

**(2011) 05 AHC CK 0404**

**In the Allahabad High Court**

**Case No :** C.M.W.P. No. 25994 of 2006 connected with C.M.W.P. No's. 31653 of 2006 and 24613 of 2008

Mohammad Ateeque Siddiqui and others

APPELLANT

Vs

State of U. P. and others

RESPONDENT

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**Date of Decision :** 05-05-2011

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19(1), 226, 26, 29  
Penal Code, 1860 (IPC) — Section 419, 467, 468  
Uttar Pradesh Intermediate Education Act, 1921 — Section 16E, 16E(1), 16E(2), 16E(4), 16FF

**Citation :** (2011) 5 AWC 4537

**Hon'ble Judges :** Arun Tandon, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## **Judgement**

Arun Tandon, J.—Heard Sri R.N. Singh, learned counsel for the petitioners. Sri Indra Raj Singh, learned counsel for the respondent-Committee of Management and learned standing counsel for the State-respondents in all these connected writ petitions.

2. Civil Misc. Writ Petition No. 25994 of 2006 has been filed for quashing the proceedings Initiated by the Commissioner. Varanasi Region. Varanasi against the petitioners in pursuance to the alleged complaint dated 31st January, 2006.

Civil Misc. Writ Petition No. 31653 of 2006 has been filed for quashing the orders dated 18th May, 2006 and dated 26th May, 2006 passed by respondent Nos. 5 and 4.

Civil Misc. Writ Petition No. 24613 of 2008 has been filed for quashing the order dated 1st May, 2008, passed by the alleged Manager of the institution (Annexure-20 of the writ petition) whereby the petitioners have been informed that their services are being put to an end with the condition that the order would be subject to the decision of Civil Misc. Writ Petition No. 25994 of 2006

and Civil Misc. Writ Petition No. 31653 of 2006.

3. Facts in short, as are borne out from the records of the present writ petitions, are :

Mohammad Hasan Intermediate College, Jaunpur is an aided and recognized intermediate college. Provisions of U. P. Intermediate Education Act, 1921 are applicable to the teachers and employees of the said institution. The institution is a recognized minority institution and therefore, provisions of U. P. Secondary Education Services Selection Board Act, 1982 are not applicable to the teachers of the said institution. Two posts of Lecturer are stated to have become available in the institution, due to retirement of Faridul Haq on 30th June, 1999 and Mohd. Khalid Siddiqui on 30th June, 2002 in the subjects of Biology and Chemistry respectively. Another vacancy in L.T. grade is stated to have become available in December, 1995 due to death of one Mohd. Ayub. The Committee of Management forwarded a letter to the District Inspector of Schools to permit the advertisement of the vacancies and to proceed with the selection against the said vacancies. Permission is stated to have been granted by the District Inspector of Schools on 24th March, 2003. Accordingly, an advertisement was published in two Hindi newspapers, namely, Tarun Mitra dated 25th March, 2003 and Kashi Varta dated 26th March, 2003. Under the advertisement, 10th April, 2003 was fixed as the last date for submission of the application form and 13th April, 2003 was fixed for interview. After interview, petitioners, namely, Mohd. Ateeque Siddiqui is stated to have been selected for the post of Lecturer (Biology), Syed. Badruddozad was selected for the post of Lecturer (Chemistry) and Mohd. Khalid was selected for the post of L.T. grade teacher. On the basis of the selections so held, appointment letters dated 14th April, 2003 were issued by the Manager, namely, Dr. Abu Mohd. and the petitioners, Mohd. Ateeque Siddiqui, Syed Badruddozad and Mohd. Khalid is stated to have joined their respective posts on 15th April, 2003, 15th April, 2003 and 19th April, 2003 respectively. On 20th April, 2003, papers pertaining to the alleged selections of the petitioners were forwarded to the District Inspector of Schools for approval. On 30th May, 2003, the District Inspector of Schools transmitted the papers to the Regional Joint Director of Education.

4. At this stage of the proceedings, petitioners filed Civil Misc. Writ Petition No. 3136 of 2004 jointly, which was disposed of vide order dated 29th January, 2004 requiring the District Inspector of Schools to take final decision in the matter of approval. The Regional Joint Director of Education, however, by means of the order dated 25th February, 2004 proceeded to approve the appointments. On 15th April, 2004, the District Inspector of Schools also approved the appointment of the petitioners. On the basis whereof, the payment of salary to the petitioners started.

5. The President of the Committee of Management of the institution made a complaint dated 31st January, 2006 to the Commissioner, Varanasi Region, Varanasi stating therein that the alleged appointment of the petitioners was

collusive and based on extraneous considerations made without following the procedure prescribed by law. The Commissioner vide order dated 18th May, 2006 on the basis of the complaint of the President of the Committee of Management, examined the records and came to a conclusion that selections and appointments of aforesaid teachers as well as the orders passed by the Regional Joint Director of Education and the District Inspector of Schools approving the same, were contrary to law and illegal, this resulted in payment of salary, upto the relevant date, nearly Rs. 2.8 lacs each was paid to the Lecturers and Rs. 2.3 lacs was paid to the assistant teacher. This money was directed to be recovered. For the purpose, disciplinary action was recommended for fixing the liability of the officers of the department. The order has been challenged by means of Civil Misc. Writ Petition No. 25994 of 2006 by all the teachers jointly.

6. The District Inspector of Schools under the order dated 26th May, 2006. having regard to the order of the Commissioner, stopped the payment of salary of the petitioners. This lead to filing of Civil Misc. Writ Petition No. 31553 of 2006 by all the three teachers jointly. No interim order for payment of salary was granted in the said writ petitions.

7. The Court in Civil Misc. Writ Petition No. 31553 of 2006, passed an order dated 12th December. 2006 requiring the District Magistrate to summon the original records in the matter of selection of the petitioner and to submit his report qua the legality or otherwise of the process adopted. The District Magistrate conducted a detail enquiry and submitted his report dated 4th January, 2007, a copy whereof has been brought on record as Annexure-S.C.A.-8 to the supplementary counter-affidavit filed in Civil Misc. Writ Petition No. 31653 of 2006. The District Magistrate in his report has recorded a categorical finding that there has been collusion between the management of the institution, petitioners and education authorities resulting in payment of illegal salary to the petitioners running into lacs of rupees.

8. The writ court with reference to the said report of the District Magistrate passed an order dated 28th March, 2007 directing the District Magistrate to lodge a first information report. This order was subjected to challenge by means of Special Appeal No. 551 of 2007. The special appeal was disposed of vide order dated 5th April, 2007 with a request upon the writ court to decide the writ petition on merits, if possible on the next date fixed. However, no restrain was placed in the matter of lodging of the first information report nor any other order for payment of salary to the petitioners was granted by the Division Bench.

9. On 28th April, 2007 a first information report was lodged being Case Crime No. 489 of 2007 u/s 467/468/419 of the Indian Penal Code at Police Station Kotwali, Jaunpur. On 15th May, 2007, the District Inspector of Schools required the Principal of the institution to submit report with regard to the recovery of the illegal salary paid to the petitioners.

10. On 16th May, 2007. the writ court required the District Inspector of Schools

to ensure the recovery. Against this order of the writ court. Special Appeal No. 672 of 2007 was filed by the petitioners which was disposed of vide order dated 22nd May, 2007 with a direction upon the writ court to decide the writ petition itself and till then recovery was stayed. In the meantime, there was change in the Committee of Management of the institution, and newly elected Manager vide order dated 1st May, 2008 communicated the termination of service of the petitioner having regard to the fact that their appointment has been made in collusion between the earlier Management, petitioners and education authorities. This order has been challenged by means of Civil Misc. Writ Petition No. 24613 of 2008 by Mohd. Ateeque Siddiqui.

11. On behalf of the petitioner it is contended that after permission was obtained from the District Inspector of Schools to make selections on three posts, namely, two Lecturers in the subject of Biology and Chemistry and one assistant teacher in L.T. grade, the vacancies were advertised in two Hindi newspapers, Tarun Mitra and Kashi Varta. Thereafter a selection committee was constituted, which has selected the candidates for a minority intermediate college. The District Inspector of Schools can refuse to accord approval to such appointments only on the limited ground that the persons selected are not possessed of the prescribed minimum qualifications. Since in the facts of the present case, there are no such allegations qua the petitioners being not qualified, their appointment had to be approved. The education authorities and for that purpose, the Commissioner or the District Magistrate cannot interfere in the working of the petitioners as Lecturers and Assistant Teacher. For the proposition, learned counsel for the petitioner has placed reliance upon the provisions of Section 16FF (4) of the U. P. Intermediate Education Act. 1921 as well as upon the judgment of this Court in the case of Mukesh Singh Chauhan, Randhir Singh Chauhan and Ramesh Chandra Vs. State of U.P., : Karunesh Kumar Singh Vs. State of U.P. and Others, Committee of Management, Shri Kund Kund Jain Inter College Vs. State of U.P., Regional Joint Director of Education, Saharanpur Region, District Inspector of Schools and Sudhir Kumar Pandey, It is then contended that the Hon'ble Supreme Court of India in the case of N. Ammad Vs. The Manager, Emjay High School and Others, has held that the Management has full freedom to appoint any person from the staff of the same institution or from outside, who is possessed of the prescribed qualification under the Statutes/Rules or Regulations and such right of the management cannot be interfered with.

12. It is therefore, submitted that even if there has been some technical lapse in the matter of process of selection of the teachers for a minority institution, the fundamental rights, which follow from Article 30 of the Constitution of India cannot be interfered with. Lastly, learned counsel for the petitioner refers to the unreported Judgment of the Delhi High Court dated 21st August, 2008 in the case of St. Stephen College v. University of Delhi and others. wherein right to appoint a teacher has been held to be a part of fundamental right guaranteed under Article 30 of the Constitution of India, which cannot be interfered with by the State Government by framing regulations merely because it is providing

financial assistance to such minority institution. Learned counsel for the petitioner informs that said judgment of the Delhi High Court has since been affirmed by the Hon'ble Supreme Court of India vide judgment and order dated 13th October. 2008. passed in SLP No. 23784 of 2008.

13. Learned counsel for the respondents in reply contends that provisions of Section 16E (1) and (2) and Section 16FF of U. P. Intermediate Education Act. 1921 apply in the matter of appointment of teachers and Principal of recognized minority intermediate colleges. For selection and appointment, detail procedure under Regulation 17 of Chapter II of the Regulations framed under the U. P. Intermediate Education Act, 1921 has been laid down. The said provisions of the Act and the Regulations framed under the U. P. Intermediate Education Act, 1921 have not been challenged by the petitioner. Even otherwise, he submits that these provisions have stood the test time for decades together. They are only regulatory in nature, which do not infringe any constitutional right of the Committee of Management. Right to manage the institution by minority community does not include a right to mismanage the institution and therefore, the State-Government can lay down certain guidelines/regulations for regulating the mode and manner of selections, so that the best available candidate is selected in the interest of education.

14. Reference has been made to the judgment in the case of Committee of Management of Smt. Sughra Begum Girls Inter College and Wahid Akhtar Vs. State of U.P., Joint Director of Education, Agra Region, District Inspector of Schools and Smt. Sheelmani Sharma, wherein after considering in detail, the provisions of Section 16FF (4) and Regulations 17 to 19 of Chapter II of the Regulations framed under the U. P. Intermediate Education Act, 1921, as well as the law applicable in the matter of appointment of teachers in minority institution, it has been held that the aforesaid statutory provisions had to be followed in the matter of appointment of teachers in minority intermediate colleges. He has also placed reliance upon the Constitution Bench judgment of the Supreme Court of India in the case of T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, as also upon the Division Bench judgment of this Court in the case of Krishna Mohan Singh v. State of U. P. and others, 2005 (2) ESC 1542. wherein it has been held that any appointment made in any institution receiving aid from the State Government without advertisement de hors the statutory rules, would be nullity.

15. I have considered the submissions made by the learned counsel for the parties and have examined the records of the present writ petition.

16. This Court may first deal with the issue as to whether the provisions of Section 16E (1) and (2) and Section 16FF of the U. P. Intermediate Education Act. 1921 read with Regulations 17 to 19 of Chapter II of the Regulations framed under the U. P. Intermediate Education Act, 1921, which lay down a procedure for selection and appointment on the post of principal and teacher in a minority institution, breach any of the fundamental rights of minority institution as

guaranteed under Article 30 of the Constitution of the India or not.

17. The Hon'ble Supreme Court of India has repeatedly held that a right to administer a minority institution includes within its ambit, right to appoint staffs for the institution. Reference T.M.A. Pai Foundation (supra).

18. However, although the right to appoint teachers in a minority institutions, has been held to be a facet of Article 30 of the Constitution of India, but such right conferred upon the minority institutions, cannot be exercised in arbitrary manner. It is for the purpose of regulating the mode and manner of such appointment that provision has been made u/s 16E (1) (2), Section 16FF read with Regulations 17 to 19 of Chapter II of the Regulations framed under U. P. Intermediate Education Act. 1921. The mode and manner of advertisement, constitution of selection committee etc. so provided is only to ensure fair and transparent methods being adopted in the matter of appointment of teachers in minority institutions, which are recognized for intermediate examinations. Such provisions, which are in conformity with Article 14 of the Constitution of India cannot be said to have infringed any of the fundamental rights as guaranteed under Article 30 of the Constitution of India in favor of minority community.

19. Eleven Judges of the Hon'ble Supreme Court of India in the case of T.M.A. Pai Foundation (supra), have explained that minority institutions are also under legal obligation to follow reasonable restrictions, which are imposed in the matter of selections of principal/teachers upon such minority institution. Relevant paragraphs, i.e., 395 and 450 (Q.5) (c) read as follows :

395. In respect of categories 3 and 5 we wish to point out that this Court has been constantly taking the view that these aided educational institutions (whether majority or minority) should not have unfettered freedom in the matter of administration and management. The State which gives aid to educational institution including minority educational institution can impose such conditions as are necessary for the proper maintenance of the higher standards of education..... The provisions contained in the various enactments are not specially challenged before us. The constitutional validity of the statutory provisions vis-a-vis the rights under Article 19 (1) (g). Article 26, Article 29 and Article 30 (1) of the Constitution can be examined only if a specific case is brought before the Court. Educational Institutions receiving State aid cannot claim to have complete autonomy in the matter of administration. They are bound by various statutory provisions which are enacted to protect the interests of the education, students and teachers. Many of the Statutes were enacted long back and stood the test of time. The regulations made by the State, to a great extent, depend on the extent of the aid given to institutions including minority institutions. In some States, a lump sum amount is paid as grant for maintenance of schools. In such cases, the State may not be within its right to impose various restrictions, especially regarding selection and appointment of teachers. But in some States the entire salary of the teaching and non-teaching staff are paid, and these employees are given pension and other benefits, the

State may then have a right and an obligation to see that the selection and appointment of teachers are properly made. Similarly the State could impose conditions to the effect that in the matter of appointments, preference shall be given to weaker sections of the community, especially physically handicapped or dependents of employees who died in harness. All such regulations may not be said to be bad and/or invalid and may not even amount to infringing the rights of the minority conferred under Article 30 (1) of the Constitution. Statutory provisions such as labor laws and welfare legislation etc. would be applied to minority educational institutions. As this decision is being rendered by a larger Bench consisting of eleven Judges, we feel that it is not advisable and we should not be taken to have laid down extensive guidelines in respect of myriads of legal questions that may arise for consideration. In our view in this case the battle lines were not drawn up in the correct perspective and many of the aggrieved or affected parties were not before us.

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

A. So far as the statutory provisions regulating the facets of administration is concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as conditions of affiliation to an University or Board have to be complied with, but in the matter of day-to-day management, like appointment of staff, teaching and non-teaching and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. For redressing the grievances of such employees who are subjected to punishment or termination from service, a mechanism will have to be evolved and in our opinion appropriate Tribunals could be constituted, and till then, such Tribunal could be presided over by a Judicial Officer of the rank of District Judge. The State or other controlling authorities, however, can always prescribe the minimum qualifications, salaries, experience and other conditions bearing on the merit of an individual for being appointed as a teacher of an educational institution.

Regulations can be framed governing service conditions for teaching and other staff for which aid is provided by the State without interfering with overall administrative control of management over the staff.

Government / University representative can be associated with the selection committee and the guidelines for selection can be laid down. In regard to

unaided minority educational institutions such regulations, which will ensure a check over unfair practices and general welfare, of teachers could be framed.

There could be appropriate mechanism to ensure that no capitation fee is charged and profiteering is not restored to.

The extent of regulations will not be the same for aided and unaided institutions.

20. Judged in the aforesaid legal background, this Court has no hesitation to held that Section 16E (1) (2) and Section 16FF and Regulations 17 to 19 of Chapter II of the Regulations framed under the U. P. Intermediate Education Act, 1921 which lay down the procedure for selection of principal and teachers in minority institutions are basically provisions for furtherance of fair administration of the minority institution and not to its detriment. These provisions have stood the test of time for decades together.

21. For ready reference. Section 16E (1) and (2) and Section 16FF and Regulations-17 to 19 are quoted below :

16E. Procedure for selection of teachers and heads of institutions.--Subject to the provisions of this Act, the Head of institution and teachers of an institution shall be appointed by the Committee of Management in the manner hereinafter provided.

(2) Every post of Head of institution or teacher of an institution shall except to the extent prescribed for being filled by promotion, be filled by direct recruitment after intimation of the vacancy to the Inspector and advertisement of the vacancy containing such particulars as may be prescribed, in at least two newspapers having adequate circulation in the State.

....

Section 16FF. Saving as to minority institutions.--(1) Notwithstanding anything in subsection (4) of Section 16E and Section 16P, the Selection Committee for the appointment of a Head of Institution or a teacher of an institution established and administered by a minority referred to in Clause (1) of Article 30 of the Constitution shall consist of five members (including its Chairman) nominated by the Committee of Management:

Provided that one of the members of the Selection Committee shall- (a) In the case of appointment of an Institution, be an expert selected by the Committee of Management from a panel of experts prepared by the Director; (b) In the case of appointment of a teacher, be the Head of the Institution concerned.

(2) The procedure to be followed by the Selection Committee referred to in subsection (1) shall be such as may be prescribed.

(3) No person selected under this section shall be appointed unless--

(a) in the case of the Head of an Institution the proposal or appointment has been approved by the Regional Deputy Director of Education : and

(b) in the case of a teacher such proposal has been approved by the Inspector.

(4) The Regional Deputy Director of Education or the Inspector, as the case may be, shall not withhold approval for the selection made under this section where the person selected possesses the minimum qualifications prescribed and is otherwise eligible.

(5) Where the Regional Deputy Director of Education or the Inspector, as the case may be, does not approve of candidate selected under, this section, the Committee of Management may, within three weeks from the date of receipt of such disapproval, make a representation to the Director in the case of Head of Institution, and to the Regional Deputy Director of Education in the case of a teacher.

(6) Every, order passed by the Director or the Regional Deputy Director of Education on a representation under sub-section (5) shall be final.

Chapter II of the Regulations framed under U. P. Intermediate Education Act, 1921.

Regulation 17 : The procedure for filling up the vacancy of the head of the Institution and teachers by direct recruitment in any recognized institution referred to in Section 16FF shall be as follows :

(a) After the management has determined the number of vacancies to be filled up by direct recruitment, the posts shall be advertised by the manager of the institution in at least one Hindi and one English newspaper having adequate circulation in the State giving particulars as to the nature (i.e., whether temporary/permanent) and number of vacancies, descriptions of post (i.e. Principal or Headmaster, Lecture or L.T., C.T, or J.T.C.B.T.C. grade teacher including the subject or subjects in which the lecturer or teacher is required), scale of pay and other allowances, experience required, minimum qualification and age prescribed, if any for the post and prescribing a date which should ordinarily be less than two weeks from the date of advertisement by which the applications shall be received by the Manager. A copy of the advertisement shall be simultaneously sent to the Inspector concerned.

Notes.--(1) All vacancies in the posts of teachers and the head of institution existing at the time of advertisement shall be advertised. (2) No new post shall be advertised unless sanction of the appropriate authority for the creation thereof has been received by the management.

(a) All applications shall be made in the form prescribed by the management and shall contain all necessary particulars about qualifications, teaching experience and other activities and be accompanied by certified copies, of all the necessary certificates and testimonials. The management may charge cost of the application form not exceeding the amount referred 10 in Clause (2) of the Regulation 10.

(b) An application by a person employed in an institution and applying for a post elsewhere or in the same institution shall not be withheld by his employer but shall be forwarded to the authority concerned immediately.

(c) All applications received from the candidates shall be serially numbered and entered in a register and particulars of the candidates noted under appropriate columns, The candidates to be called for interview shall be severed for each post (with the prior permission of the head of the institution). The Manager shall intimate by registered post all the members of the Selection Committee as well as such candidates as are called for interview, the date, time and place of selection at least ten days before it is held. The Selection Committee will hold the selection accordingly.

If on account of any unavoidable reason the expert selected by the Committee of Management under Clause (a) of the proviso to sub-section (1) of Section 16FF is unable to attend the selection on the date fixed, the meeting of the Selection Committee shall be postponed.

(d) The provisions of Clauses (e) and (f) of Regulation 10 and those of Regulations 11, 12, and 16 shall mutatis mutandis apply to selections made under this regulation.

(e) A panel of experts consisting of fifteen or more persons selected from category (a) referred to in Regulation 14 shall be drawn by the Director for each region and be sent to the Regional Deputy Director of Education concerned. The Regional Deputy Director of Education shall out of the said panel communicate the names of three experts in sealed cover to the management through its manager as soon as he receives any request for supply of names of experts from him. The regional panel of experts shall, however, remain valid until it is replaced by a new one.

(f) Chairman of the Selection Committee after conducting interview of all the candidates for any post will get a note prepared in two copies on the proceedings of the selection which will mention the names of the selected candidates and names of two more candidates of waiting list. Chairman and other members of Selection Committee will sign on notes, so prepared, and mention their full name, designation and address. Chairman would immediately forward a copy of this note and a copy of statement referred to in Clause (f) of Regulation 10 to the Regional Dy. Director of the Inspector, as the case may be for approval as required u/s 16FF. Regional Dy. Director or Inspector. as the case may be, within one month of the date of receipt of concerned records, will give his decision thereon and, failing to do so, it will be deemed to be approved.

Regulation 18.-- (1) Within fifteen days of the receipt of-the recommendation of the Selection Committee constituted under subsection (1) or (2) of Section 16F, and in case of an institution referred to in Section 16FF, the approval of the authority specified therein, the Manager shall, on authorization under resolution of the Committee of Management, issue an order of appointment by registered

post to the candidate in the form given in Appendix "B" requiring the candidate to join duty within ten days of the receipt of such order failing which the appointment of the candidate will be liable to cancellation.

(2) In case of promotions and ad hoc appointments also formal order of promotion or appointment in the form as near as possible to the form referred to in Clause (1) shall be issued to the person concerned under the signature of the Manager.

(3) A copy of every order referred to in Clauses (1) and (2) shall be sent to the Inspector and in case of appointment of the head of institution a copy thereof shall also be sent to the Regional Deputy Director of Education.

Regulation 19.--Where any person is appointed as, or any promotion is made on any post of head of institution or; teacher in contravention of the provisions of this Chapter or against any post other than a sanctioned post the Inspector shall decline to pay salary and other allowance, if any, to such person where the institution is covered by the provisions of the U. P. High Schools and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971. and in other cases shall decline to give any grant for the salary and allowances in respect of such person.

22. This Court is in respectful agreement with the law laid down by the Hon'ble single Judge of this Court in the case of Committee of Management, Smt. Sughrabegum Girls Inter College (supra). It is held that the provisions of Section 16E (1) and (2) and Section 16FF and Regulations 17 to 19 of Chapter II of the Regulations framed under U. P. Intermediate Education Act, 1921 do not violate Article 30 of the Constitution of India. Every recognized minority intermediate institution is obliged under law to hold selections strictly by following the procedures prescribed there under.

23. After arriving at the said conclusion, this Court may now examine the facts leading to the selections of the petitioner. On record is a report of the District Magistrate, which has been submitted under an interim order of this Court. From the report of the District Magistrate it is admittedly clear that the vacancies in question were advertised in two Hindi newspapers, namely. Tarun Mitra, published from district Varanasi having circulation in district Varanasi. The other Hindi newspaper, namely, Kashi Varta in which the vacancies are stated to have been published, has circulation within the district of Jaunpur only.

24. Section 16E (1) and (2) read with Section 16FF and Regulations 17 of Chapter II of the Regulations framed under U. P. Intermediate Education Act, 1921 specifically provides that the vacancy have to be advertised in two newspapers one in Hindi and other in English having adequate circulation throughout the State of Uttar Pradesh.

25. Petitioners have hopelessly failed to establish the compliance of the aforesaid provisions, it is admitted on record that : (a) the vacancies were never

advertised in English newspaper, (b) the Hindi newspapers in which the vacancies had been advertised, have very limited circulation in the district from where they are published only. It is therefore, held that in the matter of advertisement of vacancies in question there has been manifest violation of statutory provisions, which regulate the mode and manner of the selection.

26. This Court further finds from the proceeding of the Selection Committee, which has been brought on record by the petitioner himself along with his supplementary rejoinder-affidavit filed in Civil Misc. Writ Petition No. 31653 of 2006 at page 35 that the selection committee comprised of only two persons, namely. Principal and Manager of the same institution. Advertisement itself, refers to vacancy on the post of Principal also along with other three posts (Reference page 17 of the supplementary counter-affidavit). It is, therefore, clear that there was a vacancy on the post of principal in the institution on the relevant date. Even otherwise, there would have been no occasion for the advertisement of the vacancy of the post of Principal (Reference Regulation 17 (a) Note 1 of the Regulations framed under U. P. Intermediate Education Act, 1921).

27. However, the issue needs no further examination, inasmuch as even if it is accepted that the person who had participated in the selection was lawful principal on the relevant date, the constitution of the Selection Committee is still bad in view of Section 16FF, which provides that the Selection Committee for the post of teachers shall comprise of five persons including the Chairman nominated by the Committee of Management. In place of five persons, the selections have been held by two persons only. This Court may further notice that under the advertisement, the method for submission of the application forms was provided by registered post only, the District Magistrate has found that the application forms of the selected candidate had been received by hand and further that in absence of due publication of the vacancy, large number of eligible candidates have been deprived of a right to participate in the selections.

The facts, which have been so noticed in the enquiry report of the District Magistrate could not be demonstrated to be incorrect by the petitioners.

28. It is settled law that if law arise, something has to be done in particular manner, it has to be done in the same manner. (Reference Writ Petition No. 51370 of 2005 decided on 11th August, 2007, State of Uttar Pradesh Vs. Singhara Singh and Others, Haresh Dayaram Thakur Vs. State of Maharashtra and Others, Dhananjay Reddy v. State of Karnataka, 2001 (4) SCC 9 ; Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, Prabha Shankar Dubey v. State of Madhya Pradesh, AIR 2004 SC 486 and Ram Phal Kundu Vs. Kamal Sharma,

29. This Court has no hesitation-to hold that the procedure prescribed under law had not been followed in the mode and manner of selections of the petitioners. There had been deliberate and manifest noncompliance of the statutory

provisions, which regulate mode and manner of the advertisement of the vacancies and constitution of the Selection Committee as well as receipt of the application forms. This Court has no other option but to declare that such procedure adopted in the matter of appointment of the petitioner is illegal.

30. In view of Regulation 19 of Chapter II of the regulations framed under U. P. Intermediate Education Act, 1921, petitioners are not entitled to salary from State exchequer.

31. The judgment relied upon by the learned counsel for the petitioner in the case of Mukesh Singh Chauhan, Karunesh Kumar Singh and Committee of Management, Shri Kund Jain Inter College (supra) deal with the powers of the District Inspector of Schools in the matter of disapproval of the appointment made in light of Section 16FF (4) of U. P. Intermediate Education Act, 1921. The legal principles so laid down in the aforesaid judgments cannot be disputed. However, applicability of the deeming provision u/s 16FF (4) would arise only when the other statutory provisions have been followed, namely, the vacancy has been advertised as required under law, selections have been held by a duly constituted selection committee, as per the statutory provisions etc. Section 16FF (4) cannot be read independent of the other provisions. Section 16E and Section 16FF and the Regulations 17 to 19 of the Regulations framed under U. P. Intermediate Education Act, 1921 form part of the same scheme for appointment of teachers in minority institution and have to be read together. Since in the facts of the present case, this Court has come to the conclusion that the procedure adopted in the matter of appointment itself was de hors the statutory Rules, the reliance upon the limited scope of Section 16FF does not arise nor can this Court approve such appointment only because the selected candidate is possessed of the prescribed qualifications.

32. The observations made by the writ court in the case of Mukesh Singh Chauhan (supra) to the extent that the provisions of Regulation 17 are only recommendatory in nature, does not appeal to the Court. However, it is not necessary to deal with the said issue any further, inasmuch as there has been manifest non-compliance of the provisions of Section 16E (1) and (2) in the matter of advertisement as well as in the matter of Selection Committee as per Section 16FF of U. P. Intermediate Education Act, 1921. Moreover the Hon'ble single Judge has not noticed the impact of Regulation 19 of Chapter II of the Regulations framed under U. P. Intermediate Education Act, 1921 for noncompliance of the Regulations 17 and 18 of Chapter II of the Regulations framed under the U. P. Intermediate Education Act, 1921.

33. In view of the aforesaid, this Court finds that the petitioners are not entitled to any relief under Article 226 of the Constitution of India. Any interference with the order of the Commissioner or the District Magistrate in the facts of the present case would only result in perpetuating the illegal appointment of the petitioners. Because of such illegal appointment, in collusion with the education authorities, petitioners have succeeded in drawing huge sum of money as salary

from the State exchequer.

34. This Court had already issued orders for lodging of first information report, which order had not been interfered by the Division Bench as is apparent from the facts noticed above. The directions for recovery of the loss caused to the State Government was stayed only till the writ petition was finally decided. Since I have come to the conclusion that the appointments of the petitioners is de hors the statutory provisions of Regulation 17 of Chapter II of the Regulations framed under U. P. Intermediate Education Act, 1921, they could not be paid salary under the U. P. High School and Intermediate Colleges (Payment of Salaries of Teachers and Other Employees) Act, 1971 in view of Regulation 19 of Chapter II of the Regulations framed under U. P. Intermediate Education Act, 1921. Collusion of the Management, District Inspector of Schools is apparent in the matter of drawing money from the State exchequer.

35. This Court finds that the petitioners, the then Manager of the Institution and the District Inspector of Schools at the relevant time must all be held responsible for the loss caused to the State Government. This loss as per the payment made to the petitioners must be recovered from all three equally without delay.

All these three writ petitions are accordingly dismissed.

Interim order, if any, stands discharged.