

\$~29

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

*Reserved on: 25.07.2019*

*Pronounced on:01.10.2019*

+ W.P.(C) 10549/2018 & CM No.41174/2018

KIRAN JAIN

..... Petitioner

Through Mr. A.P.S.Ahluwalia, Sr. Advocate  
with Mr. S.S. Ahluwalia and Mr.  
Mohit Bangwal, Advocates

versus

GOVERNMENT OF NCT OF DELHI & ORS. .... Respondent

Through Ms. Meenakshi Midha with Mr. Kapil  
Midha and Ms. Abhivandana  
Chowdhury, Advocates for  
Respondent No.3

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**J U D G M E N T**

1. Vide the present petition, the petitioner seeks quashing of the orders/letters dated 10.08.2018 and 18.08.2018 issued by the respondent nos.2&3, terminating the appointment of petitioner as TGT (Hindi) and further seeks directions to the respondents thereby allowing the petitioner to continue in service as TGT (Hindi), being duly selected and appointed for the said post in respondent no.3/school. Petitioner also seeks directions for

the respondents to pay the salary to the petitioner since the date of her joining i.e. 16.01.2018 till date and treat her in continuous service.

2. Brief facts of the case are that the respondent no.3 school invited applications for appointment of teacher through a newspaper advertisement dated 26.08.2017. The petitioner applied for the same and was selected vide appointment letter dated 18.12.2017 for permanent post. Consequently, the petitioner joined the school on 16.01.2018 and continued to teach in the school till 18.08.2019 when the above mentioned order of termination was passed by the school.

3. It is further the case of the petitioner that respondent no.3/school duly intimated the Section Officer, Accounts Department of Directorate of Education about the selection of the petitioner as TGT Hindi and requested for the grant in aid for her salary to the extent of 95%, the school being aided. However, the respondent no.2 through its letter dated 31.01.2018 to the respondent no.3/school asked for certain queries regarding which due intimation was sent by the school vide letter dated 05.02.2018. Subsequently, vide letter dated 10.08.2019, the respondent no.1&2 informed the school that appointment of the petitioner was not in order and, therefore, there is no question of grant of sanction of salary and she must be relieved.

Through a letter dated 18.08.2018, the respondent no.3/school called upon the petitioner regarding termination of her employment and hence the present petition was filed and the orders dated 10.08.2019 and 18.08.2019 are being challenged.

4. Mr. A. P. S. Ahluwalia, learned senior counsel for the petitioner submits that the primary legal point involved in the present writ petition; is whether the petitioner can be allowed to suffer for any irregularity, if at all, in the procedure of appointment as TGT (Hindi) when the respondent nos.1 & 2 have remained silent for more than seven months in pointing out any discrepancy. The legal provisions applicable to the case are as follows:-

*i. Rule 96(3) of DSE Rules, 1973 specifically provides that the procedure provided for the constitution of Selection Committee as well as the selection of the teacher is not applicable to an Aided Minority School, meaning thereby that the nominees of the Director of Education present in the Selection Committee simply act as advisers and do not have power to vote and actually control the selection of an employee. (please refer to Rule 96(3A)).*

*It is also provided in Rule 96(6) that Selection committee shall regulate its own procedure. In other words, there are no fetters or any hindrances for the Selection Committee to follow any statutory guidelines or notifications or circulars for the purpose of selecting the employees.*

*ii. Rule 98 provides for the powers of appointing*

*authority. Rule 98(2) second proviso specifically provides that provision of this sub rule shall not apply to a Minority Aided School. In other words, the approval of the Director which is otherwise required as per sub Rule 2 will not be applicable to Minority Aided school. So, any selection made by the Selection Committee of a Minority Aided School and the appointment made by its managing committee shall be final and not to be called in question thereby granting approval or disapproval by Director of Education.*

*iii. It is also provided in Rule 98(4) that Director shall be deemed to have approved an appointment made by the Managing Committee within 15 days from the date on which the particulars of the appointment are communicated if he does not intimate the Managing Committee his disapproval and the person so appointed shall be entitled for his salary and allowance from the date of his appointment.*

5. It is further submitted that in the present case, since no approval of the Director of Education is required, being respondent no.3 school a Minority Aided School, the approval does not arise at all. Though, no approval is required, yet in the alternative it is stated that the Director of Education ought to have communicated his approval or disapproval within 15 days from the date of the intimation received. Undoubtedly, the appointment of the Petitioner as TGT Hindi was communicated to Section Officer (Accounts) on the same day and yet it is the Deputy Director of Education/respondent no.2 who sought certain queries. In other words, the respondent nos.1&2 had the intimation about the appointment of Petitioner

as TGT Hindi and yet slept over the matter till 10.08.2018 and did not communicate their disapproval or any discrepancy in the appointment of the Petitioner. In law, such approval, though not required in terms of Rule 98 (2), second proviso shall be deemed to have been granted since it was never communicated within 15 days from the date of receipt of the first communication. This Hon'ble Court has considered the said issue in several cases which are being enumerated as under:

- a. *Ankur vs. Director of Education: 260 (2019) DLT 185*
- b. *Delhi Tamil Education Association vs. Director of Education: 153 (2008) DLT 261*
- c. *Inder Dev Sharma vs. Government of NCT of Delhi & Ors.: 94 (2001) DLT 422*
- d. *Rajiv Kumar Tomar vs. Government of NCT of Delhi* Writ Petition (C) No 11133/2004 decided by Hon'ble Mr. Justice Vikramajit Sen on 23.03.2005

6. In all the aforesaid judgments, it has been specifically held that if Director of Education fails to accord approval within 15 days, it shall be deemed to have been granted. The petitioner in the present case has worked for 8 months, which cannot be overlooked and the petitioner should not be allowed to suffer. The actions of the respondent nos.1 & 2 are wholly illegal and perverse since they have woken up after 8 months.

7. Learned senior counsel for the petitioner further relied upon the judgment passed by the Hon'ble Division Bench of this Court in *Queen Mary's School thru its Principal vs. Union of India: 185 (2011) DLT 168 (DB):-*

*“14.the view is fortified by Rule 98 which deals with the approval of appointment; it does not apply to Minority Aided Schools as is evident from Rule 98(2) proviso 2 and therefore the Court see no logic in the Minority Aided School being compelled to allow participation of nominee member in the Selection Committee even if their views of votes are not binding. It is further held that Minority Aided School are not bound to adopt the composition of the recruitment committees indicated in Rule 96; they are to adhere to the rules applicable to Unaided Minority school i.e. rules 127-128. It has been further held and declared that Rules 47, 64(1)(b), (e) and 96 of the Delhi School Education Rules are inapplicable to Minority Aided School. Further, Rule 64(1)(g) is inapplicable so far as it mandates such schools to fill the posts without any discrimination or delay. The Court further held that the Minority Aided School shall adhere to the Recruitment Rules and other general norms to the extent they prescribed qualification, experience and other such criteria for appointment as they are simply regulatory.”*

8. Accordingly, the aforesaid law laid down by this Court clearly mandates that the order dated 10.08.2018 is not only perverse and illegal but

have been passed arbitrarily and for no fault of the petitioner, she has not been allowed to continue in the School.

9. Learned senior counsel for the petitioner has pointed out that one other candidate namely Ms. Sonal Bhardwaj was awarded additional marks for having qualification of M. Ed by the Selection Committee despite the rule prescribed by the circular. The marks given to her in the interview were out of 20 instead of 5 as pointed out by the counsel for the Director of Education/respondent no.2. The appointment of Sonal Bhardwaj has been approved by the nominee of Director of Education who sat in the panel for the interview for the post of TGT. The respondent nos.1 & 2 have miserably failed to explain why this discrimination has been done with the Petitioner inasmuch as other candidates have also been given marks out of 20 in interview column but their appointments have been approved. In all, 13 candidates were selected by respondent no.3 for which the respondent nos.1 & 2 had granted approval for aid of these candidates except for the petitioner. Moreover, the appointment of petitioner has been held not to be in order in the second breath. This action of the respondent nos.1 & 2 constitutes arbitrariness and complete perversity which cannot be permitted in law. This fact alone is sufficient for this Court to quash the order dated

10.08.2018 and the subsequent order passed by the School dated 18.08.2018.

10. On the other hand, learned counsel for the respondent nos.1 & 2 submits that short issue before this Court is; whether the appointment of the petitioner herein as TGT (Hindi) while her higher qualification was M.A. (English) was proper? Benefit of additional qualification could be available to her if she had been M.A. (Hindi), the subject of her appointment. Since she was M.A. (English) the benefit of additional qualification was not available to her in terms of Order No.F. DE/15/Act-II/2014/372-391 dated 26.02.2014. It was further submitted that appointment of petitioner by respondent no.3, on the basis of benefit given for additional qualification (by giving additional marks) was bad in law as the same was in violation of the Recruitment Rules and other general norms, to the extent that they prescribed qualification, experience, age and all other criteria for appointment.

11. To strengthen above arguments, learned counsel has relied upon the case of *Queen Marry School (Supra)* whereby this Court directed that management of aided minority schools shall adhere to the Recruitment Rules, and other general norms, for appointment.



12. On the other hand, learned counsel appearing on behalf of respondent no.3 submitted that the prime issue which requires consideration is whether Rule 96 of the Delhi School Education Rules, 1973 is applicable to minority aided schools and further whether the said respondent was bound to follow order dated 26.02.2014 passed by the Directorate of Education/respondent no.2.

13. It is submitted that the aforesaid order passed by the Directorate of Education prescribing the marking scheme for aided schools and also the interpretations of the Delhi School Education Act, 1973 (hereinafter referred to as '*the Act*') does not apply to the school and the purported reasons furnished by respondent no.2 are wholly baseless, misconceived and entirely vexatious. The fundamental right of administration of educational institutions for minorities guaranteed under Article 30 is paramount and is not subject to any entrenched reasonable restrictions as has been repeatedly highlighted in a catena of judgments of the Hon'ble Supreme Court and this Court.

14. Mr. Kapil Midha, learned counsel appearing on behalf of respondent no.3 submitted that the stand taken by Respondent No. 2 in the said petition is not only misconceived and untenable but would also mitigate against the

avowed objectives of the Act and also the landmark judgment of this Court in the matter of *Queen Mary's School (Supra)* wherein this Court settled the legal proposition on the issue of recruitment to minority aided schools while observing that the basic right to recruitment personnel of its choice, is that of the minority aided school management and further explicitly declared that Rule 96 of Delhi School Education Rules, 1973 (hereinafter referred to as 'the Rules) is inapplicable to minority aided institutions. The relevant extract is reproduced herein-below for ready reference:

*“However, the further condition in the rule is that posts shall be filled ‘without discrimination’ as per Recruitment Rules. Now, this latter injunctions cannot be binding upon minority schools, regardless of whether they are aided or not, because their autonomy in appointing teachers of their choice, cannot be interfered with. Similarly, the Recruitment Rules which can apply are those which prescribe minimum qualifications, and pertain to educational standards.....*

*We hold and declare that Rules 47, 64(1)(b),(e) and 96 of Delhi School Education Rules, are inapplicable to aided minority schools.*

15. It is further submitted that the Directorate of Education vide circular dated 07.02.2014 bearing No. F.DE. 15 (Misc)/Act-II/2014/224-239 directed deputy directors of Education to ensure compliance of the order dated

21.11.2011 passed by this Hon'ble Court in the matter of *Queen Mary's School (Supra)*.

16. It was further urged that the Order dated 26.02.2014 passed by the Directorate of Education, Government of Delhi bearing No. F.DE/15/Act-II/2014/37-2-391 prescribes the marking scheme for recruitment of teachers in aided schools, however, a bare perusal of the aforementioned Order makes it categorically clear that the order is in fact applicable to aided schools and not minority schools. It is not the case of the Respondent No. 2 that similar regulation standards are applicable to both aided and minority schools.

17. It is further submitted that the governing Act itself carves out the essential and rudimentary distinctions between aided and minority schools by virtue of the definition clause. The Act defines both aided schools and minority schools separately vide section 2(d) and section 2 (o) which define as under:

*“2(d) “aided school” means a recognised private school which is receiving aid in the form of maintenance grant from the Central Government, Administrator or a local authority or any other authority designated by the Central Government, Administrator or a local authority:*

*2(o) “minority school” means a school established and administered by a minority having the right to do so under clause (1) of Article 30 of the Constitution;”*

18. It is submitted that there is no dispute that the regulations applicable to an aided school cannot be simply imposed upon a minority school without according due consideration to the fundamental right of management guaranteed to minority schools under Article 30 of the Constitution. This Court has settled the proposition of law with regard to the extent of regulation applicable to a minority aided school in the matter titled as *Queen Mary v. Union of India (supra)* wherein this Court observed that Rule 96 of the Rule is inapplicable to a minority aided school and further that they are to adhere to the rules applicable to unaided minority school as enshrined in Rules 127-128 of the Act. This Court has, therefore, explicitly observed that the rules applicable to an aided minority school *qua* recruitment of teachers are those applicable to an unaided minority school contained in Rule 127-128 of the Rules and not applicable to aided schools. The afore cited observation fortifies the submissions of the respondent no.3, that the regulations, marking schemes, etc applicable to an aided school cannot be enforced upon a minority institution simply because it is an aided institution. Therefore, in effect, Order dated 26.02.2014 passed by the Directorate of

Education, Government of Delhi bearing No F.DE/15/Act-II/2014/37-2-391 which prescribes the marking scheme for recruitment of teachers in aided schools cannot be enforced upon minority aided school.

19. Without prejudice to the aforesaid, a bare perusal of the Rules 127-128 reveals that the right to recruit teachers is qualified solely by the minimum qualification as set by the applicable authority and is devoid of any mention of any marking scheme. Further, second proviso to sub rule 2 of rule 98 further highlights the distinction between aided schools and minority aided schools. On one hand, sub-rule 2 stipulates that every appointment made by the managing committee of an aided school shall initially, be provisional and shall require the approval of the Director of respondent no.2 whereas, the second proviso to the sub-rule clarifies the position in as much as it categorically provides that the sub rule is not applicable to minority aided schools. It is pertinent to mention that this serves two purpose, firstly; it is indicative of the legislative intent to treat minority aided schools as a class separate from aided schools and secondly, the logical corollary to the exclusion of minority aided schools from the applicability of the said rule is that, every appointment made by the Managing Committee of an minority aided school is final.

20. Learned counsel further pressed that even otherwise the essential or core management right to appoint teachers and other personnel of their choice is unassailable and any order, statutes, rules aimed at making inroads into the said right of the minority institutions are in clear contradiction with the fundamental right guaranteed under Article 30 and are therefore, inapplicable to minority institutions. While mandatory minimum education qualification for recruitment of teachers can be understood as regulatory and imperative for ensuring quality of education, however, prescribing a definitive marking scheme over and above the same has the effect of eliminating one of the quintessential facet of the right to administer and manage the educational institutions being the right of recruitment of teachers of their choice. The proposition of law in this regard stands settled by the decision of the Hon'ble Supreme Court in the matter of *T.M.A Pai Foundation* (Supra) has thereafter been affirmed by various other decisions of the Hon'ble Supreme Court including in the matter of *Braho Samaj Education Society v. State of west Bengal* reported in (2004) 6 SSC 224 wherein the Hon'ble court reiterated the law with regard to the right of minority schools to recruit teachers. The aforesaid proposition of law was further reiterated by a five judges bench of the Hon'ble Supreme Court in

the matter of *Modern Dental College and Research Centre & Ors. v. State of Madhya Pradesh & Ors.*: (2016) 7 SSC 353.

21. The Hon'ble Supreme Court in the matter titled as *Sindhi Education Society (Supra)* has settled the proposition of law on the issue of right of minority schools to recruit teachers, wherein the Hon'ble Court observed as under.

*“101. To appoint a teacher is part of the regular administration and management of the school, of course, what should be the qualification or eligibility criteria for a teacher to be appointed can be defined and, in fact, has been defined by the Government of N.C.T of Delhi and within that specified parameters, the right of the linguistic minority institution to appoint a teacher cannot be interfered with.*

*102. At this stage, at the cost of repetition, we may again refer to the judgment of this Court in T.M.A Pai's case (supra), where in para 123, the Court specifically noticed that while it was permissible for the State and its educational authorities to prescribe qualification of a teacher, once the teachers possessing the requisite qualification were selected by the minorities for their educational institutions, the State would have no right to veto the selection of the teachers.*

22. That the Hon'ble Supreme Court in the matter titled as *Ahemdabad St. Xavier's College Society v. State of Gujarat: 1974 (1) SSC 717* has settled the proposition of law on the issue of right of minority schools to recruit teachers, wherein the Hon'ble Court observed as under:

*“104. ....The selection and appointment of teachers for an educational institution is one of the essential ingredients of the right to manage an educational institution and the minorities can plainly be not denied such right of selection and appointment without infringing Article 30(1)....”*

23. A perusal of the aforementioned judgments makes it abundantly clear that prescription of a marking scheme renders the fundamental right of recruiting teachers of their own choice by a minority institution illusory, since there is effectively no choice left with the management anymore and that clearly cannot be the intent of the legislature while drafting provisions to safeguard the interests of minority institutions.

24. However, it is pertinent to state that from a bare perusal of the aforesaid circular dated 17.07.2017, it is categorically clear that the educational and other qualifications required for direct recruitment to the post of T.G.T. Hindi does not specify anything qua the allotment of marks with respect to additional qualification in the concerned subject.

25. Since the school of the answering respondent was an aided minority institution, the salary of the staff is reimbursed to the extent of 95% by respondent no.2 i.e. Directorate of Education and only 5% of the salary due is the liability of the school of the answering respondent. That in compliance with the order dated 05.10.2018 passed by this Court in the instant writ



under reply, the answering respondent has already remitted their 5% share to respondent no.2 for the amount of ₹22,080/- vide challan no.2767 in SBI Old Sectt. Delhi and that therefore, no claim for salary is maintainable against the answering respondent.

26. Since the school of the respondent no.3 was an aided minority institution, the salary of the staff is reimbursed to the extent of 95% by Respondent No. 2 i.e. Directorate of Education and only 5% of the salary due is the liability of the school of the respondent no.3. In compliance with the Order dated 05.10.2018 passed by this Hon'ble Court in the instant writ under reply, respondent no.3 has already remitted their 5% share to Respondent No. 2 for the amount of Rs. 22,080/- vide challan No. 2767 in SBI Old Sectt, Delhi and therefore, no claim for salary is maintainable against respondent no.3.

27. It is relevant to state that the Deputy Director of Education *vide* orders dated 22.03.2018 bearing no. DDE(N) Actt/PF/2017-18/4054-57, DDE (N) Actt/PF/2017-18/4058-61 and DDE (N) Actt/PF/2017-18/4066-69 has approved the appointment of Ms. Aditi Jain, Ms. Sonia Bhardwaj and Ms. Jaya Lata in the school of respondent no.3, whereby the appointment was made on the basis of the marking scheme notified by the Selection

Committee of the respondent no.3 as opposed to the marking scheme notified by Respondent No. 2 in their circular dated 26.02.2014. Subsequent to the aforesaid approval, the Deputy Director of Education again *vide order date 29.08.2018* bearing No. DDE(N)GIA-NA/PF/2018-19/544-548 and thereafter *vide orders dated 03.04.2018* bearing No. DDE (N) Acctt/PF/2017-18/1-4, DDE(N) Acctt/PF/ 2017-18/9-12, DDE (N) Acctt/PF/2017-18/5-8, approved the appointment of Ms. Tripti Jain, Ms. Shilip Jain, Ms. Poonam Khatri and Ms. Rosy Rani in the school of respondent no.3 in a similar fashion based on the marking scheme notified by the selection committee of the respondent no.3 as opposed to the marking scheme notified by Respondent No. 2 in their circular dated 26.02.2014. In pursuance thereto, it does not lie within the domain of the Directorate of Education to dispute the validity of the marking scheme now or appointment made in pursuance thereof.

28. Further, it is submitted that Article 30(1) read only with The National Commission for Minority Educational Institutions Act, 2004 grants minority intuitions the unfettered right to appoint its own teaching and non-teaching staff.

29. Heard. Learned counsel for the parties in length and perused the

material on record.

30. Respondent no.3, admits that they have done the evaluation of the candidates in terms of their own marking scheme approved by their Executive Committee in the meeting held on 18.11.2017. It is submitted by learned counsel for respondent nos.1 & 2 that the selection/appointment of petitioner should have been on the basis of marking scheme as approved by the Directorate of Education vide Order No. DE/15/Act-II/2014/371-391 dated 26.02.2014 and not on the basis of a scheme, if any, evolved by the School's Management Committee and therefore is bad in law, besides being affront to the judgment of this Court in *Queen Mary's School (Supra)*, wherein it was made explicitly clear that the management of aided minority schools shall adhere to the Recruitment Rules, and other general norms for appointment.

31. Further, respondent no.3 never informed the Directorate of Education about the appointment of the petitioner. In terms of sub rule (3) of Rule 98 of the Rules, 1973, *“every appointment made by the managing committee of an aided school shall, initially, be provisional and shall require the approval of the Director, provided that the approval of the Director would be required only where Director's nominee was not present in the selection*

*committee/DPC or in case there is difference of opinion among the members of the Selection Committee”.*

32. In view of the above, failure on the part of respondent no.3 to abide by the mandatory statutory provisions makes the entire selection process as void *ab initio*. Respondent no.3, failed to comply with sub-rule (3) of Rule 98 of the Rules, 1973. It is mandatory that particulars of every appointment made by the managing committee of an aided school be communicated by such committee to the Director (either by registered post acknowledgment due or by messenger who will obtain an acknowledgment thereof) within seven (7) days from the date of appointment.

33. Admittedly respondent no.3, never communicated regarding the disputed appointment within the statutory period of seven days of appointment of the petitioner which was illegally made by respondent no.3 vide order dated 18.12.2017. Petitioner herself has stated that no information was sent to the Director about her appointment which was violation of Rule 98(3) of Rules, 1973.

34. The respondent no.3 sent communication dated 16.01.2018 to Account's Officer of the respondent no.2 for sanctioning grant-in-aid towards salary of petitioner for the month of January & February, 2018.

However, upon scrutiny, the illegality committed by respondent no.3 in collusion with petitioner was exposed whereupon respondent no.2 promptly informed respondent no.3, about the illegality in constituting Selection Committee being in violation to above said Rules and not following the marking scheme provided in Circular dated 26.02.2014. No formal communication was ever served upon the Directorate of Education about the appointment of petitioner as TGT (Hindi) by school management/ respondent no.3.

35. Further, the appointment of petitioner was as TGT (Hindi) while her higher qualification was M.A. (English). Benefit of additional qualification was not admissible as per Circular No.F. DE/15/Act-II/2014/372-391 dated 26.02.2014. Serial No.2 of the circular dated 26.02.2014 states that “*marks for additional qualification would be given for next immediate higher education above the essential one and that too in concerned subject relevant to the concerned post. No marks would be awarded for additional qualification of M. Ed.*”

36. The selection committee constituted by respondent no.3 undeservingly granted ‘*additional marks for next immediate higher qualification above the essential one*’ to the petitioner which could not have

been granted to her being inadmissible in terms of serial no.2 of circular dated 26.02.2014.

37. It is emphatically denied that respondent no.3 has unfettered right to choose and appoint teacher of its own choice by flouting the Recruitment Rules and other general norms, to the extent that they prescribe qualifications, experience, age and all other criteria for appointment. Further Rule 64(a) of the Delhi School Education Rules, 1973 explicitly provides:

*“No school shall be granted aid unless its managing committee gives an undertaking in writing that it shall comply with the provisions of the Act and Rules.”*

38. Selection Committee constituted by respondent no.3 undeservingly granted ‘*additional marks for next immediate higher qualification above the essential one*’ to the petitioner which could not have been granted to her being inadmissible in terms of serial no.2 of circular dated 26.02.2014. Additional marks could be given for higher qualification provided the teacher was being appointed for the subject in which the candidate attained higher qualification. Petitioner is M.A.(English) and had she been M.A. (Hindi) only then she could be granted additional marks for higher qualification. Thus, illegally constituted Selection Committee which committed further illegality in granting additional marks, which were not admissible to the petitioner.

39. Deputy Director Education vide letter dated 28.04.2018 informed respondent no.3, that on examination it was found that the marks given for additional qualification was for M.A.(Eng) whereas the applicant is selected for the post of TGT (Hindi), on the contrary, the marks given for the additional qualification should be in concerned subject i.e. M.A. (Hindi).

40. Since respondent no.3 brazenly flouted Recruitment Rules and other general norms, for appointment which they were required to adhere in terms of judgment of this Hon'ble Court in *Queen Mary's School (supra)*, the grant in aid cannot be accorded to the petitioner & it is the responsibility of the respondent no.3 school, to pay the salary to the petitioner for the period it took work from her, since her selection was *dehors* the relevant rules, hence non-est and bad in law, as such it does not visit the respondent no.2 with any liability to bear towards grant in aid for illegal appointment of the petitioner by respondent no.3. Said respondent must bear the consequences of committing deliberate illegality in appointing the petitioner while tracking on the wrong side of law, in conflict therewith.

41. In addition, Hon'ble Supreme Court and this Court have held in a catena of judgments that the right to administer educational institutions would not include the right to *mal-administer*. It has been held that

regulations could be lawfully imposed for the receiving of grants and recognition, while permitting the institution to retain its character as a minority institution. It is permissible for the authorities to prescribe regulations, which must be complied with, before a minority institution could seek or retain affiliation and recognition. Directorate of Education issued Circular No.F.DE/1S/Act- II/2014/37-2-391 dated 26.02.2014 prescribing the marking scheme for recruitment of teachers in aided school as a secular condition and the same is applicable across all the schools and the same would not dilute its force and vigor for the minority run educational institutions. Conditions provided in Circular dated 26.02.2014 are applicable to all the educational institutions receiving grant and it is meant to safeguard and maintain teaching standards. Circular dated 26.02.2014 is not aimed at making any inroads into the managerial powers of the minority institutions.

42. Reliance was further placed on the judgment of eleven judges Constitution Bench of the Hon'ble Supreme Court in ***TMA Pai vs. State of Karnataka : 2002 (8) SCC 481*** whereby it was held:

*“143. This means that the right under Article 30(1) implies that any grant that is given by the State to the minority institution cannot have such conditions attached to it, which will in any way dilute or abridge the rights of*



*the minority institutions to establish and administer that institution. The conditions that can normally be permitted to be imposed, on the utilization of the grant and fulfillment of the objective of the grant. Any such secular conditions so laid, such as a proper audit with regard to the utilization of the funds and the manner in which the funds are to be utilized, will be applicable and would not dilute the minority status of the educational institutions. Such conditions would be valid if they are also imposed on other educational institutions receiving the grant. "*

43. The circular dated 26.02.2014 does not take away the right to appoint teachers and other personnel as per the choice of the institution, as safeguarded under Article 30(1) of the Constitution of India, but such right is not unfettered. Hon'ble Supreme Court has recognized the State's regulatory power to prescribe basic qualifications for filling the posts and the same was spelt out by the nine judges bench judgment in *Ahmadabad St. Xavier's College Society vs. State of Gujarat: 1974 (1) SCC 717* .

44. In *Pramati Educational & Cultural Trust vs. Union of India: (2014) 8 SCC 1*, the Hon'ble Supreme Court, considering judgment in *TMA Pai (supra)* held:

*"92. In T.M.A. Pai, the dual test is summed up as:  
 ....It was permissible for the authorities to prescribe regulations, which must be complied with before a minority Institution could seek or, retain affiliation and recognition. But it was also stated that the regulations made by the authority should not impinge upon the minority character of the institution. Therefore a balance*

*has to be kept upon the two objectives-that of ensuring the standard of excellence of the institution, and that of preserving the right of the minorities to establish and administer their educational institutions. Regulations that embraced and reconciled the two objectives could be considered to be reasonable ...”*

*93. It is submitted with respect that dual test applies to (a) unaided and aided minority institutions, (b) unaided non-minority institutions. But the principle will apply to the aided institutions.”*

45. In ***Sindhi Education Society vs. Govt. (NCT of Delhi): 2010 (8) SCC 49***, the Hon'ble Supreme Court held:

*“91. In T.M.A. Pai case the right to establish an institution is provided. The Court held that the right to establish an institution is provided in Article 19(1)(g) of the Constitution. Such right, however, is subject to reasonable restriction, which may be brought about in terms of clause (6) thereof. Further, that minority, whether based on religion or language, however, has a fundamental right to establish and administer educational institution of its own choice under Article 30(1).*

*92. The right under clause (1) of Article 30 is not absolute but subject to reasonable restrictions which, inter alia, may be framed having regard to the public Interest and national interest of the country. Regulation can also be framed to prevent maladministration as well as for laying down standards of education, teaching, maintenance of discipline, public order, health, morality, etc. It is also well settled that a minority institution does not cease to be so, the moment grant-in-aid is received by the institution. An aided minority educational institution, therefore, would be entitled to have the right of admission of students belonging to the minority group and, at the*

same time, would be required to admit a reasonable extent of non-minority students, to the extent, that the right In Article 30(1) Is not substantially Impaired and further, the citizen's right under Article 29(2) is not infringed.

93. A minority institution may have its own procedure and method of admission as well as the selection of students but it has to be a fair and transparent method. The State has the power to frame regulations which are reasonable and do not impinge upon the basic character of the minority institutions'. This Court, in some of the decisions, has taken the view that the width of the rights and limitations thereof of even unaided institutions, whether run by a majority or by a minority, must conform to the maintenance of excellence and with a view to achieve the said goal indisputably, the regulations can be made by the State.

94. It is also equally true that the right to administer does not amount to the right to maladminister and the right is not free from regulations. The regulatory measures are necessary for ensuring orderly, efficient and sound administration. The regulatory measures can be laid down by the State in the administration of minority institutions. The right of the State is to be exercised primarily to prevent maladministration and such regulations are permissible regulations. These regulations could relate to guidelines for the efficiency and excellence of educational standards, ensuring the security of the services of the teachers or other employees, framing rules and regulations governing the conditions of service of teachers and employees and their pay and allowances and prescribing course of study or syllabi of the nature of books. etc. Some of the impermissible regulations are refusal to affiliation without sufficient reasons, such conditions as would completely destroy the autonomous status of the

*educational institution, by introduction of outside authority either directly or through its nominees in the governing body or the managing committee of a minority institution to conduct its affairs, etc. These have been illustrated by this Court in State of Kerala v. Very Rev. Mother Provincia, All Saints High School v. Govt. of A.P. and T. M.A. Pai case.*

*97. It is not necessary for us to examine the extent of power to make regulations, which can be enforced against linguistic minority institutions, as we have already discussed the same in the earlier part of the judgment. No doubt, right conferred on minorities under Article 30 is only to ensure equality with the majority but, at the same time, what protection is available to them and what right is granted to them under Article 30 of the Constitution cannot be diluted or impaired on the pretext of framing of regulations in exercise of its statutory powers by the State. The permissible regulations, as afore-indicated, can always be framed and where there is a maladministration or even where a minority linguistic or religious school is being run against the public or national interest, appropriate steps can be taken by the authorities including closure but in accordance with law. The minimum qualifications, experience, other criteria for making appointments, etc. are the matters which will fall squarely within the power of the State to frame regulations but power to veto or command that a particular person or class of persons ought to be appointed to the school failing which the grant-in-aid will be withdrawn, will apparently be a subject which would be arbitrary and unenforceable.*

46. The present writ petition filed by the petitioner is devoid of any cause of action and is arising out of complete misconceived interpretation of settled proposition of law as laid down by the Hon'ble Supreme Court and

by this Court.

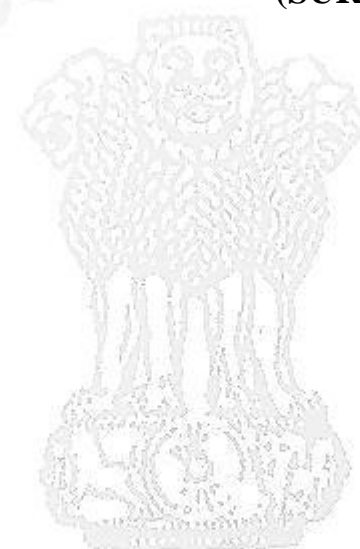
47. The writ petition is dismissed, accordingly, with no order as to costs.

**CM APPL. 41174/2018**

In view of the order passed in the present writ petition, the application has been rendered infructuous and is accordingly, disposed of.

**(SURESH KUMAR KAIT)  
JUDGE**

**OCTOBER 01, 2019  
ms**



सत्यमेव जयते