

(1995) 01 MP CK 0064
In the Madhya Pradesh High Court
Case No : M.P. No. 1951 of 1993

Polina Alexander Singh (Mrs.)	Vs	APPELLANT
Joint Director Education, Sagar and Others		RESPONDENT

Date of Decision : 31-01-1995

Acts Referred:

Constitution of India, 1950 — Article 19(1), 29, 30, 30(1)
Madhya Pradesh Ashashkiya Shikashan Sanstha (Adhyapakon Tatha Anya Karmachariyon Ke Vetano Ka Sanday) Adhiniyam, 1978 — Section 10, 6
Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamchariyon Ke Bharti) Niyam, 1979 — Rule 13, 4
Madhya Pradesh Private Educational Institutions (Promotion of Teachers and other Employees working in Schools) Rules, 1988 — Rule 3(2)

Citation : (1995) JLI 435 : (1996) 1 MPJR 97

Hon'ble Judges : S.K. Dubey, J

Bench : Single Bench

Advocate : Abhay Sapre and Ku. Chandana Mukherjee, for the Appellant; M.L. Choubey, Government Advocate for Respondent Nos. 1 and 2 and H.S. Ruprah, for the Respondent

Judgement

S.K. Dubey, J.

This order shall also govern the disposal of Miscellaneous Petition No. 532 of 1993 (Mrs. Polina Alexander Singh v. Joint Director, Education, Sagar) and Miscellaneous Petition No. 1558 of 1994 (Mission Higher Secondary School, Damoh v. Stale of M.P.).

The Petitioner who is a Lecturer in Mission Higher Secondary School, Damoh has filed two petitions. In Miscellaneous Petition No. 532/93 relief sought is to quash the appointment of Respondent No. 4 as Principal of the School and to issue a writ of mandamus against the Mission Higher Secondary School, Damoh commanding the Respondents to consider the case of the Petitioner for promotion according to Rules as directed by this Court vide order dated 16.7.1992 in Miscellaneous Petition No. 2285 of 1992. In Miscellaneous Petition

No. 1951 of 1993 the Petitioner claims a relief for quashing of the advertisement issued by the Church of North India, Board of Secondary Education and Teachers Training (hereinafter called "the CNI Board") of inviting applications for appointment of the Principal by way of direct recruitment and the selection and appointment of Respondent No. 4. Miscellaneous Petition No. 1558/94 has been filed by the Mission Higher Secondary School, Damoh through the Principal J. Prasad, who is Respondent No. 4 in two petitions filed by the Petitioner for quashing of the approval of the Petitioner on the post of Lecturer, from the post of Upper Division Teacher to the Post of Lecturer, vide Annexure P-5 dated 12.1.1993 passed by the Joint Director of Education.

The C.N.I. Board is a registered society under the Societies Registration Act, which runs the minority institutions, one of them is Mission Higher Secondary School, Damoh, which gets maintenance grant from the State Government in respect of the approved teachers and its employees. It is not disputed that the provisions of Madhya Pradesh Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ke Vetano Ka Sandaya) Adhiniyam, 1978 (hereinafter called the "Act") are applicable on the minority educational institutions except the provisions of Section 6(a)(iii) and (iv), (b) and (c) which have been declared invalid as violative of Article 30(1) of the Constitution, by a Division Bench decision of this Court in case of Siddhibala Bose Library Association v. State of M.P. 1979 JLJ 485 : 1979 MPLJ 379.

The case of the Petitioner is that action of the CNI Board in issuing advertisement for direct recruitment of the Principal of the School (Annexure P-12) and the amendment in qualification prescribing the 10 years minimum teaching experience and date of submitting application as 25th May, 1993, published by advertisement Annexure P-13, thereafter, selecting Respondent No. 4 on the post of Principal of the School by-passing the claim of the Petitioner for promotion in accordance with the Madhya Pradesh Private Educational Institutions (Promotion of Teachers and other Employees Working in School) Rules 1988, (for short called the "Rules of 1988") framed u/s 10 of the Act of 1978, are illegal and deserve to be quashed.

Facts giving rise to the petitions are these. The Petitioner avers that the Petitioner is highly qualified and educated Lecturer who holds a Masters degree in Hindi and Diploma in Teaching. The Petitioner joined School on 5.8.1957 as a Teacher in the Middle School of the CNI Board, which runs 3 educational institutions at Damoh viz. (1) Mission Primary School; (2) Mission Middle School and (3) Mission Higher Secondary School. Later on the Petitioner was promoted as Upper Division Teacher in the Higher Secondary School from 1.9.67. The Petitioner became eligible for the post of Lecturer in 1977-78 but as a result of the ban on promotion by abolishing the post of Lecturer, the Petitioner continued as Upper Division Teacher, in the cadre of Upper Division Teacher, the Petitioner was the senior most as is evident from the seniority list Annexure P-4. When the ban was lifted by the State Government by order dated 28.8.91, vide Annexure

P-5, the Selection Committee of School considered the case of the Petitioner for the post of Lecturer and recommended the same for the approval of the Joint Director of Education. The proceedings of the Selection Committee are Annexure P-6, of that approval was granted by the Joint Director of Education, Sagar. The Petitioner had an unblemished excellent career of service. The Petitioner also worked as acting Principal in place of Mrs. P.V. Lall as would be evident from Annexure P-8 and P-9. Mrs. P.V. Lall retired on 21.4.1992 causing a vacancy of the said post in her place the Petitioner was to be appointed by way of promotion, but surprisingly, Respondent No. 4 a teacher, who was not even eligible for the post of Lecturer was appointed by the CNI Board, vide Annexure P-10. The Petitioner challenged the said order before this Court in Writ Petition M.P. No. 2285 of 1992. A Division Bench of this Court vide order dt. 16.7.1992, Annexure P-1 disposed of the petition with an observation that the appointment of the Respondent No. 4 is nothing but a stop-gap arrangement as the Respondent No. 4 has been only appointed as Incharge Principal, as he happened to be the Principal also of the Middle School. It is expected of the School authorities to make regular selection and appointment to the post of the Principal in accordance with the Rules. That may be done within a reasonable period for filling vacancy in regular manner. In case the Petitioner is found eligible under the rules, her case for appointment on regular basis on the post of Principal may be considered. But that was not done, therefore, the Petitioner filed Miscellaneous Petition No. 532 of 1993 on 27.1.1993 challenging the continuance of Respondent No. 4 as Principal in violation of the Rules and directions of this Court. After notice of the petition the Respondent CNI Board issued an advertisement for direct recruitment which was amended vide Annexure P-12. The Petitioner without prejudice to her rights also made an application. The Selection Committee which was not even duly constituted in accordance with Rules 13 of the M.P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ke Bharti) Niyam, 1979, considered of Mr. P.C. Jonathan, Bishop, Mrs. K.F. Jonathan his wife, as two members and one Mr. M.K. Singh Secretary of the CNI Board selected the Respondent No. 4 for appointment on the post of Principal.

It is submitted that there was no authority to invite applications from public for filling of the post of the Principal by way of direct recruitment as it is 100 per cent promotion post in view of the Rules of 1988. The Respondent No. 4 could not have been selected, as he was ineligible not having 15 years experience of teaching as he was appointed as Head Master of Middle School on 1.8.1976 who left the service and went to Dubai on 15.12.1983, who again joined the School on 30.6.1985.

The contention of Respondent No. 3 and 4 is that the Educational Institution is of religious minority community of the Christians. There is further division of the Community into the Roman Catholics and Protestant Christians. Many denominations constitute the Protestant Christians and the Church of North India is one of them (CNI). The CNI has a scheme to establish Boards for its secular

activities including education. In exercise of the powers, the Board of Secondary Education and Teachers Training Madhya Pradesh, CNI with its Head Quarters at Jabalpur, for short (CNI Board), was constituted which had all the safeguards under Articles 29 and 30 of the Constitution of India to establish and manage its own institutions. No law of the land is to abridge or curtail or abrogate or in any way adversely affect the constitutional freedom to establish and manage the educational institutions, the only exception being for the purpose of recognition of the educational institutions of the Minority Communities. The CNI Board has got its own set of Rules for the purpose of employment of its employees in its institution. The CNI Board has got a set of Rules to select, appoint and promote its employees. It has got its autonomus status and having its own constitution, has framed its own bye-laws for the employees of the Board of Secondary Education and Teachers Training, which governs the terms and conditions of the service of the staff. As the post of Principal fell vacant on retirement of Mrs. P.V. Lall, the Petitioner approached this Court for consideration of her case, wherein a direction was issued to appoint the Principal in regular manner, therefore, in compliance of the direction, the CNI Board invited applications for direct recruitment on the post of the Principal according to the provisions of Rule 4 of the M.P. Ashaskiya Shikshan Sanstha (Adhyapakon Tatha Anya Karamcharyon Ke Bharti) Niyam, 1979 (hereinafter called "Bharti Niyam, 1979"), the methods of recruitment namely:

- (a) absorption of teachers or other employees of other institutions whose services have been terminated;
- (b) direct recruitment;
- (c) promotion; or
- (d) deputation of persons either from Government or Ayog or from any other organisation approved by the Government for the purpose.

Section 6(a)(i) of the Act lays down that no post of a teacher or other employee shall be created except in such scale of pay as the State Government, may from time to time, determine and no teacher or other employee shall be recruited without following the procedure prescribed in this behalf. As no procedure was prescribed the advertisement was issued inviting applications for the appointment on the post of Principal by direct recruitment. Only two applications were received - one was of Respondent No. 4 and other was of the Petitioner. In that the Petitioner was not found suitable in comparison to Respondent No. 4 and, therefore, Respondent No. 4 was recommended for appointment and was appointed as Principal on bonafide discretion exercised by the CNI Board. The discretion of the management is to be independent and it is not subordinate to any other extraneous authority. It is not to be influenced by Non-Minority Community Authorities. According to Respondents, if there is any deviation from the set of Rules & Regulations in the appointment of the Respondent No. 4 by the management, it is in deliberate exercise of discretion by the Minority Community

to preserve and conserve its own independent existence. Respondent No. 4 had all eligibilities, had 15 years teaching experience as he was appointed in the year 1956, he was sent on deputation by granting him extra ordinary leave and when he came back, he was taken back. While the past record of the Petitioner is not satisfactory. Her services were terminated and after expressing sorrow she was retaken in service, therefore, the question of the Petitioner being the senior does not arise. The Petitioner was never selected for the appointment of Lecturer as the Chairman never participated in the Selection Committee, Annexure P-6 is a bogus document. It was also contended that, in any case, even if the Rules of 1988 applied, in that case Clause 2 of the Note appended to Schedule as per Rule 4, clearly shows that in the event of non-availability of any person fulfilling the qualifications, the vacancy shall be filled by direct recruitment. Therefore, in view of clause 2 of the note the Petitioners as well as the Respondent No. 4 were not fulfilling the qualifications for promotion, therefore, the applications were invited and then, after taking the interview and considering the qualifications, Respondent No. 4 was found fit and was appointed.

Shri Abhay Sapre and Ku. Chandana Mukherjee counsel for the Petitioner, Shri M.L. Choubey, Government Advocate for Respondents No. 1 and 2 and Shri H.S. Ruprah, counsel for Respondent No. 3 and 4 heard.

The main contention for the Respondent in this case is that CNI has got its own autonomous status and therefore, no interference can be made by any outside agency in running the minority educational institution in view of Article 30(1) of the Constitution of India. The constitution of CNI was also placed before this Court, but, in the opinion of this Court it is not necessary to go into that question, as the Respondents No. 3 & 4 have not challenged the validity of the Rules of 1988. So far as the objection of the learned Counsel for the Respondent No. 3 & 4 that no outside agency can be allowed to interfere in the autonomous status of the minority institution, the question has been dealt with in the case of *Sidhibala Bose Library Association v. State of M.P.* and Ors. 1979 J.L.J. 485 : 1979 M.P.L.J. 379, wherein it has been held that except Section 6 (a) (iii) (iv) (b) and (c) of the Act, in respect of the minority educational institutions are invalid as violative of Article 30(1) of the Constitution of India, however other provisions of the Act and in particular Section 6 has been held valid. It would be appropriate to quote Section 6 as a whole which reads thus:

Prohibition on creation of posts and appointment of staff and termination of services:

Notwithstanding anything contained in any law for the time being in force or any rules, regulations, byelaws, statutes or regulations made thereunder:

(a) on and from the appointed date:

(i) on post of a teacher or other employee shall be created except in such scale of pay as the State Government may, from time to time, determine and no teacher or other employee shall be recruited without following the procedure

prescribed in this behalf.

(ii) the teachers or employees shall have such qualifications and experience as may be prescribed; and

(iii) no teacher or other employee shall be dismissed or removed from service or his services terminated except by an order passed after following such procedure as may be prescribed;

Provided that a teacher or other employee may prefer an appeal against his dismissal, removal or termination from service to an appellate authority as the State Government may, by notification, specify within thirty days from the date of receipt of the order by him and such authority may after holding such enquiry as it may deem fit in the manner prescribed, may either set aside or confirm or modify the said order and pending the disposal of appeal, the appellate authority may also stay the operation of order on such grounds, as it thinks fit;

(iv) no teacher or other employee shall be placed under suspension for more than ninety days without such prior approval of the competent authority:

Provided that the competent authority shall give its approval only after holding such enquiry and within such time as may be prescribed;

(b) the competent authority may on an application made within thirty days from the appointed date by a teacher or an employee of an institution, who has been dismissed or removed from service or whose service has been terminated by the management of an institution at any time on or after the 17th November, 1977, after giving the management of the institution and the persons affected by such dismissal, removal or termination a reasonable opportunity of being heard and after conducting such enquiry as it may deem fit, declare the dismissal, removal or termination, as the case may be, to be void and direct the management of the institution to reinstate such teacher or employee in service;

(c) the competent authority shall review all the cases of appointment of teachers and other employees made during the period commencing from the 17th November, 1977 and ending on the date of commencement of this Act and, if it, after giving the management of the institution and the person concerned a reasonable opportunity of being heard, finds that the appointments were made in anticipation of this Act, it may by an order in writing for reasons to be stated therein disapprove such appointment." A bare reading of Section 6(a)(i) shows that while recruiting a teacher or other employee the procedure prescribed in this behalf has to be followed while Sub-clause (ii) of Clause (a) of Section 6 lays down that the teachers of employee shall have such qualifications and experience as may be prescribed.

The present case is of appointment on the post of the Principal which is a 100 percent promotional post in view of statutory Rules of 1988, the Respondents ought to have considered the cases of the employees who were eligible having qualifications as required according to seniority for filling up of the post by

promotion, but, that was not done. No scrutiny was made nor any proceedings were recorded as no candidate is found suitable, therefore the applications be invited for appointments as Principal by way of direct recruitment. Therefore, without coming to the conclusion that no candidate is available for the appointment on the post of Principal by way of promotion, in terms of clause 2 of Note appended to the schedule, the vacancy be filled by direct recruitment. Even for arguments sake it is considered that the applications were invited in view of clause 2 of the Note of the scheduled of the Rules of 1988, there was no validly constituted select committee as per Rule 3(2) of the Rules which reads thus:

There shall be Committee for promotion consisting of the following members:

(i) Secondary School/Higher Secondary School/Training Institution/Sanskrit School:

(a) Chairman or Secretary of the Education - Chairman Society

(b) Joint Director, Education Division/---Member Divisional Superintendence of Education or a Gazetted Officer nominated by him.

(c) A principal nominated by Education--Member Society.

(d) An Expert of the subject concerned-Member nominated by Joint Director, Public Instruction or a Principal, Government Higher Secondary School.

(ii) Middle/Primary School/Sanskrit School (up to middle standard):

(a) Chairman/Secretary of the Society-Chairman

(b) District Education Officer/Deputy - Member Director of Education or an officer nominated by him.

(c) A person nominated by Education--Member Society.

(d) A Head Master of Government middle -- Member school nominated by District Education Officer (Deputy Director, District Education).

Therefore in view of the above facts, the advertisement so issued and the appointment of Respondent No, 4 so made cannot be said to be legal as it violates the mandatory provisions of the Rules of 1988.

The contention based on Article 30(1) of the Constitution on various decisions relied by the Respondents No. 3 & 4; The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another, , The Gandhi Faiz-E-Am College, Shahjahanpur Vs. University of Agra and Another, , All Saints High School, Hyderabad and Others Vs. Government of Andhra Pradesh and Others, , A.P. Christians Medical Educational Society Vs. Government of Andhra Pradesh and Another, , All Bihar Christian Schools Association and Another Vs. State of Bihar and Others, , A.K.E. Society v. Director of School Education AIR 1989 SC 183, has also no merit. The above and other decisions have been referred by the Supreme Court in its recent judgment in the case of St. John's T.T. Institute (for

Women), St. John's Teacher Training Institute (for Women), Madurai, Vs. State of Tamil Nadu and others, etc. etc., . From the aforesaid decisions the following legal principle emerge:

- (1) The fundamental right declared by Article 30(1) of the Constitution is absolute in terms, but subject to regulatory measures;
- (2) There is no fundamental right under Article 19(1)(g) of the Constitution to establish or administer an educational institution, if recognition is sought therefor;
- (3) The institutions must be educational institutions of the minorities in truth and reality and not mere masked phantoms;
- (4) There is no fundamental right to recognition and any institution seeking recognition should abide by the regulations prescribed by the State as conditions therefor;
- (5) The minority institutions must be fully equipped with educational excellence to keep in step with other institutions in the State;
- (6) The regulations framed by the State cannot abridge the fundamental right of the minorities" and they should be in the interests of the minority insitutions themselves and not based on State necessity or general societal necessities;
- (7) The regulations should be with a view to promoting excellence of educational standards and ensuring security of the services of teachers and other employees of the institutions and in the true interests of efficiency of institutions, discipline, health, sanitation, morality, public order and the like;
- (8) Even unaided institutions are not immune from the operations of general laws of the land such as Contract Law, Tax measures, Economic Laws, Social Welfare Legislations, Labour and Industrial Laws and similar other laws which are intended to meet the need of the Society.

As ruled by the Supreme Court in case of St. John's T.T. Institute (supra) it is clear that the fundamental right declared by Article 30(1) of the Constitution is absolute in terms, but subject to regulatory measures. The regulations framed by the State cannot abridge the fundamental right of the minorities and they should be in the interests of the minority institutions themselves, the regulations should be with a view to promoting excellence of educational standards and ensuring security of the services of teachers and other employees of the institutions and in the true interests of efficiency of institutions, discipline, health, sanitation, morality, public order and the like. The Act of 1978 has been enacted with an object which is amply clear from its preamble, the invalid provisions of the Act, have been struck down in Sidhi Bala Bose case. The valid provisions are not with an object of interfering with the right of administration of the minority educational institutions guaranteed under Article 30(1) of the Constitution but for the purpose of achieving excellence and security of tenure of service of the

teachers right guaranteed under Article 30(1) of the Constitution is two fold; to establish and to administer educational institutions of their choice. The key to the Article lies in the word "of their own choice"". These words indicate that the extent of the right as to be determined, not with reference to any concept of State necessity and general societal interest but with reference to educational institutions themselves, that is, with reference to the goal of making the institutions effective vehicles of education for 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. See *Frank Anthony Public School Employees' Association Vs. Union of India (UOI) and Others*, .

Therefore, judged with the angle of Article 30(1) of the Constitution it cannot be said that the society or institution is free in all respect, in an educational institution, a teacher or other employee must have requisite qualifications and the recruitment should be made in the manner prescribed, all these are regulatory measures and in no way interfere or abridge the right of the management which get 100 percent maintenance grant in respect of those teachers and employees who are approved and employed in the institution. It does not in any manner interfere in the right of the minority to administer the educational institution. The contention that the Principal of the School takes part in the affairs of the internal management of the educational institution, it cannot be said that such principal would be an outsider, but, would be an insider appointed by the institution. See *G.I. College, Shahjahanpur's case* (supra).

As a result of the above discussion the petition is allowed, the selection of Respondent No. 4 is quashed. The Respondent CNI Board is directed to follow the procedure prescribed by the Rules of 1988 for appointing a Principal. Till a regular appointment is made the Respondent No. 4 will continue to hold the office of the Principal as In-charge arrangement. But, CNI Board shall appoint the Principal in accordance with Rules within a period of 3 months.

As regards the petition of the School namely - M.P. No. 1558/94, aggrieved of the appointment and approval on the post of lecturer of Mrs. Pilina Alexander, the petition has been filed by the Principal who is a rival candidate for the post of Principal and not by the CNI Board. Besides no material has been placed before this Court that there was no validly constituted committee for the selection of the candidate for the appointment on the post, therefore, this petition has no merit and is dismissed.

Accordingly, all the three petitions are disposed of with no order as to costs. Security amount, if any, be refunded to the Petitioners.