
(2012) 08 BOM CK 0055
In the Bombay High Court
Case No : Writ Petition No. 542 of 2008

Mrs. Ivy C. da Conceicao

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Constitution of India, 1950 — Article 30, 30(1)

National Commission for Minority Educational Institutions Act, 2004 — Section 2(g)

Citation : (2012) 08 BOM CK 0055

Hon'ble Judges : U.V. Bakre, J;A.P. Lavande, J

Bench : Division Bench

Advocate : V.P. Thali, for the Appellant; D. Lawande, Government Advocate for Respondents No. 1 and 2, Mr. J.E. Coelho Pereira with Mr. S. Karpe, Advocate for Respondent No. 3, Mr. J. Godinho, Advocate for Respondents No. 4, 5 and 7 and Mr. M.S. Sonak and Mr. J. Supekar, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—Heard learned Counsel for the parties. By this petition, the petitioner challenges appointments of respondents No. 4, 5, 6, and 7 vide orders dated 31.7.08, 31.7.08 and 4.6.2008, respectively to the post of Principals of Higher Secondary Schools run by respondent No. 3 Society.

2. It is the case of the petitioner that while making appointments of respondents No. 4 to 7, the name of petitioner was not considered for promotion as required under Rule 74 of the Goa School Education Rules, 1986 ("the Rules" for short) framed under the Goa School Education Act, 1984 ("the Act" for short). It is further the case of the petitioner that all the said appointments have been made in breach of Rule 86, read with Rule 78 of the Rules inasmuch as all the four respondents are not only junior to the petitioner, but also not coming within the zone of consideration for promotion to the post of Principal. It is further the case of the petitioner that the appointments of the said respondents were not made on recommendation of any promotion committee as mandatorily required under

Rule 74 of the Rules. The petitioner claims that there was no reason to bypass her claim, nor any reasons have been recorded, in writing, by the promotion committee bypassing the petitioner. According to the petitioner, the claim of the petitioner has been arbitrarily and illegally bypassed, without any tangible reason. It is further the case of the petitioner that respondent No. 6 was in fact already appointed to the post of Principal in Fr. Basilio Andrade Memorial Higher Secondary School, Majorda vide order of appointment dated 16.8.2003 in the vacancy created on retirement by superannuation of Shri John Mascarenhas, the Principal of Rosary Higher Secondary School, Navelim consequent upon transfer of Smt. Cheryl Colaco, the Principal of the said Majorda School, as the Principal of Rosary Higher Secondary School, Navelim. The petitioner further claims that he had challenged the order of appointment dated 16.8.2003 of respondent No. 6 by filing Writ Petition No. 236/2004 before this Court. It is further the case of the petitioner that respondent No. 6 was again appointed, on promotion, to the post of Principal, vide Order dated 31.5.2007 and was posted as Principal at St. Theresa's Higher Secondary School, Candolim with effect from 15.6.2007 in the vacancy allegedly arising due to the transfer of Mr. Elvis Gonsalves, Principal of St. Theresa's Higher Secondary School, Candolim as Principal of Rosary Higher Secondary School, Navelim. It is the case of the petitioner that no vacancy can be created by transfer of Principal of one school to another school. According to the petitioner, the appointment of respondent No. 6, by order dated 4.6.08, is malafide and a fraud, committed with oblique motive.

3. It is further the case of the petitioner that respondent No. 3 runs a number of primary, secondary and higher secondary schools within the State of Goa. Respondent No. 3 runs seven higher secondary schools in different parts of Goa and they are governed by the Act and the Rules. All the said schools are recognized schools u/s 5 of the Act and respondent No. 3 receives aid from the State of Goa u/s 7 of the Act. It is specifically the case of the petitioner that respondent No. 3 is neither a religion based minority institution as stated in their letters dated 31.7.08, 31.7.08 and 4.6.08, nor do they satisfy any of the requirements for labelling them as religion based minority institution, within the meaning of Article 30 of the Constitution of India. It is specific case of the petitioner that respondent No. 3 Society has not been recognized as a minority school or minority institution by the appropriate authority u/s 5 of the Act. The petitioner claims that the claim made by respondent No. 3 that it is minority institution is malafide and has been made only with an oblique motive to support the illegal action in respect of various appointments by promotion made to the posts of Principal. According to the petitioner, the petitioner is not only senior to respondents No. 4 to 7 among Grade I teachers of Higher Secondary Schools run by respondent No. 3 Society in terms of common seniority list (Exhibit -F), but the petitioner is senior to respondents No. 4 to 7 in the list of teachers who are eligible to be appointed as Principals in terms of Exhibit-G. It is pertinent to note that the petition was filed in the year 2008 and initially, the appointments of respondents No. 4 to 6 were challenged and after the appointment of respondent

No. 7 in the year 2010, by an amendment, her appointment was also challenged. In short, the case of the petitioner is that the appointments of respondents No. 4 to 7 are made in clear breach of the provisions of the Act and the Rules and, therefore, their appointments are liable to be set aside and respondents No. 1 to 3 be directed to consider the case of the petitioner along with other eligible and qualified Grade I teachers in the post of Principal, in accordance with the provisions of the Act and the Rules.

4. On behalf of respondent No. 3, three affidavits have been filed. In the first affidavit dated 10th November, 2008, filed by the Secretary of Respondent No. 3 Society, respondent No. 3 has claimed that respondent No. 3 is a Society established by a religious minority, namely the Catholic Church in Goa, which administers a number of schools in Goa. Respondent No. 3 has relied upon the statistical handbook of Goa, issued by the Government of Goa, in terms of which, Christians number about 26.68% of the population of the State, as per Census of India 2001. It is further the case of respondent No. 3 that after liberation of Goa, the then Government of the Union Territory directed formation of Registered Societies as a sine quo non for grant-in-aid to educational institutions. As a sequel, the third respondent was formed with the avowed object of taking over the educational institutions established by the Archdioceses of Goa and conduct, develop, improve, equip and administer them in keeping with the mind of the Church. Respondent No. 3 has produced a copy of the Society's Memorandum of Association and its Rules and Regulations (Annexure III). The same discloses that the ordinary members of the third respondent consist of Archbishop of Goa, who is the ex-officio Chairman of the Society, the Vicar General, the Chancellor of the Archdiocese; the President and the Secretary and the members of the Governing Council and the Directors of the Archdiocesan Charitable and Social Institutions, the extra-ordinary Members are all appointed by the aforesaid ex-officio Chairman. All the members are Catholics and citizens of India. It is the case of respondent No. 3 that Diocesan Schools are all minority educational institutions, established and administered under Article 30 of the Constitution of India and as such, are entitled to the protection under Article 30 of the Constitution. Respondent No. 3 has placed reliance upon a Judgment of this Court in the case of Harmal Panchakroshi Shikshan Mandal and another vs. State of Goa and others, 1990 (1) Goa Law times (22); and contended that the Division Bench of this Court has held that the schools run by the third respondent were entitled to the protection under Article 30 of the Constitution of India.

5. It is further the case of respondent No. 3 that the petitioner is very much aware that respondent No. 3 is a minority educational institution established and administered under Article 30 of the Constitution of India and even the letter of appointment of the petitioner clearly indicates that respondent No. 3 is a minority institution. The petitioner is taking advantage of the situation that the State Government has not constituted any entity to determine the minority status in terms of Article 30 of the Constitution of India. It is further the case of respondent No. 3 that respondent No. 3 applied to the Minority Commission for

Educational Institution, Delhi constituted by the Union of India vide application dated 22.11.2007. Respondent No. 3 considered the claim of the petitioner for the post of Principal, but the petitioner chose the most suited in exercise of rights conferred under Article 30. It is further the case of respondent No. 3 that upon retirement of Mrs. Nirmala Mesquita from the post of Principal from Fr. Basilio Andrade Memorial Higher Secondary School on 1.8.08, a vacancy to the post of Principal arose in the School; D.P.C. was held in which 5 candidates were considered and some of the senior teachers had declined the offer for selection to the said post and, as such, next to them in the order of seniority were considered for the selection. The DPC selected respondent No. 5 at Sr. No. 1 and respondent No. 3 chose to abide the result of the DPC and accordingly, respondent No. 5 was appointed.

6. In so far as appointments to the post of respondents No. 4 to 6 are concerned, respondent No. 4 was appointed to the post of Principal of Rosary Higher Secondary School, Navelim, against a temporary vacancy which had then occurred in the said School pursuant to the appointment of the incumbent, Shri Mervin D'Souza to the post of Chairman of the Goa Board of Secondary and Higher Secondary Education by the Government of Goa. Mr. Mervin D'Souza, by letter dated 29.7.2008, requested respondent No. 3 that he be relieved from the post, upon retaining a lien on the said post of Principal. Respondent No. 3 relieved Mr. Mervin D'Souza, granting him lien on the said post for a period of two years. Against the said temporary vacancy, the DPC considered 3 eligible candidates amongst Grade I teachers. The petitioner did not qualify and since she was an Arts graduate, the other eligible candidates were considered and respondent No. 4 was selected.

7. In so far as appointment of respondent No. 6 is concerned, he has been appointed to the post of Principal, on a vacancy which arose on superannuation of Shri Edward Coutinho on 23.3.2005 in St. Andrew's Higher Secondary School at Vasco-da-Gama. On 30.5.2008, the DPC was held to consider filling up two vacancies, namely the vacancy which arose in St. Andrew Higher Secondary School on retirement of Mr. Edward Coutinho which was sanctioned by the Department of Education and the vacancy in Fr. Basilio Andrade Memorial Higher Secondary School and at the said DPC, Mrs. Nirmala Mesquita and Mr. Walter Cabral were considered amongst 8 candidates and they were placed at serial nos. 1 and 2. Respondent No. 3, accordingly, appointed said Mrs. Nirmala Mesquita and Mr. Walter Cabral to the posts of Principal in Fr. Basilio Andrade Memorial Higher Secondary, School, Navelim and in Santa Cruz Higher Secondary School, St. Cruz, respectively. Mrs. Mesquita who was appointed to the said post on 12.6.2008 got superannuated on 31.7.2008.

8. It is further the case of respondent No. 3 that the appointments of respondents No. 4, 5 and 6 are not in violation of Rules 78 and 86 of the Rules and the same have been made in consonance with the rights conferred on the respondent under Article 30 of the Constitution of India. It is the case of

respondent No. 3 that it is entitled to appoint the Principals of its choice from amongst the persons who are holding requisite qualifications to hold the said posts. Respondent No. 3 has sought leave to produce Minutes of DPC as and when directed. Respondent No. 3 has denied the claim of the petitioner that she has been by-passed by respondent No. 3 while making appointments to the posts of Principal in different Schools.

9. Respondent No. 3 has further filed an affidavit dated 10/7/2009 and produced the certificate dated 24.6.2009, issued by National Commission for Minority Educational Institution, New Delhi which discloses that the schools run by respondent No. 3 are Minority Educational Institutions, within the meaning of Section 2(g) of the National Commission for Minority Educational Institution Act, 2004. The certificate further declares that all the schools mentioned in the certificate are Minority Educational Institutions, covered under Article 30 of the Constitution of India.

10. Respondent No. 4 filed an affidavit-in-reply dated 10/11/2008. In short, it is the case of respondent No. 4 that the petitioner was not the most qualified amongst the persons considered for appointment to the post of Principal. It is the case of respondent No. 4 that she was appointed after all the eligible candidates were considered by the DPC and their merits evaluated.

11. On behalf of respondent No. 5, an affidavit-in-reply dated 5/2/2010 has been filed, controverting the statements made by the petitioner in the petition and further claimed that respondent No. 3 is a Minority Institution, established and administered by Roman Catholic Church, having right under Article 30 of the Constitution of India.

12. Similarly, respondent No. 7 has also filed an affidavit-in-reply dated 6/1/2011, stating therein that she was considered along with other eligible candidates by the DPC and only after considering the merits of the candidates, her name was recommended and accepted by respondent No. 3.

13. On 16.1.09, the petitioner filed a rejoinder to the affidavits-in-reply filed by respondents No. 3 and 4, maintaining the stand taken in the petition. It is further the case of the petitioner that respondent No. 4 was posted in Rosary Higher Secondary School, without their being any work load in the Science stream.

14. The petitioner has also filed an affidavit dated 27.8.09, inter alia, claiming that the commission had no right to issue the certificate dated 24.6.09, produced by respondent No. 3. It has been further claimed that Roman Catholics in Goa are not notified by the Central Government as "Minority Community" u/s 2(g) of the National Commission for Minority Educational Institution Act, 2004. Consequently, respondent No. 3 cannot be called as Minority Educational Institution, within the meaning of Section 2(g) of the Act.

15. After the petition was amended, challenging appointment of respondent No. 7, respondent No. 3 has filed an affidavit dated 29.6.2011, reiterating that the

petitioner was considered along with other eligible candidates and in exercise of the rights conferred under Article 30 of the Constitution of India. According to respondent No. 3, the DPC was constituted to consider the eligible candidates for promotion to the posts of Principal and the petitioner remained present before the DPC. It is, therefore, the case of respondent No. 3 that the petitioner has made a false statement that she was not considered by DPC while making appointment of respondent No. 7 to the post of Principal.

16. The petitioner has filed a rejoinder to the affidavit in reply of respondent No. 3 to the amended petition dated 20/8/2011, wherein, inter alia, it has been stated that the order of appointment of respondent No. 7 does not even mention about her selection by DPC. It has been further averred that the letter of appointment of respondent No. 7 dated 18.6.2010 shows that she was appointed on promotion as Principal of Mount Mary's Higher Secondary School, Chinchinim which has been suppressed by respondent No. 3.

17. Mr. Thali, learned Counsel appearing for the petitioner took us through the relevant pleadings of the parties and submitted that the appointments of respondents No. 4 to 7 have been made in clear breach of Rules 74 and 86 of the Rules. According to the learned Counsel, the said respondents have been selected although they were not in the zone of consideration at the time when they were considered for appointments. According to learned Counsel, no reasons have been given by respondent No. 3 for refusing to appoint eligible senior teachers and, as such, the appointments of the said respondents are liable to be set aside. Mr. Thali submitted that no DPC has been constituted in terms of the Rules. Mr. Thali made submissions on the basis of the pleadings in the petition, as well as the statements made in further affidavits filed by the petitioner.

In so far as appointment of respondent No. 7 is concerned, her appointment has been justified by respondent No. 3 on the ground that she was from Science stream and the petitioner was from Arts stream. According to the learned Counsel, such a distinction is not permissible while appointing eligible teachers from the posts of Principal. Learned Counsel further submitted that therefore, the appointments of respondents No. 4 to 7 are liable to be quashed and set aside.

In support of his submissions, Mr. Thali relied upon the following Judgments :

(1) Shri Manohar Naik vs. Fr. Thomas Gonsalves and others, (Writ Petition No. 57/1991) passed by this Court, dated 10.2.2004;

(2) Smt. Malini Xete vs. The Director of Education and others., (Writ Petition No. 69/1999) passed by this Court, dated 8/3/1999 and

(3) S. Shanmugavel Nadar Vs. State of Tamil Nadu and Another, .

18. Mr. Lawande, Government Advocate appearing for respondents No. 1 and 2 submitted that it is not the case of the petitioner that the respondents No. 4 to 7 are not eligible for appointments in terms of the Rules and as such, their

appointments are illegal and the petition, on this count also deserves to be dismissed. Mr. Lawande further submitted that Rule 86(2) of the Rules has to be interpreted harmoniously, along with the Judgment of the Apex Court in the case *The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others*, .

19. Mr. Coelho Pereira, learned Senior Counsel appearing for respondent No. 3 submitted that the institutions run by respondent No. 3 are minority educational institutions, as disclosed by Certificate dated 24.6.2009, issued by National Commission for Minority Educational Institution, New Delhi. According to the learned Senior Counsel, the petitioner is not entitled to challenge the status of respondent No. 3 inasmuch as the Certificate dated 24.6.2009 clearly mentions that the schools run by respondent No. 3 are religious minority institutions. The petitioner having accepted the minority status of the institution in terms of the appointment letter, is now not entitled to challenge the status of respondent No. 3. According to the learned Senior Counsel, the Memorandum of Association, placed on record and the Census of India 2001 clearly disclose that the Christians are religious minority, so far as State of Goa is concerned. Learned Senior Counsel further submitted that in the case of *Harmal Panchakroshi Shikshan Mandal and another (supra)*, a Division Bench of this Court has recorded a finding that respondent No. 3 is a Minority Educational Institution and, as such, the appointments made by respondent No. 3 cannot be faulted on the touchstone of Article 30 of the Constitution of India. Learned Senior Counsel submitted that there is no dispute that respondents No. 4 to 7 have essential qualifications required for appointment to the post of Principal and, therefore, respondent No. 3 was well within its rights to appoint the said respondents as Principals to the schools run by it in exercise of the rights conferred under Article 30 of the Constitution of India.

According to learned Counsel, Rules 74 and 86 of the Rules, in so far as they are inconsistent with the rights of Minority Educational Institutes, are not binding on respondent No. 3 and respondent No. 3 is entitled to appoint the Principals of its choice, provided they have requisite qualifications under the Act. According to learned Senior Counsel, the petitioner was very much considered along with other eligible candidates, including respondents No. 4 to 7, having requisite qualifications in terms of the Rules.

In support of his submissions, learned Senior Counsel placed reliance upon the following Judgments :

- (1) *Harmal Panchakroshi Shikshan Mandal and another vs. The State of Goa and others.*, 1990 (1) GLT (22);
- (2) *N. Ammad Vs. The Manager, Emjay High School and Others*, ;
- (3) *Board of Secondary Education and Teachers Training Vs. Jt. Director of Public Instructions, Sagar and Others*, .
- (4) *The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others*, ;

(5) Order dated 31/3/2010, passed by the Apex Court in Thomas Gonsalves and another vs. Manohar Naik and ors.

20. We have carefully considered the rival submissions, perused the record and the judgments relied upon by the rival parties.

21. Before considering the rival submissions on merits, it would be appropriate to quote Rules 74 and 86 of the Rules and Article 30 of the Constitution of India. Rules 74 and 86 read thus :

74. Recruitment and promotion. --- 47[...]

(2) Recruitment/promotion of employees in each recognised private school aided or unaided shall be made on the recommendation of the selection committee promotion committee.

(3) The selection committee/promotion committee shall consist of:

(a) in the case of recruitment/promotion of the head of the school/Hr. Secondary school/primary Teachers Training Institute.

(i) the chairman of the managing committee;

(ii) the Dy. Education Officer of the area or an educationist nominated by the Director of Education;

(iii) an educationist nominated by the managing committee and

(b) in the case of an appointment/promotion of a teacher (other than the headmaster of the school) : -

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

(ii) the head of the institution;

(iii) the Dy. Education Officer of the area or his representative to be nominated by him; and

(iv) in the case of appointment of a teacher in the Hr. Secondary school or a primary Teachers' Training Institute, a specialist may be co-opted by the committee and in such a case he/she shall carry the same rights and privileges on par with other members.

(c) in the case of an appointment/promotion of a non-teaching staff

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

(ii) head of the institution;

(iii) the Dy. Education Officer of the area or his nominee;

Explanation: In case of minority schools the nominee of the Department or an

Educationist appointed by the Director of Education in sub-rule shall function as an observer and can participate in the discussion, but he/she shall not have the right to vote or make selection of the candidates, however he/she shall send a separate report to the Director of Education about his/her observations.

(4) The chairman of the managing committee, or, where he is not a member of the 48["selection/promotion"] committee, the member of the managing committee who is nominated by the chairman to be a member of the 48["selection/promotion"] committee, shall be the chairman of the 48 ["selection/ /promotion"] committee.

(5) Selection Committee/Promotion Committee shall 49["follow the procedure applicable to the corresponding posts in the Government Schools"].

(6) The selection made by the selection committee/ /promotion committee shall be ordinarily accepted by the managing committee of the school. Where any selection made by the selection committee/promotion committee is not acceptable to the Managing committee of the school, the managing committee shall record its reasons for such non acceptance and refer the matter to the Director of Education for his decision and the Director of Education shall decide the same. 50[...]

(7) Where a candidate for recognised school is related to any member of the selection committee, promotion committee the member to whom he is related shall not participate in the selection and a new member shall be nominated. 52 ["by the Managing Committee of the school or by the Director of Education as the case may be as provided in sub-rule (3)"].

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

53 ["Provided that every such application shall be forwarded by the applicant through the Head of the School to the Manager who shall forward the same to the prospective employer within seven days of its receipt by the Head of the School, under intimation to the applicant well within the time stipulated by the later towards the receipt of such application. In case the Manager fails to forward the application, the applicant may send a copy of his/her application to the prospective employer and appear directly for the interview."]

Provided further that no such employee shall be relieved of his duties on registration except after the expiry of a period of:

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

(ii) one month, in the case of an employee who is not* permanent, from the date of which notice of resignation to leave the school is given;

Provided also where the employee desires to relieve himself before the expiry of the notice period he shall be relieved forthwith after recovery of three months salary including allowances from the permanent employee and one month salary with allowances from the non-permanent employee as the case may be and the amount so recovered shall be credited to the Government treasury within one month of the acceptance of the resignation.

86. Filling of vacancies.- (1) Notwithstanding anything contained in rule 78, every vacancy in an aided school shall be filled up by promotion failing which by direct recruitment, in accordance with such rules as may be framed by the Director of Education in this behalf and notified/circulated separately.

66 ["Provided that the claim of any employee already working under the said Management in the Under graduate category possessing the requisite qualifications for the direct recruit shall be given due consideration while filling up the post with direct recruitment."].

(2) The vacancy of Principal, Higher Secondary School/ Primary Training Institutes, Headmasters of Secondary Schools and Middle Schools, and the Asstt. Headmasters of Secondary Schools shall be filled up by promotion subject to the eligibility conditions prescribed in rule 78. While filling up of these posts, the managements shall first explore the possibility of selecting the senior most teacher from the next below "category indicated in column 5 of Table under rule 78. While making such selection the. management shall also give very careful consideration and shall select the best qualified and most competent person among those available for selection/ appointment to the post. Seniority shall be the first criteria subject to fitness and merit. If the claim of a senior eligible teacher is by-passed, the reason for the same in writing will have to be recorded in the minutes by the promotion committee. The claim of the senior qualified teacher shall not be by-passed arbitrarily without tangible reasons.

Explanation:- Common managements running the secondary schools as well as Higher Secondary schools, shall consider the claims of the Headmasters of Secondary schools in the order of interse seniority for the promotion to the post of Principal of Higher Secondary Schools subject to eligibility conditions prescribed in rule 78.

(3) The management shall make appointment of Heads only on probation for a year in the first instance and communicate full particulars with their biodata to the Director of Education for his approval. No Head of -the school shall be confirmed without the prior approval of the Director of Education.

Every vacancy which is to be filled up by direct recruitment shall be notified to the Employment Exchange or in the local newspapers as the case may be as per the rules applicable to Government Offices while recruiting the corresponding posts in Government schools. However the harness cases shall be regulated as per the rules applicable to Government offices and the Director of Education shall be the controlling authority.

Article 30 of the Constitution reads thus :

30 Right of Minorities to establish and administer educational institutions.

(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.

(1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.)

(2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of minority, whether based on religion or language.

Rule 78 prescribes minimum qualifications for the recruitment/ promotion of the teaching staff in the recognized schools, whether aided or not.

22. The first question which arises for consideration is whether respondent No. 3 is entitled to protection under Article 30(1) of the Constitution of India and whether the Christian community can be considered as minority community in the State of Goa ?

23. Respondent No. 3 has relied upon Statistical Handbook of Goa, issued by the Government of Goa, on the basis of Census of India 2001 which discloses that as per 2001 census, Christians in Goa constituted 26.68% of the population of the State. It is, therefore, the case of respondent No. 3 that Christian community in Goa is entitled to protection under Article 30 of the Constitution, at least from 2001. Respondent No. 3 has also relied upon Memorandum of Association and constitution of respondent No. 3 which disclose that Diocesan Society of Instruction was established and registered with "the Conservatoria dos Registos das Comarcas das Ilhas de Goa" on 30.11.1962 and after the Societies Registration Act of 1860 was made applicable to Goa, the Society was re-registered in the Office of the Registrar of Societies on May 13, 1974, as "Diocesan Society of Education" respondent No. 3 herein. It, inter alia, discloses that the Society was founded by Roman Catholic Church of Goa to promote, safeguard and organise systematically the education of youth, both Christian and non-Christian, at all levels, as well as to procure for its catholic students formation and education based on the principles of Catholic doctrine under the control of the competent ecclesiastical authority, through the means of religious instruction, liturgical activities, etc. It appears that thereafter the constitution was amended, but the same does not change the basic structure of respondent No. 3.

24. Respondent No. 3 has relied upon the Certificate dated 24th June, 2009, issued by National Commission for Minority Educational Institutions, New Delhi. The said certificate also discloses that all the Higher Secondary Schools run by

respondent No. 3 are declared to be Minority Educational Institutions within the meaning of Section 2(g) of the National Commission for Minority Educational Institutions Act, 2004. By the said certificate, all the Higher Secondary Schools run by respondent No. 3 are declared to be the minority educational institutions covered under Article 30 of the Constitution of India.

25. Moreover, this Court in the Judgment dated 21.12.1989, passed in Harmal Panchakroshi Shikshan Mandal and another (supra) considered whether respondent No. 3 was entitled to protection under Article 30(1) of the Constitution of India. In the said case, the Government had challenged the minority status of respondent No. 3 herein. The stand taken by respondent No. 3 was that the population of Roman Catholic Community in Goa on the basis of 1981 census was about 30% and that the school was run by the respondent Society of which the chairman was Archbishop and other members of the committee were priests. The object of the Society, inter alia, was to impart secular education in the background of Roman Catholic religion and that 84% of the students were from Roman Catholic community. In this factual background, the Division Bench held that it was fair to proceed on the basis that the School run by respondent No. 3 was entitled to protection under Article 30 of the Constitution of India. However, liberty was given to the Government to reconsider the claim of the Society, after giving an opportunity of being heard and to take decision in accordance with law. It is pertinent to note that on behalf of respondents No. 1 and 2 not only the minority status of the school run by respondent No. 3 has not been challenged, but nothing has been pointed out to us that after the Judgment in the case of Harmal Panchakroshi Shikshan Mandal and another (supra), any steps were taken by the State Government in terms of the liberty granted to it. Moreover, no return has been filed by respondent Nos. 1 and 2 challenging minority status of respondent No. 3.

26. It is pertinent to note that the appointment letter dated 24th was appointed as a teacher with effect from 22nd June, 1987 and it was specifically mentioned therein that St. Xavier's College was a minority institution. At the foot of the said letter, the petitioner has made the following endorsement "I accept the above appointment and agree to its terms and conditions."

27. What emerges from the above is that the schools run by respondent No. 3 are minority educational institutions and entitled to protection under Article 30(1) of the Constitution of India in terms of the Certificate issued by the National Commission for Minority Educational Institutions, New Delhi, not only from 29.6.2009, but also from the date of pronouncement of the Judgment by this Court in Harmal Panchakroshi Shikshan Mandal and another (supra), i.e. 21.12.1989. We fail to understand as to how the petitioner having accepted the terms and conditions mentioned in her letter of appointment can turn around and challenge the minority status of respondent No. 3, solely for the purpose of challenging the appointments of respondents No. 4 to 7 as Principals of the Higher Secondary Schools run by respondent No. 3.

28. The next question which arises for consideration is whether respondent No. 3 is entitled to appoint the Principals of its choice, subject to fulfilling the educational qualifications, in exercise of the rights conferred on it under Article 30(1) of the Constitution of India ?

29. In the case of Secretary, Malankara Syrian Catholic College (supra), the Apex Court considered the scope of Section 57(3) of the Kerala University Act, 1974 providing that the post of Principal was to be filled on the basis of seniority-cum-fitness. The appellant before the Apex Court was a minority educational institution, which had appointed one Rv. Daniel, as Principal, bypassing the claim of Mr. T. Jose, who was the senior most amongst the eligible and fit lecturers. The Apex Court set aside the Judgment passed by the Division Bench of Kerala High Court, by which the petition filed by Mr. T. Jose was allowed holding that Section 57(3) providing that the post of Principal when filled by promotion, which was to be filled on the basis of seniority cum fitness, trammelled the right of management to take note of merit of the candidate or the outlook and philosophy of the candidate which would determine whether he was supportive of the objects of the institution and thus violated Article 30(1). The Apex Court further held that Section 57(3) of the said Act, therefore, could not be applied to minority run educational institutions even if they were aided. It would be pertinent to note that the Apex Court, considering its several earlier judgments, in paragraphs 12, 27, 28 and 29, observed thus :

12. The rival contentions give rise to the following questions:

(i) To what extent, the State can regulate the right of the minorities to administer their educational institutions, when such institutions receive aid from the State?

(ii) Whether the right to choose a Principal is part of the right of minorities under Article 30(1) to establish and administer educational institutions of their choice. If so, would Section 57(3) of the Act violate Article 30(1) of the Constitution of India?

27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai¹. Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid will make no difference.

28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person

proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. The management is entitled to appoint the person, who according to them is most suited to head the institution, provided he possesses the qualifications prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

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

30. In the case of *Sindhi Education Society and Another Vs. The Chief Secretary, Govt. of NCT of Delhi and Others*, , the Apex Court, after referring to the Judgment in the case of *Secretary, Malankara Syrian Catholic College (supra)*, held that Rule 64(1)(b) of Delhi School Education Act, 1973 and the Circular of September, 1989 were not enforceable against the linguistic minority School run by the appellant.

31. In the case of *Manohar Naik, (Supra)*, the Division Bench of this Court by Judgment and Order dated 10.2.2004 passed in Writ Petition No. 57 of 1991, allowed the petition holding that respondent No. 2 Xaverian Educational Society, which was running an educational institution, was not entitled to appoint respondent No. 1 therein as a Headmaster, bypassing the claim of the petitioner who was a senior most teacher. Respondent No. 1 was transferred from a school run by respondent No. 2 at Ambarnath in the State of Maharashtra. The Division Bench held that this was clearly in breach of Rule 86 of the Goa School Education Rules, 1986. The Apex Court in Civil Appeal No. 5311 of 2005, preferred by respondents No. 1 and 2 against the judgment and order passed by this Court in Writ Petition No. 57/1991, on 31.3.2010 passed the following order :

Heard learned counsel for the parties.

Learned counsel for the appellants submitted that the facts of the present case are fully covered by the decision of this Court in the case of *The Secretary, Malankara Syrian Catholic College Vs. T. Jose and Others*, .

Learned counsel for respondent No. 1 fully agrees with the statement of learned counsel for the appellants.

Following the decision of this Court in the case of Secretary, Malankara Syrian Catholic College (supra), we set aside the impugned judgment and order dated 10.02.2004 of the High Court and allow this appeal. No order as to the costs.

According to Mr. Thali, the said order has been passed on concession and, therefore, cannot be termed as a binding precedent. We find absolutely no merit in the submission of Mr. Thali. A bare perusal of the order of the Apex Court clearly discloses that the order was not passed on concession only. No doubt, learned Counsel for respondent No. 1 (original petitioner) had conceded that the facts in the said case were fully covered by the decision of the Apex Court in the case of Secretary, Malankara Syrian Catholic College (supra), but the Apex Court set aside the Judgment and Order not on concession, but by relying upon ratio laid down in the Judgment in the case of Secretary, Malankara Syrian Catholic College (supra). What emerges from the said order is that the Apex Court even upheld the action of the Minority Educational Institution appointing a teacher as a Headmaster of a school not only from amongst the teachers serving in the school run by an institution in the State of Goa, but also from a school outside the State of Goa, provided he fulfilled the minimum educational qualifications prescribed under the Act and the Rules.

32. The reliance placed by Mr. Thali on the Judgment of Smt. Malini Xete vs. The Director of Education and others (supra), is totally misplaced inasmuch as in the said case, the educational institution was not a minority educational institution and, as such, the ratio laid down in the said Judgment does not advance the case of the petitioner.

33. In the case of Board of Secondary Education and Teachers Training vs. Jt. Director of Public Instructions, Sagar and others (supra), relied upon by learned Senior Counsel Mr. Pereira, the Apex Court has held that a minority educational institution is entitled to appoint a Principal of its choice who is qualified according to the Rules prescribed by the State Government. The Apex Court has held that the action on the part of the authorities insisting upon appointment of senior most teacher was unsustainable in law, since a right of a minority educational institution to appoint a Principal of its choice, subject to the appointee having educational qualifications prescribed by the State Government, cannot be taken away by rules or regulations.

34. Similarly, in the case of N. Ammad vs. Manager, Emjay High School and others (supra), the Apex Court has held that the management of a minority educational institution has a right to choose a qualified person as a Headmaster of a school and the same is insulated by the protective cover of Article 30(1) of the Constitution of India and it could not be chiseled out through any legislative act or executive rule, except for fixing up the qualifications and conditions of service for the post. The Apex Court further held that any such statutory or executive flat would be violative of the fundamental right enshrined in Article 30(1) of the Constitution of India and hence would be void.

35. In view of the ratio laid down in the above referred judgments of the Apex Court, the minority educational institution is entitled to appoint a qualified person of its choice as Principal, subject to the appointee having educational qualifications prescribed by the State Government and such a right cannot be taken away by Rules and Regulations. In the case of Manohar Naik (*supra*), though the Division Bench allowed the appeal, the Apex Court upheld the right of minority educational institution in Goa to appoint a qualified teacher having requisite qualification, serving in the State of Maharashtra, in a school run by minority educational institution as the headmaster of the school in Goa. Obviously, therefore, he could not have been considered by the DPC in terms of Rule 74(2) of the Rules nor he could be one of the eligible teachers in the school run by respondent no. 3 Society and as such, Rule 86 was not complied with. Even in such factual background, the Apex Court has upheld the right of minority educational institution to appoint a teacher having requisite qualification as a headmaster of its school. In the present case, it is not the case of the petitioner that the respondents no. 4 to 7 do not have minimum qualification for being appointed as Principals of the school. This being the position, in our considered opinion, the ratio of the judgments of the Apex Court in the above mentioned cases, is squarely applicable in the present case. The necessary sequitur is that the challenge of the petitioner that DPC was not properly constituted or that some of the appointees do not come within the zone of consideration, are irrelevant for the purpose of deciding the issues involved in the present petition. Therefore, in our considered view, no fault can be found with the action of respondent no. 3 in appointing respondents no. 4 to 7 as the Principals of the different schools run by it. In the result, therefore, we do not find any merit in the petition. Consequently, Rule is discharged. Having regard to the facts and circumstances of the case, we leave the parties to bear their own costs.