
(1995) 03 BOM CK 0053
In the Bombay High Court
Case No : Writ Petition No. 28 of 1994

St. Anthony's High School Trust and Another	APPELLANT
Vs	
State of Goa and Another	RESPONDENT

Date of Decision : 31-03-1995

Acts Referred:

Constitution of India, 1950 — Article 30(1)
Goa, Daman and Diu School Education Act, 1984 — Section 20
Goa, Daman and Diu School Education Rules, 1986 — Rule 100, 56, 58, 74, 90

Citation : (1996) 5 BomCR 33

Hon'ble Judges : T.K. Chandrashekhara Das, J; A.C. Agarwal, J

Bench : Division Bench

Advocate : J. Dias, S.A. and S. Shirodkar, S.S. Kantak, for the Appellant; H.R. Bharne, A.G.A., for the Respondent

Judgement

A.C. Agarwal, J.—The petitioner No. 1 is a Trust by name St. Anthony's High School Trust. Petitioner No. 2 is Shri Inacio Almeida Coutinho, a major Trustee of the first petitioner Trust. By this petition they seek to impugn an Order passed by the Government of Goa on 10th January, 1994 purported to have been passed u/s 20 of the Goa, Daman and Diu School Education Act, 1984 (hereinafter referred to as the Act), taking over the management of their School which is being run at Assolna, Goa.

2. A few facts which has led to the filing of the petition may be stated.

The aforesaid St. Anthony's High School is being run since 1921. As far as the first petitioner Trust is concerned, it was formed under a Deed of Trust dated 28th August, 1964 and the management of the School was taken over by the said Trust. During the period 1981 to 1985 one Smt. Irene Ferreira was the principal of the School. When she was appointed Headmistress in 1981 she had superseded Smt. A.M. Almeida who is the Intervenor in the present petition. As her seniority had been superseded, she filed in this Court a Writ Petition bearing No. 56 of 1985. The said petition in due course was rejected as having become

infructuous by passage of time. The said Irene Ferreira was due to retire with effect from 30th April, 1985 and hence the post of Headmistress was to fall vacant with effect from 1st May, 1985. The petitioners on 1st April, 1985 brought this fact to the notice of the Director of Education along with a letter enclosing the minutes of its Departmental Promotion Committee, whereby Mr. Conception Almeida, a teacher who also is junior to Smt. Almeida, was proposed to be appointed to the post of Headmaster. The letter of 1st April, 1985 along with the minutes of the Promotion Committee are annexed to this petition. The minutes show that the Promotion Committee was constituted by two members: (1) Mr. Leo Almeida, a representative of the management; and (2) Mr. Wolfango Mascarenhas, an educationist, being the Principal of Cuncolim United Higher Secondary School. The Committee considered the cases of three graduate trained senior teachers for the post of Headmaster and the Committee found that Shri Conception Almeida was fit to be promoted to the post of Headmaster. As far as the case of Smt. Almeida is concerned, the minutes provided that the Promotion Committee did not consider the selection/promotion of Smt. Almeida to the post of Headmistress due to the following reasons :

"1. The C.Rs. of the teacher are not found to be satisfactory compared to the other teachers.

2. There is enough evidence in her personal file that she has been working against the interest of the school.

3. It is found that the teacher has been working in one of the training institutions for additional monetary benefits without the approval of the management of the school.

4. It is on record that the teacher tried her best to instigate the other members of the staff not to co-operate with the management.

5. The Ex-Principal (Management) viz. late Shri Jose Pinheiro had severely castigated the teacher for her unbecoming behaviour. The entire correspondence about the indiscipline and unbecoming behaviour of the teacher is resting with the department.

6. Non-punctual in reporting on daily duties at School.

7. Non-co-operative inductive arrogant, no inclination to Headmistress.

Under the circumstances, the Promotion Committee proposes the appointment of Mr. Conception Almeida to the post of Headmaster as and when the post falls vacant."

The aforesaid proposal of appointing Shri Conception Almeida as the Headmaster did not receive the approval of the Government. By a communication dated 3rd May, 1985 the Dy. Director of Education, copy of which is annexed to the petition, informed the petitioners that approval for the appointment of Shri Conception Almeida as Headmaster cannot be granted since senior most trained

graduate teacher namely Smt. Almeida has been bypassed without tangible reasons. In view of disapproval of the appointment of Shri Conception Almeida, the petitioners held a second Promotion Committee meeting of 14th May, 1985. This time the committee comprised of the management representative which was other than the one which constituted the Committee on 1st April, 1985. This meeting once again reaffirmed the decision of the earlier Committee and decided upon the appointment of Shri Conception Almeida as the Headmaster. When the said decision was intimated to the Government, the Director of Education by his communication dated 18th October, 1985 called upon the petitioners to reconsider the case of Smt. Almeida for promotion by ignoring the adverse remarks in her C.Rs. A copy of the aforesaid communication dated 18th October, 1985 which is annexed to the petition. Accordingly the petitioners on 22nd August, 1986 held a third Promotion Committee meeting. The respective merits of the three aforesaid candidates was reconsidered and the Committee once again reaffirmed its earlier decision to promote Shri Conception Almeida as the Headmaster. This led to a memorandum dated 24th February, 1987 being issued by the Director of Education against the petitioners to show cause why the Grant-in-aid should not be withheld and/or why the School should not be de-recognised. A copy of the memorandum is annexed to the petition. The petitioners on 25th May, 1987 sent a representation to the Hon"ble Governor of Goa, complaining of unnecessary interference by the Education Department over the appointment of Headmasters of the School. By the representation the petitioners justified the appointment of Shri Conception Almeida in preference to Smt. Almeida. Copy of the representation is annexed to the petition. By an Order passed on 22nd September, 1987 the Director of Education imposed a penalty cut of 25% in the Maintenance grants of the said School (other than salary part) for the year 1987-88 for refusing to fill up the post of Headmaster as per its earlier directions. Copy of the order is annexed to the petition. Taking exception to the above Order the petitioners preferred an appeal before the Administrative Tribunal being Education Appeal No. 5 of 1987. By judgment and order dated 5th December, 1990 the appeal was allowed. The appointment of Shri Conception Almeida was approved and the impugned order cutting 25% in the Maintenance grants was set aside. It was further found that the memorandum being the show cause notice did not conform to the principles of natural justice and therefore also it was held that the impugned withholding of the maintenance grants was not justified. While disposing of the appeal the Tribunal was pleased to observe that in case the respondents are of the opinion that there is still a ground to proceed against the appellant then they are required to issue a proper show cause notice in that regard and thereafter proceed to decide the matter in accordance with law.

3. Acting on the aforesaid liberty, the Director of Education issued a fresh show cause notice dated 25th June, 1991 on the very same grounds which formed the subject matter of the earlier memorandum dated 24th February, 1987. A copy of the show cause notice is annexed to the petition. The petitioners by their reply

dated 24th July, 1991 showed cause. In the show cause notice dated 25-6-1991 the department reiterated the demand of the Government to appoint Smt. Almeida as Headmistress. The petitioners inter alia replied that the post had already been filled in and was not vacant. Moreover, the Administrative Tribunal had upheld the appointment of Shri Conception Almeida. Nothing happened for a considerable time thereafter. On 23rd April, 1993 the Government issued yet one more memorandum. By the said memorandum it was alleged that the petitioners had been found persistently flouting the directives issued by the Directorate of Education in the matter of the administration of the said High School, thereby mismanaging the affairs of the school in a manner prejudicial to the public interest. Following instances of such mismanagement were quoted.

First related to the appointment of Shri Conception Almeida by superseding Mrs. Almeida. Despite the Department disapproving the said appointment, the management had adamantly retained Shri Conception Almeida in the office of Headmaster of the School without approval or sanction. Mrs. Almeida had availed leave for a period from 28-1-1991 to 8-2-1991. Mrs. Almeida had sent two notes dated 28-1-1991 and 5-2-1991 to the management, informing the compulsive circumstances of her remaining away from duties. Despite this the management treated the said period as absence without leave and issued show cause notice as to why the absence should not be treated as break in service. The Department by its letter dated 23rd April, 1992 directed the management to accord leave to the said teacher for the said period as the case fell within the provisions of Rule 100(a)(vii) of the Goa School Education Rules, 1986. Despite repeated correspondence in this behalf, the management has failed to comply with the said instructions.

The further ground incorporated in the memorandum is in regard to the failure of the management to accord selection scale to Smt. Almeida at the proper time, the same was accorded at a belated stage i.e. with effect from 1st January, 1986, whereas Shri Conception Almeida who was junior to her was granted selection grade with effect from 8th July, 1983. Despite the anomaly having been brought to the notice of the management, the management has failed to set right the injustice meted out to Smt. Almeida. The memorandum called upon the management to show cause as to why the management of the School should not be taken over as per the provisions of section 20 of the Act for acting to victimise the aforesaid Smt. Almeida for over 12 years, causing unhealthy situation in the school un-conducive for academic activities and in turn prejudicial to the public interest. By reply dated 18th May, 1993, the petitioners showed cause, contending inter alia, that the notice is not issued because of public interest, but is issued in private interest of one teacher and at her behest. It further asserted that section 20 of the Goa, Daman and Diu School Education Act, 1984 was inapplicable and the show cause notice is mala fide and is issued in colourable exercise of power. The petitioners further pointed out that the aforesaid Act was not in existence on the date of the appointment of the Headmaster and the appointment was made under the provisions of Grant-in-Aid Code wherein no

approval was necessary from the Department for such an appointment. It further pointed out that the appointment had already been approved by the Administrative Tribunal. The memorandum had raised the very same issues and the same were liable to be withdrawn.

4. By order passed on 10th January, 1994 by the Government under sub-section (1) of section 20 of the Act the impugned order taking over the management of the school was passed. A copy of the order is annexed to the petition. The main grounds for taking over the management are two in number: (1) not promoting Smt. Almeida as per the directions of the Government; and (2) not granting 12 days leave to Smt. Almeida. Taking exception to the aforesaid order the petitioners have preferred the present petition.

5. Shri Kantak, learned Advocate appearing in support of the petition has urged that the petitioners are a minority institution and hence are free to appoint and promote its teaching and non-teaching staff and the Government has no role to play or interfere in the free management of the school as the same would infringe their fundamental right conferred by Article 30(1) of the Constitution of India. Shri Kantak has next contended that even if the aforesaid contention is ignored the impugned order of taking over the management cannot be sustained on merits of the case. He has however elaborated on the second aspect first and has requested us not to go into the first point in case the petition is found to be meritorious on the second, as the very question is now pending consideration by a larger Bench of the Supreme Court. He has pointed out that in the case of T.M.A. Pai Foundation and Others (II) Vs. State of Karnataka and Others, . The Supreme Court has raised the following three questions for being decided by a larger Bench. The questions are :

"(1) What is the meaning and content of the expression "minorities" in Article 30 of the Constitution of India ?

(2) What is the meaning of the expression "Minority Educational Institution" and what is the indicia to determine whether an educational institution is a Minority Education Institution?

(3) Whether the decision of this Court in St. Stephens is right in saying that Article 30 clothes a Minority Educational Institution with the power to admit students by adopting its own method of selection and that the State or the affiliating University has no power to regulate admission of students to such Minority Educational Institution even while permitting the Minority Educational Institution to admit students belonging to the relevant minority to the extent of 50% of its intake capacity?"

After framing the above questions, the Supreme Court observed as under :---

"2. With regard to the third question, we think, we must briefly indicate the reasons for reference to the larger Bench. In St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc., , it is held that it is not permissible for the

State or the affiliating University to provide that admissions to Minority Educational Institutions should also be on the basis of merit as determined in a joint/common entrance test and that the Minority Educational Institution too must draw its students from the common pool on the basis of merit. We entertain serious reservations with respect to the said holding. So long as the Minority Educational Institution is permitted to draw students belonging to that minority to the extent of 50% seats even by going down the merit list, we see no reason why the State/affiliating University cannot stipulate that the general students as well as minority students must all be drawn only from the common merit pool and that even the minority community students must also be admitted on the basis of inter se merit determined on the basis of common/joint entrance test. Article 30, in our opinion, does not clothe a Minority Educational Institution with the power to adopt its own method of selection of students. It is not a part of the minority character of the Institution. The said requirement is but a piece of regulation which the State/affiliating University can prescribe in the interest of fairness and maintenance of standards. The order dated 24th September, 1993, staying admission of students to Minority Educational Institutions, is vacated."

The matter thereafter appeared before a larger Bench consisting of seven Judges on 5th April, 1994 when the following observations were made, Dr. T.M.A. Pai Foundation and others Vs. State of Karnataka and others, :-

"When the matters were taken up on March 16, 1994, the Court felt that it was necessary to reframe the first two questions. The hearing of the matters was, therefore, adjourned to March 18, 1994, on which date the questions requiring consideration by this Bench have been reframed to highlight the several aspects of the claims put forward by the petitioners. The claim of being a "minority" - whether based on religion or language - and the claim of being a "minority educational institution" put forward by the petitioners cannot be pronounced upon without first ascertaining what the said expressions connote and signify. Having regard to the importance of the questions involved we consider it appropriate to issue notice to the Attorney General of India as well as the Advocates-General for the States. It would, therefore, not be feasible to take up the hearing of these matters before the Court closes for the long vacation. Since the process of selection of candidates for admission for the next academic session is to commence soon, it is necessary to pass an interim order governing admission to the professional courses in minority educational institutions for the next academic session."

The above petitions we are informed are pending consideration of the Supreme Court.

6. In view of this position we will now proceed to consider the merits of the second contention in regard to the merits of the impugned order of taking over the management of the School by the Government. The said action has been taken in exercise of the power conferred by section 20 of the Act. The said section appears in Chapter VII of the Act which deals with taking over

management of school. This section provides for 7 clauses which authorises the Administrator to take over the management of a recognised school. They are :-

"the managing committee or manager of any recognised school :---

(i) has contravened any provision of this Act or of any rule or order made thereunder, or

(ii) has neglected to perform any duty or obligation imposed on it by or under this Act, or

(iii) has mismanaged the affairs of the school or has misappropriated or has misapplied any money standing to the credit of any Fund of the School, or

(iv) has managed the affairs of the schools in a manner prejudicial to the public interest, or

(v) has omitted or neglected to pay its share towards the medical facility, pension, gratuity, provident fund, and other prescribed benefits of the employees of the school, in accordance with the provisions of sub-section (2) of section 13, or

(vi) has closed down the school or any class or section of the school in contravention of the rules made under this Act or any order, direction issued thereunder, or

(vii) has made a written representation expressing its inability to run the school, and that it is expedient in the public interest or in the interests of school education or in order to secure the proper management of the school to take over the management of such school,"

The provisions of section 20 we find is an extreme step to be resorted in rare and exceptional cases when no alternate remedy is to be found. It is a step to be resorted in public interest and not to vindicate individual interests. In *Babu Ram Verma v. State of Uttar Pradesh through Commissioner and Secretary and others* 1971 S.L.R. 649, the Allahabad High Court observed:

"What is the meaning and scope of "Public interests"? Public interest in common parlance means an act beneficial to the general public. An action taken in public interest necessarily means an action taken for public purpose, public interest and public purpose are well-known terms, which have been used by the framers of our Constitution in Articles 19, 31 and 304(b). It is impossible to precisely define the expression "public interest" or "public purpose". The requirements of public interest vary from case to case. In each case, all the facts and circumstances would require a close examination in order to determine whether the requirements of public interest or public purpose were satisfied. In *Kalyani Stores v. State of Orissa*, validity of a notification issued u/s 27 of the Bihar and Orissa Excise Act (2 of 1915) imposing a new rate of Rs. 70/- per L.P. Gallan as duty on liquor was challenged on the ground that it was violative of Article 304 of the Constitution. While discussing the reasonableness of the restriction and the

requirement of public interest Shah J., speaking for the Court, made the following observations:-

"Reasonableness of the restriction would have to be adjudged in the light of the purpose for which the restriction is imposed, that is, "as may be required in the public interest". Without entering into an exhaustive categorization of what may be deemed required in the public interest", it may be said that restrictions which may validly be imposed under Article 304 are those which seek to protect public health, safety, morals and property within the territory."

The requirement of public interest in the context of Government Service may well be the efficient working of the Government machinery. It cannot be questioned that the Public interest would well be served if there was efficiency in public administration and Government service, and in order to effectuate that purpose, if the Government was bona fide satisfied that a particular Government servant should be compulsorily retired, that would be in the public interest.

5. In *The Union of India v. J.N. Sinha*, an order of compulsory retirement passed in public interest was held valid. Their Lordships of the Supreme Court held that the right conferred on the appropriate authority to retire a Government servant compulsorily was an absolute one and that power could be exercised subject to the conditions mentioned in the rules, one of which was that the concerned authority must form an opinion that it was in public interest to do so. Upholding the validity of the order of compulsory retirement of Shri J. N. Sinha, their Lordships made the following observations:-

"There is no denying the fact that in all organizations, there is good deal of dead wood. It is in public interest to chop off the same. Fundamental Rule 56(j) holds the balance between the rights of the individual Government servant and the interests of the public. While a minimum service is guaranteed to the Government servant, the Government is given power to energise its machinery and make more efficient by compulsorily retiring those who in its opinion should not be there in public interest."

7. Before an action u/s 20 can be justified not only one or the other of the seven grounds appearing in Section 20 have to be made good, but also it has to be found that the action of taking over the management is expedient in public interest or in the interest of the school education or in order to secure the proper management of the school. It is only when both these ingredients are held to have been satisfied that an action of taking over management u/s 20 of the Act can be justified.

8. Now let us examine the facts of the present case in order to find out whether the respondent Government has made good its case for taking over the management.

9. Shri Kantak, learned Advocate appearing for the petitioners has strenuously urged that the appointment of Headmaster is the exclusive province of the

management and the Education Department has no role to play. The Department is concerned only with granting approval to the appointment already made. He has further contended that if an appointment made by the management is not approved, the Department may at best withhold the salary grant of the Headmaster. It will not be open to the Department to resort to the provisions of section 20 and take over the management. Similarly grant or refusal of leave of 12 days which is also made a ground for the take over, according to Shri Kantak is also the sole province of the management. It is a matter solely between the management and the concerned teacher. The Department is not concerned. Moreover, neither of the grounds are enumerated in the seven grounds contained in section 20 for justifying the order of take over. As far as the supersession of Smt. Almeida is concerned, she had been earlier superseded by Smt. Irene Ferreira when the latter was promoted Headmistress in 1981. The said suppression was then approved by the Department. The said supersession was challenged by Smt. Almeida by filing Writ Petition No. 56 of 1985. By an order passed on 24th June, 1985 the writ petition was rejected having become infructuous on account of retirement of Smt. Irene Ferreira. As far as the present supersession is concerned the same was on account of the appointment of Shri Conception Almeida. The said promotion of Shri Conception Almeida was made before the coming into force of the Act which has come into force on 14-11-1986. The said promotion as in the earlier case was also made under the provisions of the Grant-in-Aid Code. The validity or otherwise of the promotion of Shri Conception Almeida was the subject matter of appeal before the Administrative Tribunal. As far as the Order of the Tribunal is concerned, the same has approved the order promoting Shri Conception Almeida. It is therefore not open to the Department to rake up the issue once again at this belated stage and pass an order of taking over of management specially when the earlier show cause notice dated 25th June, 1991 was not pursued. For the foregoing reasons according to Shri Kantak the impugned order of 10th January, 1994 deserves to be quashed.

10. As against this, Shri Bharne, learned Addl. Government Pleader appearing for respondents No. 1 and 2, Government of Goa and the Director of Education and Shri J. Dias, learned Counsel appearing for the Intervenor Smt. A. Almeida have made a gallant effort to save the order from the attack mounted by Shri Kantak. According to them the order for taking over the management of school is perfectly justified and does not call for any interference in the present petition. They have conceded that the Christian community is a minority community. They have also conceded that the present school is run by Christians. However, the same has not been recognised as minority institution and therefore is not entitled protection under Article 30(1) of the Constitution. The School therefore cannot claim impunity from the control of the Department in matters of appointments and promotions. On merits they have pointed out the respective qualifications and experience of the three teachers who were before the selection committee. Inter se the qualifications and seniority appears in the minutes of the promotion

committee and the same are as under:---

It is pointed out that Smt. Almeida who appears at serial No. 1 is the only double graduate having passed her M.Ed. Examination in October, 1969. She has secured her B.Sc. in 1963 and B.Ed. in 1965. As against that, the other two candidates have done their graduation in Commerce and Science in October, 1974 and April, 1975 and B.Ed. in March, 1979 and October, 1983. respectively Besides having acquired higher educational qualifications, she has a much larger experience. In the circumstances there is no justification to have bypassed her legitimate claim and chosen Shri Conception Almeida in preference to her claim. This therefore according to the learned Counsel is a case of extreme injustice meted out to her. They have submitted that she is a victim of regional prejudices and this is apparent from the minutes of the meeting of the Promotion Committee dated 20-1-86 where certain grounds have been mentioned for bypassing the claim of Smt. Almeida. Ground No. 9 provides:

"The Asst. teacher being of Keralite origin cannot very expressly converse in Goa Konkani language. This is a handicap for the Asst. Teacher to deal with the parents of the students."

Since the Department found that gross injustice had been meted out to Mrs. Almeida, it was only just and proper for the Department to have thought it fit to intervene. Selection of a proper, efficient and experienced head of school is of primary importance for the smooth running and management of a school. Imparting education to students is a matter of paramount public interest and is also in the interest of the school education. Securing of proper management of a school as mentioned in section 20 of the Act is a matter of legitimate concern of the Department. If the Department has directed the management of the school to promote Smt. Almeida as Headmistress, the same was to promote the interest of the school. If the management has failed to comply it has in effect mismanaged the affairs of the school and has thereby fallen within the mischief of sub-sections (iii) and (iv) of section 20(1).

11. The learned Counsel has conceded that the order of appointment of Shri Conception Almeida was at a point of time when the Grant-in-Aid Code was in force and the Education Act and the Rules were not then in the field. However, refusal on the part of the management to set right the wrong done was squarely within the ambit of the Education Act and the Rules. The said refusal therefore attracts the mischief of section 20 of the Act. The action of the Department to take over the management is an action taken bona fide and the same deserves to be upheld. According to the learned Counsel the present petition is devoid of merit and the same deserves to be dismissed.

12. The Education Act of 1984 and the Rules of 1986 have both been brought into force with effect from 14th November, 1986. It is undisputed that the school in question is an aided school. It receives grant-in-aid from the Government. Prior to 14-11-86 it was governed by the Grant-in-Aid Code and thereafter by the

Education Act and the Rules. It would therefore be advisable to peruse the relevant provisions which have a bearing on the controversy at hand. Section 20 of the Act which has been the subject matter of serious debate between the counsel appearing before us in so far as it is relevant, provides as under:---

"20. Taking over management of school.-

1) Whenever the Administrator is satisfied that the managing committee or manager of any recognised school,-

i) has contravened any provision of this Act or of any rule or order made thereunder, or

ii) has neglected to perform any duty or obligation imposed on it by or under this Act, or

iii) has mismanaged the affairs of the school or has misappropriated or has misapplied any money standing to the credit of any Fund of the school, or

iv) has managed the affairs of the schools in a manner prejudicial to the public interest,

v) has omitted or neglected to pay its share towards the medical facility, pension, gratuity, provident fund, and other prescribed benefits of the employees of the school, in accordance with the provisions of sub-section (2) of section 13, or

vi) has closed down the school or any class or section of the school on contravention of the rules made under this Act or any order, direction issued thereunder, or

vii) has made a written representation expressing its inability to run the school.

And that it is expedient in the public interest or in the interests of school education or in order to secure the proper management of the school to take over the management of such school, he may, after giving the managing committee or the manager of such school a reasonable opportunity of showing cause against the proposed action, take over the management of such school for a limited period not exceeding three years:"

13. As far as the present controversy is concerned, reliance is placed on sub-clauses (iii) and (iv) of sub-section (1) of section 20. Hence the question for reconsideration is whether the Department has succeeded in establishing that the management of the school has mismanaged the affairs of the school or has managed the affairs of the school in a manner prejudicial to the public interest.

14. We next have Rule 56 which deals with stoppage, reduction for suspension of grant-in-aid. Sub-Rule (a) of R. 56 provides:--- 56. Stoppage, reduction for suspension of grant-in-aid Subject to the provisions of Rule 52, any Grant-in-aid to school may be stopped, reduced or suspended at any time by the Director of Education. a) if the managing committee of the school fails, without any reasonable excuse, to comply with any provision of the Act, or these rules or any

instructions given by the Director of Education."

It is the contention of the Department that the management has been guilty of the aforesaid provision in not complying with its directions, whereas according to Shri Kantak, even if this was so, this can only justify the stoppage of grant-in-aid and will not justify an action of taking over of management u/s 20. In our judgment, the submission of Shri Kantak is justified on the plain reading of the Rule. The consequence of non-compliance of directions issued by the Deputy Director of Education can only have the effect as provided in the Rule of stoppage, reduction or suspension of grant-in-aid. The same do not justify an action u/s 20. Before an action u/s 20 can be undertaken the case has to fall in one of the seven clauses provided in section 20 and hence the mere refusal to comply with the directions given by the Director of Education cannot and will not attract the provisions of section 20.

15. We next have Rule 74 of Goa Education Rule which appears in Chapter VIII dealing with recruitment and terms and conditions of service of the employees of the private schools other than unaided minority schools. Rule 74 provides:

"74. Recruitment and promotion - (1) Nothing contained in this chapter shall apply to an unaided minority school."

Sub-rule (6) of Rule 74 provides:

"(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, but however in the case of minority schools the decision of the managing committee shall be final."

The above Rule it would appear has left the matter of selection and of promotion to the management of the school. As far as this aspect is concerned namely of appointment and promotion, the Department has been given no say in the matter. The Department comes into the picture only in the event of there being a difference of opinion between the selection committee and the managing committee of the school.

16. We next have Rule 90 dealing with confidential reports. Sub-Rule (5) or Rule 90 provides for appeal against adverse remarks made in the confidential reports. It provides:-

"(5) Any employee of an aided school who is aggrieved by any adverse entry in his Confidential Report may, within 30 days from the date on which such adverse entry is communicated to him, prefer an appeal against such entry to the Dy. Education Officer of the Zone/District and the Dy. Education Officer may, after giving to the Managing Committee the reasonable opportunity of showing cause

make such alterations in the entries in the Confidential Report as he may think fit and may, for that purpose require the Managing Committee to produce the concerned Confidential Report."

In the present case the management has relied upon several adverse remarks appearing in the C. Rs. of Smt. Almeida and has thereafter found fit to bypass her claim for being promoted as Headmistress. It would be reasonable to presume that the management of the school in compliance of the provisions of Rule 90 must have in ordinary course communicated the adverse remarks to Smt. Almeida. It has not been pointed out that being aggrieved by the adverse remarks she was field any appeal as provided in the above provision. The adverse remarks therefore appear to have stayed in the field. In the circumstances we do not find fault with the management if it has chosen to rely on the C. Rs. as also the C. Rs. of two other candidates while making selection for promotion to the post of head of School.

17. It will not be out of place at this stage to make a reference to certain provisions appearing in the Grant-in-Aid Code which are relevant on the point of appointment and confirmation of Headmasters. Rule 58 of the Grant-in-Aid Code provides:---

"Rule 58. Appointment of Headmasters---The Management of a school should give very careful consideration to the question of filling the post of the Head of a school and should appoint only the best qualified and most competent person among those available for appointment to this post.

Managements should make the appointments of Heads only on probation for a year in the first instance and communicate full particulars on their account to the Director of Education. No Head of a school shall be confirmed without the approval of that officer.

The person to be appointed as the Head must have at least five years teaching experience in secondary schools except in special cases where the rule may be relaxed by the Director at his discretion. In such cases, Director's previous approval must be obtained for the relaxation.

While making the appointment of Headmaster the managements should give due consideration to the claims of the senior and qualified teachers already working in the school and unless the seniormost of the staff is unsuitable for the Headmaster's post due to tangible reasons, his claims should not be set aside."

The above rule 58 also makes it abundantly clear that the province of appointment of Headmasters is entirely with the management of the school. The Department comes into the picture only at the stage of confirmation of the teacher as a Headmaster. The above Rule undoubtedly makes allowance for the seniority of teachers. The Rule provides that due consideration should be given to the seniority and the Rule further provides that unless the seniormost of the staff is unsuitable for the Headmaster's post, due to tangible reasons, his claim

should not be set aside. In the instant case the claim of Smt. Almeida has been bypassed and the management has given cogent reasons for bypassing her claim and this is permitted by the aforesaid Rule. We will go into the details of the reasons given at a later stage. It is enough at this stage to notice that the management of the school was conscious about the claim of Smt. Almeida to be appointed Head of the School on account of her seniority. Despite this, the management has chosen not to promote her but to promote Shri Conception Almeida. If the discretion to appoint the Head of school rests entirely with the management and if the decision has been arrived at bona fide and after following the due procedure, the same cannot be faulted. As far as the Department is concerned it is not made a Court of appeal over the discretion of the management. All that it is entitled to do is to find out whether the claim of a senior has been bypassed for good reasons. It is not enough that the Department sitting as an authority of first instance may have taken a contrary view. Unless the decision is shown to be a colourable exercise of discretion or is shown to have been arrived at for extraneous considerations, the same cannot be faulted. Unless the discretion of the management is shown to be tainted with the aforesaid vice, it will not be open to the Department to refuse to accord approval to the appointment made by the management.

18. We next have in the Grant-in-Aid Code Rule 149 which deals with the withdrawal of recognition. The same provides:

"Recognition once given may be withdrawn at any time by the Director or by Government for breach of any of the conditions in Rule 148 above or failure to fulfil the provision of Rule 147."

Rules 147 and 148 provide as under:---

"R. 147. Condition for Recognition: Before granting recognition the Director shall be satisfied that-

- i) the management of the institution is in the hands of a competent and reliable body;
- ii) the staff employed is competent and adequate, having regard to the objects of the institutions;
- iii) the financial resources are adequate to meet the necessary expenditure.
- iv) the activities of the institution are such as not to involve it in unhealthy competition with any existing and recognised institutions of the same class in the neighborhood ;
- v) the records of the institution are maintained properly;
- vi) the working of the institution is generally as to justify recognition by the Department; and
- vii) the institution is not run on a profit-making basis.

R. 148. Refusal of recognition-Recognition will not be given to an institution-

- a) which denies admission to any person on grounds only of religion, race, caste, language, sex or any of them.
- b) which requires a person attending it to take part in any religious instruction that may be imparted or to attend any religious worship that may be conducted in the institution or in premises attached thereto, unless such person or, if such person is a minor, his guardian, has given consent thereto, or
- c) whose staff or students take part in or subscribe in aid of or assist in a political or communal movement which is un-constitutional or involves the use of violence or the dissemination of ideas of communal disharmony or the like."

A perusal of the above Rules would reveal that the withdrawal of recognition can only be made on grounds provided in Rules 147 and 148. Breach of the provisions of the aforesaid Rules 147 and 148 which have no application in the present case can at best have the result of withdrawal of recognition. These can have no bearing in the matter of taking over of management. As far as Grant-in-Aid Code is concerned, there is no provision for taking over of management. Hence when the management had promoted Shri Conception Almeida in supersession of the claim of Smt. Almeida, there could not have been any scope for taking over the management.

19. As far as the impugned promotion is concerned, we have on record the minutes of the meeting of the Promotion Committee held on 1st April, 1985. The Committee comprised of Shri Leo Almeida, a representative of the management and Shri Wolfango Mascarenhas, an educationist and Principal of Cuncolim United Higher Secondary School. The Committee therefore was a valid Committee as required under the Circular dated 20th November, 1982 issued by the Government of Goa, Daman and Diu, Directorate of Education. The minutes further show that the Committee was made aware of the respective educational qualifications and experience of the three teachers who were under consideration. It further shows that the Committee dropped out of consideration the claim of Smt. Almeida and considered the respective merits of the other two candidates only. The Committee has proceeded to give reasons for having bypassed the claim of Smt. Almeida by giving the following reasons:-

"1. The C.Rs. of the teacher are not found to be satisfactory compared to the other teachers.

2. There is enough evidence in her personal file that she has been working against the interest of the school.

3. It is found that the teacher has been working in one of the training institution for additional monetary benefits without the approval of the management of the school.

4. It is on record that the teacher tried her best to instigate the other members

of the staff not to co-operate with the management.

5. The Ex-Principal (Management) viz. late Shri Jose Pinheiro had severely castigated the teacher for her unbecoming behaviour. The entire correspondence about the indiscipline and unbecoming behaviour of the teacher is resting with the department.

6. Non-punctual in reporting on daily duties at school.

7. Non-co-operative, inductive arrogant, no inclination to Headmistress.

Under the circumstances, the Promotion Committee proposes the appointment of Mr. Conception Almeida to the post of Headmaster as and when the post falls vacant."

The process of selection was once again undertaken by a fresh selection committee. This time the representative of the management was other than the one in the previous committee. The management representative this time was Shri Assunciacao Inasio Almeida Coutinho. This Committee like the earlier one also decided to bypass the claim of Smt. Almeida and it has given several reasons for doing so. It has observed that the daily muster roll of teachers attendance is written on day to day basis by the teachers at the time of entry and at the time of exit and signed by them for its correctness. It further shows that Smt. Almeida who is a resident of Margao does not attend school in time and she does not pay heed to the school regulations despite written instructions. On the contrary she takes pleasure in defying the management. Habitual late reporting was setting a bad example to the younger teachers, causing indiscipline in the whole school. An Asst. teacher is expected to remain present at least 10 minutes before the scheduled time of 8.10 a.m. Instead Smt. Almeida takes pleasure in regularly reporting late. The time lost in irregularities and sickness of Smt. Almeida are noted as under:---

"Year 83-84 (Sept. 83 - April, 84) 25.01 hours lost.

"84-85 (June, 84-April 85) 49.33 "

"85-86 (10th June, 85-21-6-85) 1.35 "

"85-86 (22-6-85 - 31-7-85) 39 days lost on sick leave.

"85-86 (1st Aug. 85 - 4-1-86) 2 hours lost

A further entry shows Smt. Almeida has been guilty of showing wrong time of entry in the muster roll, whereas she had arrived at 8.20 a.m., she had entered the time of entry as 8.10 a.m. The minutes further show that Smt. Almeida had suffered acute diabetic neuritis from 22nd June, 1985 to 31st July, 1985 and had remained on sick leave for 39 days. She had been under doctor's treatment upto that date and the committee had opined that this sickness could be controlled but was not curable. If the sickness recurs the progress of the School and the students would vigorously suffer.

20. The minutes further provides that Smt. Almeida was teaching in a private institution; though permission had been given for a period, the same had been withdrawn. Despite the withdrawal of permission and warning, she continued teaching outside and this was in violation of Rule 73 of the Grant-in-Aid Code. Moreover, Smt. Almeida was found to have no trust by the late founder Principal Shri Jose Pinheiro. In his letter dated 31st August, 1981 he has expressed no trust and confidence in her for appointment as Headmistress of the school. Smt. Almeida was found to have been working against the management of the School from the time she was denied promotion in 1981. She has tried to conspire with the other members of the staff to rebel against the management and form an education society and thereby dislodge the management. The entire community of the staff members disagreed with her and her unbecoming attitude. None of the staff members have a good impression of her.

21. Similar is the position in respect of the third selection committee held on 22nd August, 1986. It is not necessary to detail the reasons found by the Committee to bypass the claim of Smt. Almeida, it is enough to observe that the committee once again had reconsidered the promotional issue and has for reasons recorded chosen to confirm the decision of the earlier two selection committees.

22. In our judgment, it is not possible to find fault with the selection made by the management. Neither the Department nor this Court can sit in appeal over the decision. The discretion vests entirely with the management; we do not find any good reason exists that could justify the Department to set aside that discretion.

23. As far as the impugned action is concerned, the Department initially on 24th February, 1987 issued a memorandum calling upon it to show cause why the maintenance grants should not be cut or why the School should not be derecognized for failure to appoint Smt. Almeida as the Head of School. By a reply dated 22nd May, 1987 the management showed cause. It gave reasons for not appointing Smt. Almeida. By an order passed on 22nd September, 1987 the Department imposed 25% cut in the maintenance grants (other than the salary part) for the year 1987-88. Being aggrieved by the aforesaid order, the management of the school preferred an appeal to the Administrative Tribunal being Education Appeal No. 5/87. By judgment and order dated 5th December, 1990 the appeal was allowed. As far as the controversy at hand is concerned, this is what has been stated by the Tribunal. After reproducing the relevant Circular No. 169 dated 20th November, 1982 it observed:-

"From above, therefore it is clear that the Circular-exhibit "G" gives power to the Management of the school to fill up all vacancies either temporary or permanent arising out of superannuation,.....the management shall appoint its own Selection Committee and in case of selection of the Headmaster, the Committee shall consist of a representative of the Management and one expert shall be appointed by the Management."

The Tribunal has finally observed:---

"In that position, therefore in the present case no fault can be found with the Selection Committee that was constituted neither fault can be found for filling up of the vacancy on probation basis without prior approval of the respondent."

It would thus appear that as far as the controversy regarding the superseding Smt. Almeida was concerned and of the appointment of Shri Conception Almeida is concerned, the same was held to be justified. The Tribunal however has given a further finding that the Department namely the Director of Education had failed to give reasonable opportunity to the appellant before it namely the management of the School before taking final action under Rule 56 of the Rules. It therefore found that the impugned order was bad in law and had to be set aside. Before concluding, the Tribunal observed:---

"Before we part with this matter, we would like to add that in case the respondent is of the opinion that there is still a ground to proceed against the appellant then he is required to issue a proper show-cause notice in that regard to the appellant. Upon receipt of a reply to that notice and in case the respondent is not satisfied with the reply, he is required to give hearing to the appellant before passing any order against the appellant. Upon such hearing, the respondent shall decide the matter in terms of law."

Finally the appeal filed by the Management of the school was allowed and the order cutting 25% of the grant-in-aid was set aside. Taking advantage of the aforesaid observations found in para 11 of the Judgment of the Tribunal, the Department has once again chosen to rake up the issue and has issued a show cause notice dated 25th June, 1991 and this was soon after the management had by its letter dated 5th April, 1991 called upon the Director of Education to grant approval of the appointment of Shri Conception Almeida. Instead of granting approval which the management richly deserved, the Department chose to issue the aforesaid show cause notice of 25th June, 1991. By reply dated 24th July, 1991, the Management showed cause. By letter dated 13th August, 1991, the management was called for a meeting. Nothing took place thereafter for a considerable period. The Management on 31st October, 1991 again called upon the Department to grant approval. By an intimation dated 21st November, 1991, the Department declined to grant approval. The action which was sought to be raised by show cause notice dated 25th June, 1991 was not perused and the very same issue once again raked up by a fresh notice dated 23rd April, 1993. The Management by its reply dated 8-5-93 showed cause. By the impugned order passed on 10th January, 1994, the management of the school was directed to be taken over.

24. In our view the aforesaid action which is purported to be taken under the provisions of Section 20 of the Act is not only not bona fide, but is virtually undertaken as a matter of witch hunting. As far as the Administrative Tribunal is concerned it had found the order of the management in order. The said order

holds the field upto date as the same had not been impugned either by the Department or by Smt. Almeida. In the circumstances it was not open to the Department to have issued fresh show cause notices dated 25th June, 1991 and 23rd April, 1993. As far as the earlier show cause notice is concerned, the same was not pursued and no orders were passed and it would be reasonable for one to expect that the Department was satisfied with the reply of 24th July, 1991 and the explanation offered in the meeting called by the Department's letter dated 13th August, 1991 and held on 26th August, 1991. But this was not to be. The Department has chosen to issue yet another show cause notice after a lapse of almost a year and half. We have perused the order passed u/s 20 and we have no hesitation in holding that the same cannot be sustained both on facts and in law. We do not find that the case can be brought under any of the clauses found in section 20(1) of the Act. The impugned order dated 20th January, 1994 therefore deserves to be quashed and set aside. In view of the finding arrived at on this issue, we do not propose to give a finding on the minority issue and the same is left open.

25. For the foregoing reasons, the petition succeeds. The impugned order passed on 10th January, 1994 by the Government is quashed and is set aside. Rule is made absolute in terms of prayer Clause (a) of the petition. Respondents No. 1 and 2 will pay the petitioners the costs of the petition.