Education Regulations, 1921 — Regulation 101, 102, 103, 104, 105
Uttar Pradesh Secondary Education Services Commission and Selection Boards Act, 1982 — Section 16, 16(1), 16F, 16FF, 30

Citation : (2006) 6 AWC 6126

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Advocate : Ashok Khare, for the Appellant;

Judgement

Ashok Bhushan, J.—Heard counsel for the petitioner and the learned standing counsel. Counter and rejoinder affidavits have been exchanged between the parties and with the consent of the parties the writ petition is being finally decided.

2. By this writ petition the petitioner has prayed for a writ, order or direction commanding the respondents to forthwith grant compassionate appointment to the petitioner as an Assistant Teacher in L.T. Grade in any recognised and aided higher secondary school of district Kanpur Nagar

3. Brief facts necessary for deciding the controversy raised in the writ petition are: --

Petitioner's father Raj Kumar Tripathi was permanent Assistant Teacher in Christ Church Inter College, Kanpur which is a recognised and aided minority institution. Sri Raj Kumar Tripathi died on 16th May, 1994 while still in service.

Petitioner being son of the deceased Raj Kumar Tripathi, made an application on 26.7.1994 praying for appointment on compassionate ground in clerical cadre. The qualification of the petitioner as disclosed in the application was intermediate, he being student of B.Sc. Part II at the time of making the application. Petitioner claims to have made several applications to the respondents for giving appointment on compassionate ground. Petitioner passed B.Sc. In 1995 and B. Ed. In 1996. An application was made in the year 1997 by the petitioner claiming appointment on the post of Assistant Teacher. The District Inspector of Schools wrote a letter dated 12.8.1997 to the State Government expressing difficulty in appointing the petitioner as Assistant Teacher in view of the fact that Christ Church Inter College is a minority institution and the Regulations as amended vide Government order dated 2.2.1995 were not applicable on the minority institution. The District Inspector of Schools in the said letter also referred to a letter dated 14.10.1994 of the District Inspector of Schools recommending appointment of the petitioner on Class IV post in Christ Church Inter College against a supernumerary post. Petitioner's case in the writ petition is that no communication was ever received by the petitioner from the respondent with regard to claim of the petitioner of compassionate appointment.

4. A counter affidavit has been filed on behalf of the respondents stating that the petitioner was given appointment on Class IV post on 14.10.1994 but he has not joined the post. A judgment of the learned Single Judge dated 23.4.1998 passed in writ petition No. 41564 of 1997 Sanjeev Kumar Dubey v. District Inspector of Schools and Ors. has also been referred by which judgment the provisions of giving compassionate appointment on the post of Assistant Teacher was held to be ultra vires. A Government order dated 8.1.1999 issued in pursuance of the above mentioned judgment has also been referred and relied. Rejoinder affidavit has been filed by the petitioner stating that the petitioner was at no point of time offered any kind of appointment on compassionate ground. It is denied that the petitioner was given appointment on Class IV post. The judgment of the learned Single Judge in Sanjeev Kumar Dubey v. District Inspector of Schools and Ors. has been set aside by the Division Bench in Sanjeev Kumar Dubey Vs. District Inspector of Schools, Etawah and others, . A copy of judgment has been annexed as Annexure- R.A.I The Division Bench held that the provision of third proviso to Section 16(1) of U.P. Act 5 of 1982 is intra vires and the notification dated 2.2.1995 substituting Regulations 105 and 106 were also held not to be ultra vires to Article 14 of the Constitution of India.

5. Learned Counsel for the petitioner in support of the writ petition submitted that the petitioner is fully entitled to be considered for appointment as Assistant Teacher as dependent of the deceased employee in accordance with the regulation framed under the U.P. Intermediate Education Act, 1921. The judgment of the learned Single Judge in Sanjeev Kumar Dubey v. District Inspector of Schools and Ors. holding that the third proviso to Section 16 of Act 5 of 1982 has been set aside by the Division Bench in Sanjeev Kumar Dubey v. District Inspector of Schools and Ors. (supra) . The appointment on the post of

Assistant Teacher on compassionate ground is fully permissible. It is further contended that the proviso to Regulation 103 which exempted the minority institution from the applicability of Regulations 101 to Regulation 107 has been deleted vide amendment dated 9.8.2001. The judgment of the learned Single Judge reported in Committee of Management, M.A.H. Inter College and Another Vs. District Inspector of Schools, Ghazipur and Others, holding the regulation providing for compassionate appointment in minority institution is in violation of Article 30 of the Constitution of India, has been over ruled by the Division Bench judgment reported in 2003 (4) A.L.R. 381 The Governing Body of the registered Society designated as St. Andrew's College Association, Gorakhpur and Anr. v. State of Uttar Pradesh and Ors. Learned Counsel for the petitioner further contended that even with regard to minority institution provisions can be made governing the conditions of service of teacher, for the general welfare of the Institution and teachers and providing for social welfare measures; hence the regulations framed under Chapter III of the Intermediate Education Act, 1921 providing for compassionate appointment do not contravene the provisions of Article 30 of the Constitution of India. Reliance has been placed on judgment of the apex Court Christian Medical College Hospital Employees' Union and Another Vs. Christian Medical College Vellore Association and Others, All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, and Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others, Alternatively it is contended that even if permitting of compassionate appointment against a teaching post in a minority institution contravene Article 30 of the Constitution, there exist no justification for excluding the dependent of deceased employee of a minority institution from being considered for compassionate appointment against a teaching post in a non-minority institution.

6. Learned standing counsel refuting the submission of the petitioner's counsel submitted that the appointment on the post of Assistant Teacher in a minority institution is not permissible in view of the right guaranteed to minority institution under Article 30 of the Constitution of India. It is further contended that even in Division Bench judgment relied by the counsel for the petitioner in the The Governing Body of the registered Society designated as St. Andrew's College Association, Gorakhpur and Anr. v. State of Uttar Pradesh and Ors. (supra) the Division Bench made observations that the compassionate appointment cannot be made on the post of Head Master or teacher in a minority institution which may amount to infringing the right of minority under Article 30 of the Constitution.

7. I have considered the submissions of counsel for the parties and perused the record.

8. Before coming to the respective submissions raised by the counsel for the parties it is necessary to glance the statutory provisions governing the appointment in recognised and aided minority institutions.

9. Uttar Pradesh Intermediate Education Act, 1921 contains the provisions for appointment on teaching and non-teaching post. The provisions regulating the appointment in minority institutions are different as compared to provisions regulating the recruitment on the post of teachers. The Selection Committee with regard to non- minority institutions is to be constituted in accordance with Section 16F whereas with regard to minority institutions Section 16FF provides the manner and procedure of selection of teachers in minority institutions. The management has been given much more freedom in selection of teachers as compared to non- minority institutions. Although the selection of the teachers requires prior approval but emphasis in the provision is that no such prior approval be withheld except on the ground that the candidate does not possess the minimum qualification prescribed and is otherwise eligible. The Uttar Pradesh Secondary Education (Services Selection Board) Act, 1982 has been enacted providing for constitution of Selection Board for selecting teachers in the recognised institutions. A complete change has been effected by the aforesaid 1982 Act with regard to procedure and manner of selection of teachers in recognised institutions. However, an exemption has been given to the minority institutions from the applicability of U.P. Act 5 of 1982. Section 30 of the Act is quoted below :

30. Exemption to minority Institutions,_____ Nothing in this Act shall apply to an institution established and administered by a minority referred to in Clause (1) of Article 30 of the Constitution of India.

10. The exemption to the minority institutions has been given to safeguard the rights of minority as guaranteed under Article 30 of the Constitution of India. The appointment on compassionate ground was governed by a Government order dated 21.9.1981 in aided institutions. By notification dated 30.7.1992 Regulations 101 to 107 were added in Chapter III of the U.P. Intermediate Education Act providing for giving compassionate appointment to the dependent of deceased teacher or non teaching staff while dying in service. Initially, the regulations contemplated appointment on compassionate ground only on non teaching post. By subsequent amendment dated 2.2.1995 Regulation 103 was substituted providing for appointment on the post of teacher or on non teaching post. The proviso was , however, added to Regulation 103 to following effect :

Provided that anything contained in this regulation would not apply to any recognised aided institution established and administered by any minority class.

11. It is relevant to note that the provisions of U.P. Secondary Education (Services Selection Board) Act, 1982 were also amended by the U.P. Act No. XV of 1995 with effect from 28.12.1994 by adding the following as third proviso:

Provided also that the dependent of a teacher or other employee of an institution dying in harness should possess qualification prescribed under the U.P. Intermediate Education Act, 1921, may be appointed as teacher in trained graduate grade in accordance with the regulation made in Sub-section (4) of

Section 9 of the said Act.

12. As noted above, Section 16 or the amended proviso is applicable only to non-minority institutions and the amendment under the U.P. Act 5 of 1982 permitting appointment on teaching post was with regard to non-minority institutions and regulations amended vide notification dated 2.2.1995 containing proviso to Regulation 103 exempting minority institutions from applicability of regulations was in consonance with the rights of minority. The above proviso to Regulation 103 has been subsequently deleted vide notification dated 9.8.2001 again amending the Regulation 103.

13. The question to be answered in this case is as to whether the appointment on compassionate ground can be given on a teaching post in a minority institution. There is no dispute on entitlement of appointment on a teaching post in non-minority institution by express provisions of Section 16 (3rd proviso) and Regulation 103 of Chapter III of the U.P. Intermediate Education Act, 1921. The Division Bench judgment of this Court in the case of Sanjeev Kumar Dubey v. District Inspector of Schools, Etawah and Ors. (supra) which was a case of non-minority institution, has no bearing while considering the entitlement of compassionate appointment on a teaching post in minority institution.

14. The issue of compassionate appointment in minority institutions was considered by a learned Single Judge in the case of Committee of Management, M.A.H. Inter College and Anr. v. District Inspector of Schools and Ors. (supra). The notification dated 9.08.2001 which has effect of deleting the proviso to Regulation 103 has been quashed by the learned Single Judge. The learned Single Judge took the view that no compassionate appointment is permissible in a minority institution either on the post of teacher or non-teaching post and any such appointment shall infringe the rights of minority under Article 30 of the Constitution. A Division Bench had occasion to consider the above judgment of the learned Single Judge in the case of The Governing Body of the registered Society designated as St. Andrew's College Association, Gorakhpur and Anr. v. State of Uttar Pradesh and Ors. (supra). The Division Bench was considering similar government order providing for compassionate appointment in minority institutions in a Degree College. The Division Bench took the view that the regulation providing for appointment of the deceased employee even in a minority institution is regulatory in nature and permissible and does not offend Article 30 of the Constitution. The order impugned in the writ petition was an order giving appointment of one of the respondents as routine grade clerk in the College on compassionate ground due to death of his father who was lecturer in the College. The Division bench in concluding the part of the judgment made following observations:

We see no reason why humanitarian regulations, such as the kind, which has been impugned in this petition, cannot be made for minority institutions. We cannot see how such humanitarian measures of the kind with which we are dealing in this petition can be said to infringe the right under Article 30 of a

minority institution.

It may have been a different matter if the compassionate appointment was sought to be made on the post of Head Master or teacher, and there it possibly could have been said that this infringes the right of the minority institution under Article 30 of the Constitution, since teaching work is certainly related to the standard of education imparted. That is not the case here. Here we are concerned with an appointment on a Class III post in a minority institution on compassionate ground. We see no violation of Article 30 of the Constitution in such a case or in case of a class IV post.

15. While considering the learned Single Judge's judgment in Committee of Management, M.A.H. Inter College and Anr. v. District Inspector of Schools and Ors. (supra) following observation was made by the Division Bench:

Learned Counsel for the petitioner has invited our attention to the decision of a learned Single Judge of this Court in Committee of Management MAH Inter College v. DIOS, Ghazipur 2002 (2) AWC 2221, in which a contrary view has been taken by the learned Single Judge. The learned Single Judge was of the view that since an appointment on compassionate grounds is not made on merit since there is no competition with the candidates from the open market hence it cannot be said that a direction for making such appointments in minority institutions will be conducive to efficiency and standards of education in the said institution. We respectfully disagree with the reasoning given by the learned Single Judge. As held by the Supreme Court in TMA Pai's (supra) a regulation for the welfare of teacher does not infringe the right of a minority institution under Article 30 of the Constitution. We do not see how appointment on a class III or class IV post will affect the standard of education in a minority institution. After all, a class III post is not a teacher's post.

16. The apex Court had examined various aspects of the rights of minority guaranteed under Article 30 of the Constitution. In T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, Following observations were made by the apex Court in paragraphs 136, 137 and 139:

136. Decisions of this Court have held that the right to administer does not include the right to maladminister. It has also been held that the right to administer is not absolute, but must be subject to reasonable regulations for the benefit of the institutions as the vehicle of education, consistent with national interest. General laws of the land applicable to all persons have been held to be applicable to the minority institutions also___ for example, laws relating to taxation, sanitation, social welfare, economic regulation, public order and morality.

137. It follows from the aforesaid decisions that even though the words of Article 30(1) are unqualified, this Court has held that at least certain other laws of the land pertaining to health, morality and standards of education apply. The right under Article 30(1) has, therefore, not been held to be absolute or above other

provisions of law , and we reiterate the same. By the same analogy, there is no reason why regulations or conditions concerning , generally, the welfare of students and teachers should not 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).

139. Like any other private unaided institutions, similar unaided educational institutions administered by linguistic or religious minorities are assured maximum autonomy in relation thereto; e.g. method of recruitment of teachers, charging of fees and admission of students. They will have to comply with the conditions of recognition, which cannot be such as to whittle down the right under Article 30.

17. The apex Court in the same judgment had further observed with regard to those minority institutions which are receiving grant in aid from the State. The apex Court observed in paragraph 141 of the judgment that for granting aid there cannot be abject surrender of right of management. The receipt of aid cannot be reason for altering the nature or character of recipient of the education institution. Choosing teachers who will carry on the educational institution toward excellence has been held to be right of management of minority institutions.

18. Now the judgment relied by the counsel for the petitioner are next to be considered. The apex Court judgment in *Christian Medical College Hospital Employees' Union and Anr. v. Christian Medical College Velio re Association and Ors.* (supra) was a case in which the apex Court held that the provisions of Sections 9-A, 10, 11-A, 12 and 33A of the Industrial Disputes Act, 1947 are also applicable on the minority institutions. The apex Court held that the provisions of the Industrial Disputes Act is enacted as a social security measure in order to ensure the welfare of the teachers. The Act provide for a machinery for collective bargaining. The Act being a general law for settlement of the industrial dispute, cannot be construed to be the law which directly interfere with the rights of minority educational institutions. The apex Court in the said judgment held that the aforesaid provisions of Industrial Disputes Act do not interfere with any right of the minority guaranteed under Article 30. The said judgment is of no help to the petitioner in the present case.

19. *All Bihar Christian Schools Association and Anr. v. State of Bihar and Ors.* (supra) was a case in which the apex Court had examined various provisions of Bihar Non-Government Secondary Schools (Taking over of Management and Control) Act, 1981. The apex Court laid down in the said case that statutory measures regulating standard and excellence of minority educational institutions do not offend Article 30 of the Constitution of India. While considering Section 18(3) Clause (b) which require Managing Committee of the minority institution to appoint teachers possessing requisite qualification with the concurrence of the School Service Board. Following observation was made by the apex Court in paragraph 13:

13. Section 18(3) provides that recognised minority secondary schools shall be managed and controlled in accordance with the provisions contained in clauses (a) to (l). Clause (a) requires a minority secondary school to have a managing committee registered under the Societies Registration Act, 1862 and to frame written bye-laws regulating constitution and functions of the managing committee. The bye-laws regarding the constitution of the managing committee are required to be framed by the minority institution itself. The State or any other authority has no power or authority to impose any terms or conditions for the constitution of the managing committee. If a society running a minority institution frames written bye-laws providing for the constitution of managing committee entrusted with the function of running and administering its school it would ensure efficient administration. This clause is in the interest of the minority institution itself, as no outsider is imposed as a member of the managing committee, there is no interference with the minorities' right to administer its school. Clause (b) provides for two things, firstly it requires the managing committee or of a minority school to appoint teachers possessing requisite qualifications as prescribed by the State Government for appointment of teachers of other nationalised schools, secondly, the managing committee is required to make appointment of a teacher with the concurrence of the School Service Board constituted u/s 10 of the Act. Proviso to Clause (b) lays down that the School Service Board while considering the question of granting approval to the appointment of a teacher, shall ascertain if the appointment is in accordance with the rules laying down qualifications, and manner of making appointment framed by the State Government. The proviso makes it clear that the School Service Board has no further power to interfere with the right of managing committee of a minority school in the appointment of a teacher. Under Clause (b) the managing committee is required to make appointment of a teacher with the concurrence of the School Service Board . The expression "concurrence" means approval. Such approval need not be prior approval, as the clause does not provide for any prior approval. Object and purpose underlying Clause (b) is to ensure that the teachers appointed in a minority school should possess requisite qualifications and they are appointed in accordance with the procedure prescribed and the appointments are made for the sanctioned strength. The selection and appointment of teachers is left to the management of the minority school; there is no interference with the managerial rights of the institution. In granting approval the School Service Board has limited power. The appointment of qualified teachers in a minority school is a sine qua non for achieving educational standard and better administration of the institution. Clause (b) is regulatory in nature to ensure educational excellence in the minority school. Clause (c) requires a minority school to frame rules regulating conditions of service of its teachers ; such rules should be consistent with principles of natural justice and the prevailing law. The clause further requires the minority institution to submit a copy of such rules to the State Government. This clause in substance lays down that the management of a recognised minority school shall frame rules, regulating conditions of service of teachers and such rules shall conform to

principles of natural justice and prevailing law . These provisions are directed to avoid uncertainty and arbitrary exercise of power. If rules are framed by the management those rules would bring uniformity in administration and there would be security of employment to teachers. In a civilised society the observance of principles of natural justice is an accepted rule; these principles contain basic rules of fair play and justice and it is too late in the day to contend that while administering a minority school the management should have right to act in contravention of the principles of natural justice. Clause (c) is regulatory in nature which requires the managing committee to frame rules of employment consistent with principles of natural justice and the prevailing law. No outside agency is required to frame rules of employment of teachers instead the management itself is empowered to frame rules. There is therefore no element of interference with the management's right to administer a minority school.

20. The judgment of the apex Court in *Frank Anthony Public School Employees' Association v. Union of India and Ors.* (supra) was a case in which the apex Court considered various provisions of Delhi Education Act qua their applicability to minority institutions; following observations were made in paragraph 13;

13. Thus, there, now, appears to be a general and broad consensus about the content and dimension of the Fundamental Right guaranteed by Article 30(1) of the Constitution. The right guaranteed to religious and linguistic minorities by Art. 30(1) is two fold, to establish and to administer educational institutions of their choice. The key to the Article lies in the words "of their own choice". These words indicate that the extent of the right is to be determined, not with reference to any concept of State necessity and general societal interest but with reference to the educational institutions themselves, that is, with reference to the goal of making the institutions "effective vehicles of education for the minority community or other persons who resort to them". It follows that regulatory measures which are designed towards the achievement of the goal of making the minority educational institutions effective instruments for imparting education cannot be considered to impinge upon the right guaranteed by Article 30(1) of the Constitution. The question in each case is whether the particular measure is, In the ultimate analysis, designed to achieve such goal, without of course nullifying any part of the right of management in substantial measure.

21. From the various judgments of the apex Court as noted above, it is now well settled that the regulatory measure can be validly made regard to minority institutions also provided those regulatory measure are designed towards the achievement of the goal of making the minority educational institutions effective instruments for imparting education. The object of every minority institution is to achieve excellence thus the regulatory measure which advance the aforesaid objective does not impinge upon any of the rights of the minority. However, any regulation which does not promote the aforesaid object and fetters the right of management to choose its teachers and staff cannot be held to be valid

regulation. Selection and appointment of a teacher of minority educational institutions by any one other than the management of the minority institution certainly fetters the right of management as guaranteed under Article 30. The appointment of dependent of deceased employee as a teacher cannot be said to be towards achieving the excellence in educational standard. Selecting the dependent of deceased employee even though he may possess minimum qualification is not selection by management out of best candidates out of large number of applicants who normally apply against any post in aided institutions.

22. The judgment of the Division Bench in the *The Governing Body of the registered Society designated as St. Andrew's College Association, Gorakhpur and Anr. v. State of U.P. and Ors.* (supra) has also not approved the appointment on the post of a teacher in a minority institution rather the observations of the Division Bench as quoted above are to the effect that the appointment of dependent of deceased employee on teaching post shall be violative of rights of minority as guaranteed under Article 30 of the Constitution.

23. It is further to be noted that although with regard to appointment on the teaching post of the dependent of the deceased employee in a non- minority institution there is a specific provision as contained in Section 16 third proviso and Regulation 103 but there is no express provision permitting the appointment of dependent of deceased employee on a teaching post in a minority institution. This is obvious because legislature is conscious that permitting appointment on teaching post on compassionate ground is violative of rights of minority guaranteed under Article 30 of the Constitution of India.

24. Now remains the alternative submission raised by the counsel for the petitioner that even if the dependent of deceased employee of minority institution is not entitled for appointment on a teaching post in a minority institution, he may very well can be considered for appointment on teaching post in other non-minority institution. Right of a dependent of deceased employee flow from service conditions to which the deceased was governed. The dependent of deceased employee of a minority institution is entitled for the benefit which flow from service conditions of the employee from whom he is claiming right. As held above, the dependent of deceased employee of the minority institution is not entitled for appointment on teaching post, hence his claim for appointment on teaching post in non-minority institution can also not be considered. The alternative submission raised by the counsel for the petitioner can also not be accepted.

25. In view of forgoing discussions the petitioner has not made out any case for issuing writ of mandamus for appointment on teaching post. In the counter affidavit the respondent has referred to a class IV appointment offered to the petitioner on 14.10.1994. Reference of said appointment is made in the letter dated 12.8.1997 of the District Inspector of Schools to the State Government filed as Annexure-16 to the writ petition. From perusal of the said letter it appears that a letter dated 14.10.1994 was written by the District Inspector of

Schools proposing appointment of the petitioner on Class IV post against the supernumerary post and the Principal was directed to permit the joining of the petitioner. The petitioner has categorically denied receiving of such information or letter. The copy of the said letter dated 14.10.1994 has also not been brought on record nor there is any material brought by the respondent to show that the petitioner was ever communicated any such appointment. The petitioner has categorically denied receiving of any appointment or information. In this view of matter the claim of the respondent that the petitioner was offered Class IV appointment on 14.10.1994, cannot be accepted. In view of the Division Bench judgment in the case of The Governing Body of the registered Society designated as St. Andrew's College Association, Gorakhpur and Anr. v. State of U.P. and Ors. (supra) the dependent of deceased employee of a minority institution is entitled for consideration for appointment on a non teaching post. The claim of the petitioner for appointment against the non teaching post requires consideration by the respondents. Consequently, the respondent No. 4 is directed to consider the claim of the petitioner for compassionate appointment against non teaching post as dependent of deceased employee expeditiously preferably within a period of three months from the date of production of a certified copy of this order.

26. The writ petition is disposed of accordingly. Parties shall bear their own costs.