Frank Anthony Public School Employees' Association

Vs

Union of India and Others

Writ Petition (Civil) No. 587 of 1986

(O. Chinnppa Reddy, G. L. Oza JJ)

17.11.1986

JUDGMENT

CHINNAPPA REDDY, J. -

1. The scales of pay and other conditions of service of teachers and other employees of the Frank Anthony Public School, New Delhi, compare very unfavourably with those of their counterparts of the Delhi Administration Schools. The scales of pay of teachers, primary, TGT or middle, and senior or PGT of Government schools (that is, schools run by the Delhi Administration), as of today, are 1200-30-1560-EB-40-2000, 1400-40-1600-50-2300-EB-60-2600 and 1640-60-2600-EB-75-2900 respectively. Primary and middle school teachers are entitled to House Rent Allowance of Rs. 250, City Compensatory Allowance of Rs. 75 and Medical Allowance of Rs. 25, while, senior school teachers are entitled to House Rent Allowance of Rs. 450, City Compensatory Allowance of Rs. 100 and Medical Allowance of Rs. 25. At the starting point a primary school teacher gets a total sum of Rs. 1540 per month by way of salary and allowances, a middle school teacher gets a total sum of Rs. 1750 and a senior school teacher a total sum of Rs. 2215. The scales of pay of primary, middle and senior school teachers of the Frank Anthony Public School are 275-20-475-25-600-25-725, 300-25-550-30-770-30-850 and 400-30-700-35-875-35-1050. They get allowances together of Rs. 702.50, 715 and 765 respectively. At the starting point the salary and allowances together come to Rs. 977.50, Rs. 1015 and Rs. 1165 respectively. In the case of teachers of government schools they are entitled to gratuity of 15 days' pay for every year of service, Provident Fund at the rate of 8.33 per cent and Leave Travel Concession once every two years to their home town. In the case of teachers of the Frank Anthony Public School there is provision for Contributory Provident Fund and Family Pension only. Teachers of government schools are entitled to casual leave of 12 days, earned leave of 10 days, sick leave of 10 days and maternity leave of 90 days, whereas, teachers of the Frank Anthony Public School are entitled to casual leave of 10 days, no earned leave, sick leave of 14 days and maternity leave of 30 days. In the case of class IV employees, in government school, the scale of pay is 750-8-790-EB-10-940 with House Rent Allowance of Rs. 150, City Compensatory Allowance of Rs. 30 and Medical Allowance of Rs. 25. The scale of pay of class IV employees of the Frank Anthony Public School is 70-5-120-7.50-195 with allowance of Rs. 473. The total starting salary and allowance of class IV employees in government schools and the Frank Anthony Public School are Rs. 955 and Rs. 543 respectively. It is evident that in the matter of emoluments and conditions of service such as leave etc. teachers and employees of the Frank Anthony Public School lag for behind the teachers and employees of government schools. There are other conditions of service of teachers and employees of the Frank Anthony Public School which also compare unfavourably with the conditions of service of teachers and employees of government schools. The Frank Anthony Public School Employees Association seeks equalisation of their pay scales and conditions of service with those of teachers and employees of government schools.

Sections 8 to 12 of the Delhi School Education Act together comprise Chapter IV of that Act which deals with "Terms and conditions of service of employees of recognised private schools". If Section 8 to 11 were applicable to the teachers and other employees of the Frank Anthony Public School, they would at least be as well off as teachers and other employees of government schools. But Section 12 provides : "Nothing contained in this chapter shall apply to an unaided minority school". The Frank Anthony Public School is an unaided minority school. By the force of Section 12 of the Act, the provisions of Sections 8 to 11 do not apply to the Frank Anthony Public School. Therefore, the Frank Anthony Public School Employees Association has sought from this Court a declaration that Section 12 of the Delhi School Education Act is unconstitutional as being violative of Articles 14, 21, and 23 of the Constitution. A similar declaration is sought in regards to Section 21 of the Act also but is not pressed before us. A direction is also sought to the respondents, the Union of India and the Delhi Administrative to enforce all the provisions of the Delhi School Education Act, other than Sections 12 and 21, and "to fix the pay, allowances, benefits etc. to persons employed in the schools governed by the Act in relation to unaided minority schools at par with the persons employed in other schools".

2. It appears that some time after the filing of the writ petition and before the preliminary hearing of the writ petition some developments took place to which it is necessary to refer here. On April 9, 1986 at 10.30 am the teaching staff other than those on duty took out 'a silent march' which was joined by the class IV staff also. The school hours have a break between 10.00 am and 10.40 am. During the break only one or two teachers are on duty. Except those on duty, all the others took part in the 'silent march'. Classes are resumed at 10.40 am and were not affected in any manner. There were no speeches, no shouting of slogans, no violence and no disruption of studies. But even so a notice was issued by the principal on April 10, 1986 warning the members of the staff. Despite the warning a similar silent march was taken out on April 10, 1986 also. The management issued orders of suspension against Mrs Malik, Mrs Dhar, Mrs. Balman and Mr Bush. While granting 'rule nici' in the main writ petition, this Court also granted stay of operation of the orders of suspension of the four teachers. The inquiries against them were also stayed.

3. The attack of the petitioner against Section 12 of the Delhi Education Act was based on Article 14 while the provisions were sought to be sustained by the respondents on the basis of Article 30 of the Constitution. While it was argued by Mr Vaidyanathan, learned counsel for the petitioner that Section 12 was hit by Article 14 and that Sections 8 to 11 did not, in any manner, impinge upon Article 30 of the Constitution, it was argued, on behalf of the respondents, by the learned Additional Solicitor-General and by Shri Frank Anthony, that the classification made by Section 12 was perfectly valid and that, but for Section 12, Sections 8 to 11 would have to be held to interfere with the right guaranteed by Article 30 to religious and linguistic minorities to administer educational institutions of their choice and Sections 8 to 11 would consequently be inapplicable to such minority educational institutions.

4. In order to appreciate the controversy between the parties, it is necessary to refer to the scheme and the important provisions of the Delhi School Education Act. The long title of the Act recites that it is "An Act to provide for better organisation and development of school education in the Union Territory of Delhi and for matters connected therewith or incidental thereto". Section 2(d) defines "Aided School" as meaning "a recognised private school which is receiving aid in the form of maintenance grant from the Central Government, Administrator or local authority or any other authority designated by the Central Government, Administrator or a local authority". "Recognised School" is defined by Section 2(t) to mean "a school recognised by the appropriate authority". Section 2(e) defines "appropriate authority" to mean :

(i) in the case of a school recognised or to be recognised by an authority designated or sponsored by the Central Government, that authority;

(ii) in the case of a school recognised or to be recognised by the Delhi Administration, the Administrator or any other officer authorised by him in this behalf;

(iii) in the case of a school recognised or to be recognised by the Municipal Corporation of Delhi, that Corporation;

We may state here that in the case of the Frank Anthony Public School the appropriate authority is the Delhi Administration. Section 2(h) defines 'employee' to means "a teacher and includes every other employee working in a recognised school". "Minority School" is defined by section 2(o) to mean "a school established and administered by a minority having the right to do so under clause (1) of Articles 30 of the Constitution". Section 2(x) defines "unaided minority school" to mean "a recognised minority school which does not receive any aid". It is undisputed that the Frank Anthony Public School is an unaided minority school. Chapter II of the Act deals with "establishment, recognition, management of and aid to schools". Chapter III deals with school property. Chapter IV consisting of Sections 8 to 12, deals with "Terms and conditions of service of employees of recognised private schools." Chapter V, consisting of Section 13 to 15, contains "the provisions applicable to unaided minority schools." We are concerned with Chapters IV and V. Chapter VI deals with "admission to schools and fees", Chapter VII deals with "Taking over the management of schools" and Chapter VIII with miscellaneous provisions. Going back to Chapter IV, Section 8(1) empowers the Administrator to make rules regulating "the minimum qualifications for recruitment, and the conditions of service, of employees of recognised private schools". The first proviso to Section 8(1) stipulates that salary and rights in respect of leave of absence, age of retirement and pension of an employee of an existing school at the commencement of the Act may not thereafter be varied to his disadvantage. The proviso gives an indication that salary and rights in respects of leave of absence, age of retirement and pension of an employee are covered by the expression "the conditions of service". We mentioned this because in the course of the argument it was suggested that salary is not a condition of service, Sub-section (2) of Section 8 stipulates that, subject to any rule that may be made, "no employee of a recognised private school shall be dismissed, removed or reduced in rank nor shall his service be otherwise terminated except with the prior approval of the Director". Section 8(3) enables an employee of a recognised private school who is dismissed, removed or reduced in rank to prefer an appeal to the Tribunal constituted under Section 11 against the order of such dismissal, removal or reduction in rank. What is of importance and requires to be noticed is that the prior approval of the Director contemplated by Section 8(2) and the appeal for which provision is made by Section 8(3) are confined to dismissal, removal and reduction in rank and not to other case of disciplinary action or other administrative orders of the management. Section 8(2) also provides for the prior approval of the Director in the case of termination of service otherwise than dismissal or removal also. Section 8(4) requires the managing committee of a recognised private school to communicate to the Director and to obtain his prior approval before suspending any of its employees. However, the proviso enables the managing committee to suspend

an employee with immediate effect and without prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct of the employee, within the meaning of the Code of Conduct. Such immediate suspension will cease to have effect after fifteen days if approval of the Director is not obtained in the meanwhile. Section 8(5) authorises the Director to accord his approval to suspension of an employee if he is satisfied that there are adequate and reasonable grounds for such suspension. Section 9 prescribes that every employee of a recognised school shall be governed by the prescribed Code of Conduct and that the employee shall be liable to the prescribed disciplinary action for violation of any provision of Code of Conduct. Section 10(1) requires that "the scales of pay and allowances, medical facilities, pension, gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority". The proviso to Section 10(1) requires the appropriate authority to direct in writing the managing committee of any recognised private school to bring the scales of pay and allowances etc. of all the employees of such schools to the level of those of the employees of the corresponding status in school run by the appropriate authority. A further proviso to Section 10(1) contemplates withdrawal of recognition if such direction is not complied with. Section 10(2) requires the managing committee of ever aided school to deposit every month its shares towards pay and allowance, medical facilities etc. with the Administrator and requires the Administrator to disburse, or cause to be disbursed, the salaries and allowances to the employees of aided schools. Section 11 provides for the constitution of a Tribunal consisting of one person who shall have held the office of a District Judge or any equivalent judicial office. Section 11(6) provides that the Tribunal shall, for the purpose of disposal of an appeal, have the same powers as are vested in the court of appeal by the Code of Civil Procedure. Then comes Section 12 which says : "Nothing contained in this chapter shall apply to an unaided minority school". It is because of this provision that Sections 8, 9, 10 and 11 become inapplicable to unaided minority schools. Chapter V consists of Sections 13 to 15 and these are the provision of the Act which are applicable to unaided minority schools only. Section 13 enables the Administrator to make rules regulating the minimum qualification for and method of recruitment of employees of unaided minority schools. Section 14 prescribes that every employee of an unaided private school shall be governed by such Code of Conduct as may be prescribed. Except in the matter of disciplinary action the Code of Conduct prescribed for employees of unaided minority schools under section 14 is virtually the same as the Code of Conduct prescribed for all recognised schools under Section 9. Section 15(1) requires the managing committee of every unaided minority school to enter into a written contract of service with every employee of such school. Section 15(2) provides that a copy of every contract of service shall be forwarded by the managing committee to the Administrator who shall, on receipt of such copy register it. Section 15(3) provides that every contract of service shall provide for -

(a) the terms an conditions of service of the employee, including the scale of pay and other allowances to which he shall be entitled;

(b) the leave of absence, age of retirement, pension and gratuity or contributory provident fund in lieu of pension and gratuity, and medical and other benefits to

which the employees shall be entitled;

(c) the penalties which may be imposed on the employees for the violation of any Code of Conduct or the breach of any terms of the contract entered into by him;

(d) the manner in which disciplinary proceedings in relation to the employee shall be conducted and procedure which shall be followed before any employee is dismissed, removed from service or reduced in rank;

(e) arbitration of any dispute arising out of any breach of contract between the employee and the managing committee with regard to -

(i) the scales of pay and other allowances,

(ii) leave of absence, age of retirement, pension, gratuity, provident fund, medical and other benefits,

(iii) any disciplinary action leading to the dismissal or removal from service or reduction in rank of the employee,

(f) any other matter which, in the opinion of the managing committee, ought to be, or may be, specified in such contract.

Section 16, which occurs in Chapter VI, is applicable to unaided minority schools also and deals with admission to recognised schools. Sections 17 and 19 are applicable to both aided and unaided schools. Section 19(1) requires that every recognised higher secondary school shall be affiliated to one or more of the Boards or Councils conducting such examination and shall fulfil the conditions prescribed by the Board or Council. Chapter VII consists of two sections. Section 20 deals with taking over the management of schools and Section 21 provides that Section 20 shall not apply to a minority school. As already mentioned by us, though the question of the vires of Section 21 was also raised in the petition, the point was not pressed before us.

5. The effect of Section 12, as already mentioned by us, is to make Sections 8, 9, 10 and 11 inapplicable to unaided minority schools. First, the Administrator may not make rules regulating the conditions of service of employees of unaided minority schools. But so far as the minimum qualifications for recruitment of employees are concerned, Section 13 enables the Administrator to make regulations even in respect of unaided minority schools. Second, the prior approval of the Director need not be obtained for the dismissal, removal, reduction in rank or termination of service otherwise than by dismissal or removal of an employee of an unaided minority school. Third, against such dismissal, removal or reduction in rank, there is to be no appeal. Fourth, neither prior nor subsequent approval of the Director need be obtained to suspend any of the employees of an unaided minority school. Fifth, the scales of pay and allowance, medical facilities, pension, gratuity, provident fund and other benefits which may be given to employees are subject to no regulation except that they should be contained in a written contract of service and need not conform to the scales of pay and allowances etc. of the employees of the corresponding status in schools run by the appropriate authority as in the case of other recognised private schools.

6. To recall the contentions of the learned counsel for either side, on the one hand it was submitted by Shri C.S. Vaidyanathan, learned counsel for the petitioner that these drastic departures which result from giving effect to Section 12, make Section 12 discriminatory and offensive to Article 14

of the Constitution. The provisions which are made inapplicable to aided minority institutions because of Section 12 are no more than regulatory measures aimed at the excellence of the institution and in no way impinge on the Fundamental Right of the minorities religious or linguistic, to administer educational institutions of their choice. On the other hand, it was the contention of the learned Additional Solicitor-General that these provisions are inapplicable to minority institutions since they interfere with the right of management vested in the minorities. According to him, payment of salary, allowances etc. is part of the right of the management to appoint members of the staff. The economics of an unaided institution is entirely in the hands of its management and the right of the management to pay such salaries and allowances as the management deems fit is a part and parcel of the right to administer the institution. More so the right to take disciplinary action which cannot be the subject of any supervision by any other authority. But for Section 12, Sections 8 to 11 would impinge on the right of the minorities to administer Educational Institutions of their choice and would therefore, be inapplicable to minority Educational Institutions. Shri Frank Anthony made submissions on the same lines as the learned Additional Solicitor-General and in addition pointed out that the Frank Anthony Public School was an Educational Institution of great repute and that the excellence of the institution was such that it did not necessitate any regulation by any other authority. The excellence of the institution spoke for itself. He submitted that the scale of fee charged by the institution was low compared with other private institutions and it was the desire of the management that the scale of fee should continue to be low so that it may be within the reach of the ordinary people whom it was intended to reach. It was because of this desire of the management to keep the scale of fee low that the management could not pay higher salaries and allowance and we were repeatedly told that if Section 12 was struck down and the management was compelled to pay the same scale of salary and allowance as was paid to employees of Government schools, the Frank Anthony Public School would have to be closed down.

7. At this juncture, we may refer to Article 30(1) and (2) of the Constitution which are as follows :

> 30(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
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> (2) The State shall no, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

8. The content of the Fundamental Right guaranteed by Article 30(1) of the Constitution has been the subject of several decisions of this Court. The leading case is that of a Constitution Bench of seven judges, In re the Kerala Education Bill 1957 [1959 SCR 995 : AIR 1958 SC 956]. In an oft-quoted passage S.R. Das, Chief Justice, explained the content of Article 30(1) as follows :

The first point to note is that the article gives certain right not only to religious minorities but also to linguistic minorities. In the next place, the right conferred on such minorities is to establish educational institutions of their choice. It does not say that minorities based on religion should establish educational institutions for teaching religion only, or that linguistic minorities should have the right to establish educational institutions for teaching their language only. What the article says and means is that the religious and the linguistic minorities should have the right to establish educational institutions of their choice. There is no limitation placed on the subjects to be taught in such educational institutions. As such minorities will ordinarily desire that their children should be brought up properly and efficiently and be eligible for higher university education and go out in the world fully equipped with such intellectual attainments as will make them fit for entering the public

services, educational institutions of their choice will necessarily include institutions imparting general secular education also. In other words, the article leaves it to their choice to establish such educational institutions as well serve both purposes, namely, the purpose of conserving their religion, language or culture, and also the purpose of giving a thorough, good general education to their children. The next thing to note is that the article, in terms, gives all minorities whether based on religion or language, two rights, namely, the right to establish and the right to administer educational institutions of their choice. The key to the understanding of the true meaning and implication of the article under consideration are the words "of their own choice". It is said that the dominant word is "choice" and the content of that article is as wide as the choice of the particular minority community may make it. The ambit of the rights conferred by Article 30(1) has, therefore, to be determined on a consideration of the matter from the points of view of the educational institutions themselves.

Educational Institutions, it was said, could be classified into three categories (1) those which did not seek aid or recognition from the State (2) those which sought aid and (3) those which wanted recognition only but not aid. It was said that the institutions of the first category were outside the scope of the Kerala Education Bill, the question of vires of whose provisions was referred to the court in the reference. In the second category of schools, it was pointed out, there were two classes, those entitled it receive grants under the Constitution and those which were not entitled to any grant under any provision of the Constitution but, nevertheless, sought aid. Under Article 337 of the Constitution, Anglo-Indian schools which were receiving the grant up to March 31, 1948 were entitled to receive the grants for a period of ten years subject to a graded triennial diminution. Anglo-Indian schools which were receiving grants, but not more than what they were entitled to receive under Article 337 of the Constitution, came within first class of the second category it was held that their constitutional right to receive the grant could not be subjected to any restrictions as those sought to be imposed by the provisions of the Kerala Education Bill. Any attempt to impose any such restrictions on Anglo-Indian schools which received no more aid than that to which they were entitled to receive under the Constitution would infringe their rights under Article 337 and under Article 30(1) of the Constitution. We may straightway mention here that the period of ten years stipulated by Article 337 having expired there is now no question of Anglo-Indian schools being entitled to any special protection. Shri Frank Anthony sought to argued that what was truly decided by the court was that any condition imposed for granting recognition to unaided minority Educational Institutions would infringe on the right of administration granted to them by Article 30(1) of the Constitution. We do not read the decision as laying down any such proposition. What was decided was that Anglo-Indian schools which were entitled to receive grants under the Constitution and which received no more aid than that to which they were entitled under the Constitution could not be subjected to stringent terms as fresh or additional conditions precedent to enable them to obtain the grant. Such conditions would infringe their rights under Article 337 and violate their rights under Article 30(1). To place an interpretation as that suggested by Shri Anthony would be subversive of the right guaranteed by Article 30(1) since it would make the extent of the right depend on the receipt or non-receipt of aid. If one thing is clear, it is this that the Fundamental Right guaranteed by Article 30(1) cannot be surrendered, wholly or partly, and the authorities cannot make the grant of aid conditional on the surrender of a part of the Fundamental Right. In the very case it was observed :

Recognition and grant of aid says Shri G.S. Pathak, is the governmental function and therefore, the State cannot impose terms as condition precedent to the grant of recognition or aid which will be violative of Article 30(1). According to the statement of case filed by the State of Kerala, every Christian school in the State is aided by the State. Therefore, the conditions imposed by the said Bill

on aided institutions established and administered by minority communities, like the Christians, including the Anglo-India community, will lead to the closing down of all these aided schools unless they are agreeable to surrender their fundamental right of management. No educational institutions can in actual practiced be carried on without aid from the State and if they will not get it unless they surrender their rights they will, by compulsion of financial necessities, be compelled to give up their rights under Article 30(1). The legislative powers conferred on the legislatures of the States by Articles 245 an 246 and subject to the other provisions of the Constitution and certainly to the provisions of Part III which confers fundamental rights which are, therefore, binding on the State legislatures. The State legislatures cannot, it is clear, disregard or override those provisions merely by employing indirect methods of achieving exactly the same result. Even the legislature cannot do indirectly what it certainly cannot do directly.

The learned Chief Justice then proceeded to consider the case of the Anglo-Indian schools which received aid in excess of that granted by Article 337 and the other minority schools which received aid from the government. One of the principal submissions there was that the gist of the right of administration of a school was the power of appointment, control and dismissal of teachers and other staff and that under the Kerala Education Bill such power of management was practically taken away. Dealing with the submission the learned Chief Justice observed :

> The right to administer cannot obviously include the right to malad-minister. The minority cannot surely ask for aid or recognition for an educational institution run by them in unhealthy surroundings, without any competent teachers, possessing any semblance of qualification, and which does not maintain even a fair standard of teaching or which teaches matters subversive of the welfare of the scholars. It stands to reasons, then, that the constitutional right to administer an educational institution of their choice does not necessarily militate against the claim of the State to insist that in order to grant aid the State may prescribe reasonable regulations to ensure the excellence of the institutions to be aided.

9. Proceeding to consider whether the various clauses of the Bill merely prescribed reasonable regulations or conditions for the grant of aid, the Court observed that Clauses 7, 10, 11(1), 12(1)(2)(3) and (5) might easily be regarded as reasonable regulations or conditions for the grant of aid. We may mention here that clause 10 of the Bill required the government to prescribes the qualifications to be possessed by persons for appointment as teachers in government schools and in private schools. The procedure for selection of teachers in government schools and aided schools was laid down in clause 11. Clause 12 prescribed the conditions of service of the teachers of aided schools, obviously intended to afford some security of tenure to the teachers of aided schools. It provided that the scales of pay applicable to the teachers of government schools shall apply to all the teachers of aided schools. Sub-clause (4) of clause 12 which was not mentioned by the court as a clause which could easily be regarded as reasonable regulation, provided that no teacher of an aided school shall be dismissed, removed, reduced in rank or suspended by the Manager without the previous sanction of the authorised officer. Clause 11 sub-clause (2) was another clause which the court was unable to readily identify as reasonable. In regard to classes 9, 11, and 12 the court while holding that they were "serious inroads on the right of administration" and that they came "perilously near violating that right", nevertheless held :

> But considering that these provision are applicable to all educational institutions and that the impugned parts of classes 9, 11 and 12 are designed to give protection and security to the ill-paid teachers who are engaged in rendering service to the nation

> and protect the backward classes, we are prepared, as at present advised, to treat these clauses 9, 11(2) and 12(4) as permissible regulations which the State may impose on the minorities as a condition for granting aid to their educational institutions.

10. In Rev. Sidhajbhai Sabhai v. State of Bombay [(1963) 3 SCR 837 : AIR 1963 SC 540], the court summarised the decision in the reference in regard to the Kerala Education Bill and proceeded to observe :

> The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole. If every order which while maintaining the formal character of a minority institution destroys the power of administration is held justifiable because it is in the public or national interest, though not in its interest as an educational institutions, the rights guaranteed by Article 30(1) will be but a "teasing illusion", a promise of unreality. Regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining is character as a minority institution effective as an educational institution. Such regulation must satisfy a dual test - the test of reasonableness, and and test that it is regulative of the educational character of the institution and is conducive to making the institution an effective vehicle of education for the minority community or other persons who resort to it.

In State of Kerala v. Very Rev. Mother Provincial [(1971) 1 SCR 734 : (1970) 2 SCC 417 : AIR 1970 SC 2079] it was conceded by the petitioners representing the minority communities (as indeed they were bound to do having regard to the authorities of the Court) that the State or the University to which these institutions were affiliated may prescribe standards of teaching and the scholastic efficiency expected from colleges. It was also conceded that to a certain extent conditions of employment of teachers, hygiene and physical training of students can be regulated. While administration was explained as "management of the affairs" of the institution and it was said that this management should be free of control so that the institution could be moulded in accordance with the management's ideas of how the interests of the community in general and the institution in particular would be best served, it was pointed out that there was an exception to this and it was the standards of education were not a part of management as such. It was said : (SCC p. 42, para 10)

These standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish the syllabi for examinations they must be followed, subject however to special subjects which the institutions may seek to teach, and to certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards all allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them,

they may be compelled to keep in step with others.

One of the questions in the case related to the validity of Section 56 sub-sections (2) and (4) of the Kerala University Act, 1969 (9 of 1969). Section 56(2) provided that no teacher of private college should be dismissed, removed or reduced in rank without the previous sanction of the Vice-Chancellor or placed under suspension for a continuous period exceeding fifteen days without such previous sanction. Section 56(4) provided that a teacher against whom disciplinary action was taken shall have right of appeal to the Syndicate. It was held that these provisions clearly took away the disciplinary action from the governing body and the managing council and conferred it on the University. The view of the High Court that sub-sections (2) and (4) were ultra vires Article 30(1) of the Constitution in respect of minority institutions was upheld.

11. Ahmedabad St. Xaviers College Society v. State of Gujarat [(1975) 1 SCR 173 : (1974) 1 SCC 717 : AIR 1974 SC 1389] was the decision of Nine Judge Constitution Bench. Ray, C.J. with whom Palekar, J. agreed stated in his opinion, after referring to the State of Kerala v. Mother Provincial [(1971) 1 SCR 734 : (1970) 2 SCC 417 : AIR 1970 SC 2079] as follows : (SCC p. 745, para 18)

Affiliation of minority institutions is intended to ensure the growth and excellence of their children and other students in the academic field. Affiliation mainly pertains to the academic and educational character of the institution. Therefore, measures which will regulates the courses of study, the qualifications and appointment of teachers, the conditions of employment of teachers, the health and hygiene of students, facilities for liberaries and laboratories are all comprised in matters germane to affiliation of minority institutions. These regulatory measures for affiliation are for uniformity, efficiency and excellence in educational courses and do not violate any fundamental right of the minority institutions under Article 30.

Section 51-A of the Gujarat University Act, 1949 (Bombay Act 50 of 1949 as amended by Gujarat Act 6 of 1973) which was impugned in that case provided that no member of the teaching and non-teaching staff of an affiliated college shall be dismissed, removed or reduced in rank except with the approval of the Vice-Chancellor. Ray, C.J. held that the provision could not be said to be permissive regulatory measures inasmuch it conferred arbitrary power on the Vice-Chancellor to take away the right of the minority institutions. It could not, therefore, be applied to minority institutions. Section 52-A of the Act contemplated reference of any dispute connected with the conditions of service, between the governing body and any member of the teaching and non-teaching staff of an affiliated college to an Arbitration Tribunal consisting of one member nominated by the governing body, one member nominated by the affected member and an umpire appointed by the Vice-Chancellor. This provision was also held to be inapplicable to minority institutions as the references to arbitration would introduce an introduce an area of litigious controversy in educational institutions and displace the domestic jurisdiction of the governing body. Jaganmohan Reddy, J. speaking for himself and Alagiriswami, J., agreed with the conclusion of Ray, C.J. and made some observations of his own. He observed : (SCC p. 761, para 56).

The right under Article 30 cannot be exercised in vacuo. Nor would it be right to refer to affiliation or recognition as privileges granted by the State. In a democratic system of government with emphasis on education and enlightenment of its citizens, there must be elements which give protection to them. The meaningful exercise of the right under Article 30(1) would and must necessarily involve recognition of the secular education imparted by the minority institutions without which the right will be a mere husk. This court has so far consistently struck down all attempts to make affiliation or recognition on terms tantamount to surrender of its rights under

Article 30(1) as abridging or taking away those rights. Again as without affiliation there can be no meaningful exercise of the right under Article 30(1), the affiliation to be given should be consistent with that right, nor can it indirectly try to achieve what it cannot directly do.

khanna, j. pointed out : (SCC p. 772, para 77). "The idea of giving special rights to the minorities is not to have a kind of a privileged or pampered section of the population but to give to the minorities a sense of security and a feeling of confidence". Later dealing with the 'scope' and 'ambit' of the right guaranteed by Article 30(1), he said : (SCC pp. 781-83, paras 90-92)

The clause confers a right on all minorities, whether they are based on religion or language, to establish and administer educational institutions of their choice. The right conferred by the clause is in absolute terms and is not subject to restrictions, as in the case of rights conferred by Article 19 of the Constitution. The right of the minorities to administer educational institutions does not, however, prevent the making of reasonable regulations in respect of those institutions. The regulations have necessarily to be made in the interest of the institution as a minority educational institution. They have to be so designed as to make it an effective vehicle for imparting education. The right to administer educational institutions can plainly not include the right to maladminister. Regulations can be made to prevent the housing of an educational institution in unhealthy surroundings as also to prevent the setting up or continuation of an educational institution without qualifies teachers. The State can prescribe regulations to ensure the excellence of the institutions. Prescription of standards for educational institutions does not militate against the right of the minority to administer the institutions. Regulations made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed : they secure the proper functioning of the institution, in matters educational (see observations of Shah, J. in Rev. Sidhajbhai Sabhai [(1963) 3 SCR 837 : AIR 1963 SC 540] p. 850). Further, as observed by Hidayatullah, C.J., in the case of Very Rev. Mother Provincial [(1971) 1 SCR 734 : (1970) 2 SCC 417 : AIR 1970 SC 2079] the standards concern the body politic and are dictated by considerations of the advancement of the country and its people. Therefore, if universities establish syllabi for examinations they must be followed, subject however to special subjects which the institutions may seek to teach, and to a certain extent the State may also regulate the conditions of employment of teachers and the health and hygiene of students. Such regulations do not bear directly upon management as such although they may indirectly affect it. Yet the right of the State to regulate education, educational standards and allied matters cannot be denied. The minority institutions cannot be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of exclusive right of management, to decline to follow the general pattern. While the management must be left to them, they may be compelled to keep in step with others.

It is, in my opinion, permissible to make regulations for ensuring the regular payment of salaries before a particular date of the month. Regulations may well provide that the funds of the institution should be spent for the purposes of education or for the betterment of the institution and not for extraneous purposes. Regulations may also contain provisions to prevent the diversion of funds of institutions to the pockets of those in charge of management or their embezzlement in any other manner. Provisions for audit of the accounts of the institution would be permissible regulation. Likewise, regulations may provide that no anti-national activity would be permitted in the educational institutions and that those employed as members of the staff should not have been guilty of any activities against the national interest. Minorities are as much part of the nation as the majority, and anything that impinges upon national interest must necessarily in its ultimate operation

affect the interests of all those who inhabit this vast land irrespective of the fact whether they belong to the majority or minority sections of the population. It is, therefore, as much in the interest of minorities as that of the majority to ensure that the protection afforded to minority institutions is not used as a cloak for doing something which is subversive of national interests. Regulations to prevent anti-national activities in educational institutions can, therefore, be considered to be reasonable.

A regulation which is designed to prevent maladministration of an educational institution cannot be said to offend clause (1) of Article 30. At the same time it has to be ensured that under the power of making regulations nothing is done as would detract from the character of the institution as a minority educational institution or which would impinge upon the rights of the minorities to establish and administer educational institutions of their choice. The right conferred by Article 30(1) is intended to be real and effective and not a mere pious and abstract sentiment; it is a promise of reality and not a teasing illusion. Such a right cannot be allowed to be whittled down by any measure masquerading as a regulation. As observed by this Court in the case of Rev. Sidhajbhai Sabhai [(1963) 3 SCR 837 : AIR 1963 SC 540], regulations which may lawfully be imposed either by legislative or executive action as a condition of receiving grant or of recognition must be directed to making the institution while retaining its character as minority institution effective as an educational institution. Such regulation must satisfy a dual test - the test of reasonableness, and the test that it is regulative of the educational character of the institution and is conductive to making the institution an effective vehicle of education for the minority community on other persons who resort to it.

Dealing with the right of the management of a minority educational institution to exercise disciplinary control over the teachers, he observed : (SCC p. 790, para 105)

Although disciplinary control over the teachers of a minority educational institution would be with the governing council, regulations, in my opinion, can be made for ensuring proper conditions of service of the teachers and for securing a fair procedure in the matter of disciplinary action against the teachers. Such provisions which are calculated to safeguard the interest of teachers would result in security of tenure and thus inevitably attract competent persons for the posts of teachers. Such a provision would also eliminate a potential cause of frustration amongst the teachers. Regulations made for this purpose should be considered to be in the interest of minority educational institutions and as such they would not violate Article 30(1).

However, Khanna, J. held that Section 51-A which gave blanket power to the Vice-Chancellor to veto the disciplinary action of the management body and Section 52-A which provided for the nomination of an umpire by the Vice-Chancellor were both objectionable. It is important to note here that what was considered objectionable in Section 52-A was not the provision for an Arbitration Tribunal but the right given to the Vice-Chancellor to nominate the umpire. The learned judge said : (SCC p. 791, para 107)

It may also be stated that there is nothing objectionable to selecting the method of arbitration for settling major disputes connected with conditions of service of staff of educational institutions. It may indeed be a desideratum. What is objectionable, apart from what has been mentioned above, is the giving of the power to the Vice-Chancellor to nominate the umpire. Normally in such disputes there would be hardly any agreement between the arbitrator nominated by the governing body of the institution and the one nominated by the concerned member of the staff. The result would be that the power would vest for all intents and purposes in the nominee of the Vice-Chancellor to decide all disputes between the governing body and the member of the staff connected with the latter's

conditions of service. The governing body would thus be hardly in a position to take any effective disciplinary action against a member of the staff. This must cause an inroad in the right of the governing body to administer the institution. Section 52-A should, therefore, be held to be violative of Article 30(1) so far as minority educational institutions are concerned.

Mathew, J. speaking for himself and Chandrachud, J. observed : (SCC p. 810, para 172)

In considering the question whether a regulation imposing a condition subserves the purpose for which recognition or affiliation is granted, it is necessary to have regard to what regulation the appropriate authority may make and impose in respect of an educational institution established and administered by a religious minority and receiving no recognition or aid. Such an institution will, of course, be subject to the general laws of the land like the law of taxation, law relating to sanitation, transfer of property, or registration of documents, etc., because they are laws affecting not only educational institutions established by religious minorities but also all other persons and institutions. It cannot be said that by these general laws, the State in any way takes away or abridges the right guaranteed under Article 30(1). Because Article 30(1) is couched in absolute terms, it does not follow that the right guaranteed is not subject to regulatory laws which would not amount to its abridgment. It is a total misconception to say that because the right is couched in absolute terms, the exercise of the right cannot be regulated or that every regulation of that right would be an abridgment of the right.

Again he said : (SCC p. 811-12, paras 173-74)

The question to be asked and answered is whether the particular measured is regulatory or whether it crosses the zone of permissible regulation and enters the forbidden territory of restrictions or abridgment. So, even if an educational institution established by religious or linguistic minority does not seek recognition, affiliation or aid, its activity can be regulated in various ways provided the regulations do not take away or abridge the guaranteed right. Regular tax measures, economic regulations, social welfare legislation, wage and hour legislation and similar measures may, of course have some effect upon the right under Article 30(1). But where the burden is the same as that borne by others engaged in different forms of activity, the similar impact on the right seems clearly insufficient to constitute an abridgement. If an educational institution established by a religious minority seeks no recognition, affiliation or aid, the State may have no right to prescribe the curriculum, syllabi or the qualification of the teachers.

We find it impossible to subscribe to the proposition the State necessity is the criterion for deciding whether regulation imposed on an educational institution takes away or abridges the right under Article 30(1). If a legislature can impose any regulation which it thinks necessary to protect what in its view is in the interest of the State or society, the right under Article 30(1) will cease to be a fundamental right. It sounds paradoxical that a right which the Constitution makers wanted to be absolute can be subjected to regulations which need only satisfy the nebulous and elastic test of State necessity. The very purpose of incorporating this right in Part III of the Constitution in absolute terms in marked contrast with the other fundamental rights was to withdraw it from the reach of the majority. To subject the right today to regulations dictated by the protean concept of state necessity as conceived by the majority would be to subvert the very purpose for which the right was given.

The learned Judge also pointed out that where besides recognition or affiliation, an educational institution conducted by a religious minority is granted aid, further regulations for ensuring that the

aid is utilized for the purpose for which it is granted would be permissible. "The heart of the matter" said the learned Judge : (SCC p. 812, para 176)

is that no educational institution established by a religious or linguistic minority can claim total immunity from regulations by the legislature or the university if it wants affiliation or recognition; but the character of the permissible regulations must depend upon their purpose. As we said, such regulations will be permissible if they are relevant to the purpose of securing or promoting the object of recognition or affiliation.

Referring to Section 51-A Mathew, J. said that uncanalised power without any guideline to withhold approval would be a direct abridgement of the right of the management to dismiss or remove a teacher or inflict any other penalty after conducting an enquiry. He, however, took care to point out that it would be open to the State in the exercise of its regulatory power to require that before services of a teacher are terminated, he should be given an opportunity to be heard in his defence. The objection was to the blanket power given to the Vice-Chancellor without any guideline as to the manner of its exercise. Referring to Section 52-A, the learned Judge felt that it subserves no purpose and would lead to needless interference with the day-to-day management of the institution. Every petty dispute raised by the teaching or non-teaching staff would have to be referred to arbitration if it seemed to touch the service conditions. "Arbitrations, not imparting education, will become the business of educational institutions", said the learned Judge (SCC p. 819, para 194). Beg, J. and Dwivedi, J. who appeared to constitute the minority delivered separate opinions and it is sufficient to say that both of them upheld the vires of Section 51-A and Section 52-A.

12. In All Saints High School v. Govt. of A.P. [AIR 1980 SC 1042 : (1980) 2 SCC 478], Chandrachud, C.J. after referring to several earlier decisions of the Court said : (SCC pp. 485-86, para 3)

These decisions show that while the right of the religious and linguistic minorities to establish and administer educational institutions of their choice cannot be interfered with, restrictions by ways of regulations for the purpose of ensuring educational standards and maintaining the excellence thereof can be validly prescribed. Ford maintaining educational standards of an institution, it is necessary to ensure that its competently staffed. Conditions of service which prescribe minimum qualifications for the staff, their pay scales, their entitlement to other benefits of service an the laying down of safeguards which must be observed before they are removed or dismissed from service or their services are terminated are all permissible measures of a regulatory character.

Section 3(1) of the impugned Act [A.P. Recognised Private Educational Institutions (Control) Act, 1975 (11 of 1975)] in that case provided that no teacher employed in any private educational institution shall be dismissed, removed or reduced in rank nor his appointment otherwise terminated except with the prior approval of the competent authority. The provision was struck down on the ground that it gave wide and untrammelled discretion to interfere with the management's right to dismiss, remove, reduce in rank or otherwise terminate the teacher's services. However Section 3(3) (which provided that no teacher shall be placed under suspension except when an inquiry into the gross misconduct of such teacher was contemplated) was upheld as not violative of Article 30(1) of the Constitution. Chandrachud, C.J. observed that the provision was founded so patently on plain reason the at it was impossible to construe it as an invasion of the right to administer an institution, unless that right carried with it the right to maladminister. Section 4 of the Act made a provision for an appeal against an order of dismissal, removal, reducation in rank or otherwise termination of appointment or alteration to the teacher's disadvantage of pay or allowances or any other conditions

of service. This provision was also struck down as unconstitutional as it gave a right of appeal both on fact and law thereby throwing open the order of the management to the unguided scrutiny and unlimited review of the appellate authority. Section 6 required the management to obtain prior approval of the competent authority if retrenchment of teacher was rendered necessary by any order of the government relating to education or course of instruction or any other matter. This provision was upheld as valid. Section 7 which provided that the pay and allowances of a teacher shall be paid on or before such day of a month in such manner and by or through such authority as may be prescribed was held to be regulatory in character. Fazal Ali, J. after quoting in extenso from the earlier judgments of the Court and culling out the principles which according to him emerged from the earlier decisions said : [SCC p. 511, para 63(7)]

It is, therefore, open to the government or the university to frame rules and regulations governing the conditions of service of teachers in order to secure their tenure of service and to appoint a high authority armed with sufficient guidance to see that the said rules are not violated or the members of the staff are not arbitrarily treated or innocently victimised. In such a case the purpose is not to interfere with the internal administration or autonomy of the institution but it is merely to improve the excellence and efficiency of the education because a really good education can be received only if the tone and temper of the teachers are so framed as to make them teach the students with devotion and dedication and put them above all controversy. But while setting up such an authority care must be taken to see that the said authority is not given blanket and uncanalised and arbitrary powers so as to act at their own sweet will ignoring the very spirit and objective of the institution. It would be better if the authority concerned associates the members of the governing body or its nominee in its deliberation so to instil confidence in the founders of the institution or the committees constituted by them.

Fazal Ali, J. held that Section 3(2) was violative of Article 30(1) of the Constitution and would have no application to minority institutions. He was of the view that Section 3, sub-section (3), sub-clauses (a) and (b) were also violative of Article 30(1) of the Constitution. The provision for an appeal in Section 4 and the provision against retrenchment contained in Section 6 were both held to be inapplicable to minority institutions. Section 7 was upheld as innocuous. Kailasam, J. after referring to the earlier cases stated as follows : (SCC p. 525, para 98)

A reading of the decisions referred to above makes it clear that while the right to establish and administer a minority institution cannot be interfered with restrictions by way of regulations for the purpose of maintaining the educational standards of the institution can be validly imposed. For maintaining the educational standard of the institution as a whole it is necessary to ensure that it is properly staffed. Conditions imposing the minimum qualifications of the staff, their pay and other benefits, their service conditions, the imposition of punishment will all be covered and regulations of such a nature have been held to be valid. In the case of institutions that receive aid it is the duty of the government who grants aid to see that the funds are properly utilised. As the government pays for the staff it is their bounden duty to see that well qualified persons are selected, their pay and other emoluments are guaranteed and service conditions secured. So far as the institutions receiving aid are concerned, if the regulations are made for the purpose of safeguarding the rights of the staff the validity cannot be questioned as long as the regulations do not discriminate the minority institution on the ground of religion or language.

Kailasam, J. was of the view that the whole of Section 3 was valid. There were sufficient guidelines indicated in the Act for the exercise of the powers under Section 3(1) and (2). Section 3(3)(a)(b) and 3(4) were intended to safeguard the teachers from suspension for unduly long periods without there

being an enquiry into gross misconduct and could not be said to interfere with the right of administration of the private institutions. With regards to Section 3(4) the learned Judge said it was purely regulatory. Sections 6 and 7 were also upheld.

13. Thus, there now appears to be a general and broad consensus about the content and dimension of the Fundamental Right guaranteed by Article 30(1) of the Constitution. The right guaranteed to religious and linguistic minorities by Article 30(1) is twofold, to established and to administer educational institutions of their choice. The key to the article lies in the words "of their own choice". These words indicate that the extent of the right is to be determined, not with reference to any concept of State necessity and general societal interest but with reference to the educational institutions themselves, that is, with reference to the goal of making the institutions "effective vehicles of education for the minority community or other persons who resort to them". It follows that regulatory measures which are designed towards the achievement of the goal of making the minority educational institutions effective instruments for imparting education cannot be considered to impinge upon the right guaranteed by Article 30(1) of the Constitution. The question in each case is whether the particular measure is, in the ultimate analysis, designed to achieve such goal, without of course nullifying any part of the right of management in substantial measure. The provisions embodied in Section 8 to 11 of the Delhi School Education Act may now be measured alongside the Fundamental Right guaranteed by Article 30(1) of the Constitution to determine whether any of them impinges on that fundamental right. Some like or analogous provisions have been considered in the cases to which we have referred. Where a provision has been considered by the Nine Judge Bench in Ahmedabad St. Xaviers College v. State of Gujarat [(1975) 1 SCR 173 : (1974) 1 SCC 717 : AIR 1974 SC 1389], we will naturally adopt what has been said therein and where the Nine Judge Bench is silent we will have recourse to the other decisions.

14. The principal controversy between the parties centered around Section 10 which requires that "the scales of pay and allowance, medical facilities, pension, gratuity, provident fund, and other prescribed benefits of the employees of the recognised private school shall not be less than those of the corresponding status run by the appropriate authority". The submission on behalf of the respondents was that the right to appoint members of staff being an undoubted right of the management and the right to stipulate their salaries and allowances etc. being part of their right to appoint, such right could not be taken away from the management of a minority institution. The learned Additional Solicitor General very fairly stated before us that there was no case in which it had been held that the right to pay whatever salaries and allowances they liked and stipulate whatever conditions they liked was part of the right to administer the minority institutions under Article 30(1) of the Constitution. On the other hand as we shall immediately point out there are observations to the contrary.

15. In the Nine Judge Bench case [(1975) 1 SCR 173 : (1974) 1 SCC 717 : AIR 1974 SC 1389], Ray, C.J. and Palekar, J. as we have already seen, expressed the view that the conditions of employment of teachers was a regulatory measure conducive to uniformity, efficiency and excellence in educational courses and did not violate the fundamental right of the minority institutions under Article 30. Jaganmohan Reddy, J. and Alagiriswami, J. who agreed with the conclusions of Ray, C.J. did not say anything expressly about salary, allowances and other conditions of employment of teachers. Khanna, J. expressed the view that to a certain extent the State may also regulate the conditions of employment of teachers and added that it would be permissible to make regulations for ensuring the regular payment of salaries before a particular date of the month. The latter statement of Khanna, J., it was contended for the respondents, limited the extent of the right of the State to regulate the conditions of employment of teachers. We cannot

agree with this contention. The statement that the State may make regulations for ensuring the regular payment of salaries before a particular date of the month was in addition to what was said earlier that to a certain extent the State may also regulate the conditions of employment of teachers. In fact, while dealing with the question of disciplinary control, Khanna, J. also said that provisions calculated to safeguard the interest of teachers would result in security of the tenure and that would inevitably attract competent persons for the post of teachers. The same thing may be said before scales of pay and decent conditions of service. Mathew, J. with whom Chandrachud, J. agreed also indicated that economic regulations, social welfare legislation, wage and hour legislation and similar measures, where the burden was the same as that borne by others by others would not be considered on abridgement of the right guaranteed by Article 30(1). Thus, we see that most of the learned Judges who constituted the Nine Judge Bench were inclined to the view that prescription of conditions of service which would have the effect of attracting better and competent teachers would not be considered violative of the fundamental right guaranteed by Article 30(1) of the Constitution. That would rightly be so because the mere prescription of scales of pay and other conditions of service would not jeopardise the right of the management of minority institutions to appoint teachers of their choice.

16. The excellence of the instruction provided by an institution would depend directly on the excellence of the teaching staff, and in turn, that would depend on the quality and the contentment of the teachers. Conditions of service pertaining to minimum qualifications of teachers, their salaries, allowances and other conditions of service which ensure security, contentment and decent living standards to teachers and which will consequently enable them to render better service to the institution and the pupils cannot surely be said to be violative of the fundamental right guaranteed by Article 30(1) of the Constitution. The management of a minority Educational Institution cannot be permitted under the guise of the fundamental right guaranteed by Article 30(1) of the Constitution, to oppress or exploit its employees any more than any other private employee. Oppression or exploitation of the teaching staff of an educational institution is bound to lead, inevitably, to discontent and deterioration of the standard of instruction imparted in the institution affecting adversely the object of making the institution an effective vehicle of education for the minority community or other persons who resort to it. The management of minority institution cannot complains of invasion of the fundamental right to administer the institution when it denies the members of its staff the opportunity to achieve the very object of Article 30(1) which is to make the institution an effective vehicle of education.

17. Apart from the learned Judges who constituted the Nine Judge Bench, other learned Judges have also indicated the same view. In the leading case of the Kerala Education Bill [1959 SCR 995 : AIR 1958 SC 956], the Constitution Bench observed that, as then advised, they were prepared to treat the clauses which were designed to give protection and security to the ill-paid teachers who were engaged in rendering services to the nation as permissible regulations. The observations were no doubt made in connection with the grant of aid to educational institutions but that cannot make any difference since, aid, as we have seen, cannot be made conditional on the surrender of the right guaranteed by Article 30(1). In State of Kerala v. Mother Provincial [(1971) 1 SCR 734 : (1970) 2 SCC 417 : AIR 1970 SC 2079], it was said that to a certain extent the State may regulate conditions of employment of teachers. In All Saints High School v. Govt. of A.P. [AIR 1980 SC 1042 : (1980) 2 SCC 478], Chandrachud, C.J., expressly stated that for the maintenance of educational standard of an institution it was necessary to ensure that it was competently staffed and therefore, conditions of service prescribing minimum qualifications for the staff, their pay scale, their entitlement to other benefits of service and the safeguards which must be observed before they were removed or dismissed from service or their services terminated were permissible measures of a regulatory

character. Kailasam, J. expressed the same view in almost identical language. We, therefore, hold that Section 10 of the Delhi School Education Act which requires that the scales of pay and allowances, medical facilities, pension gratuity, provident fund and other prescribed benefits of the employees of a recognised private school shall not be less than those of the employees of the corresponding status in schools run by the appropriate authority and which further prescribes the procedure for enforcement of the requirement is a permissible regulation aimed at attracting competent staff and consequently at the excellence of the educational institution. It is a permissible regulation which in no way detracts from the fundamental rights guaranteed by Article 30(1), to the minority institution to administer their educational institutions. Therefore, to the extent that Section 12 makes Section 10 inapplicable to unaided minority institutions, it is clearly discriminatory.

18. Section 8(1) merely empowers the Administrator to make rules regulating the minimum qualifications for recruitment, and the conditions of service of recognised private schools. Section 8(1) is innocuous and in fact Section 13 which applies to unaided minority schools is almost on the same lines as Section 8(1). The objection of the respondents is really to Section 8(2), 8(3), 8(4), and 8(5) whose effect is (1) to require the prior approval of the Director for the dismissal, removal, reduction in rank or other termination of service of an employee of a recognised private school, (2) to give a right of appeal to a Tribunal consisting of a single member who shall be a District Judge or who has held an equivalent judicial office, (3) to require prior approval of the Director if it is proposed to suspend an employee unless immediate suspension is necessary by reason of the gross misconduct of the employee in which case the suspension shall remain in force for not more than 15 days unless approval of the Director is obtained in the meanwhile. In the Nine Judge Bench case [(1975) 1 SCR 173 : (1974) 1 SCC 717 : AIR 1974 SC 1389] Ray, C.J. and Palekar, J. took the view that Section 51-A of the Gujarat Act which provided that no member of the staff of an affiliated college shall be dismissed, removed or reduced in rank except with the approval of the Vice-Chancellor was violative of Article 30(1) as it conferred arbitrary power on the Vice-Chancellor to take away rights of the minority institutions. Similarly, Section 52-A which contemplated reference of any dispute connected with conditions of service, between the governing body and any member of the staff to an Arbitration Tribunal consisting of one member nominated by the governing body, one member nominated by the member of the staff and an Umpire appointed by the Vice-Chancellor was also held to be violative of Article 30(1). It was said that this provisions would introduce an area of litigious controversy in educational institutions and displace and the domestic jurisdiction of the management. Jaganmohan Reddy, J. and Alagiriswami, J., agreed with the conclusions of Ray, C.J. Khanna, J. thought that the blanket power given by Section 51-A to the Vice-Chancellor to veto the disciplinary action and the power given by Section 52-A to the Vice-Chancellor to nominate an Umpire were both objectionable, though he observed that there was nothing objectionable in selecting the method of arbitration for settling major disputes. Mathew, J., also objected to the blanket power given to the Vice-Chancellor by Section 51-A. He also thought that Section 52-A was too wide and permitted needless interference in day-to-day affairs of the institutions by providing for arbitration in petty disputes also. Keeping in mind the view of the several learned Judges, it becomes clear that Section 8(2) must be held to be objectionable. Section 8(3) provides for an appeal to the Tribunal constituted under Section 11, that is, a Tribunal consisting of a person who has held office as an District Judge or any equivalent judicial office. The appeal is not to any departmental official but to the Tribunal manned by a person who has held office as a District Judges and who is required to exercise his powers not arbitrarily but in the same manner as a court of appeal under the Code of Civil Procedure. The right of appeal itself is confined to a limited class of cases, namely, those of dismissal, removal or reduction in rank and not to every dispute between an employee and the management. The limited right to appeal, the character of the authority

constituted to hear the appeal and the manner in which the appellate power is required to be exercised make the provision for an appeal perfectly reasonable, in our view. The objection to the reference to an Arbitration Tribunal in the Nine Judge Bench case [(1975) 1 SCR 173 : (1974) 1 SCC 717 : AIR 1974 SC 1389] was to the wide power given to the Tribunal to entertain any manner of dispute and the provision for the appointment of Umpire by the Vice-Chancellor. Those defects have been cured in the provisions before us. Similarly, the provisions for an appeal to the Syndicate was considered objectionable in State of Kerala v. Very Rev. Mother Provincial [(1971) 1 SCR 734 : (1970) 2 SCC 417 : AIR 1970 SC 2079], as it conferred the right on the University.

19. Section 8(4) would be inapplicable to minority institutions if it had conferred blanket power on the Director to grant or withhold prior approval in every case where a management proposed to suspend an employee but we see that it is not so. The management has the right to order immediate suspension of an employee in case of gross misconduct but in order to prevent an abuse of power by the management as safeguard is provided to the employee that approval should be obtained within 15 days. The Director is also bound to accord his approval if there are adequate and reasonable grounds for such suspension. The provision appears to be eminently reasonable and sound and the answer to the question in regards to this provision is directly covered by the decision in All Saints High School [AIR 1980 SC 1042 : (1980) 2 SCC 478], where Chandrachud, C.J. and Kailasam, J. upheld Section 3(3)(a) of the Act impugned therein. We may also mention that in that case the right of appeal conferred by Section 4 of the Act was also upheld. How necessary it is to afford some measure of protection to employees, without interfering with the management's right to take disciplinary action, is illustrated by the action taken by the management in this very case against some of the teachers. These teachers took part along with others in a 'silent march', first on April 9, 1986 and again on April 10, 1986, despite warning by the principal. The march was during the break when there were no classes. There were no speeches, no chanting or shouting of slogans, no violence and no disruption of studies. The behaviour of the teachers appears to have been orderly and exemplary. One would have thought that the teachers were, by their silent and dignified protest, setting an examples and the soundest of precedents to follow to all agitators everywhere. But instead of sympathy and appreciation they were served with orders of immediate suspension, somethings which would have never happened if all the provisions of Section 8 were applicable to the institution.

20. Thus, Sections 8(1), 8(3), 8(4) and 8(5) do not encroach upon any right of minorities to administer their educational institutions. Section 8(2), however, must, in view of the authorities, be held to interfere with such right and, therefore, inapplicable to minority institutions. Section 9 is again innocuous since Section 14 which applies to unaided minority schools is virtually on the same lines as Section 9. We have already considered Section 11 while dealing with Section 8(3). We must, therefore, hold that Section 12 which makes the provisions of Chapter IV inapplicable to unaided minority schools is discriminatory not only because it makes Section 10 inapplicable to minority institutions, but also because it makes Sections 8(1), 8(3), 8(4), 8(5), 9 and 11 in applicable to unaided minority institutions. That the Parliament did not understand Sections 8 to 11 as offending the fundamental right guaranteed to the minorities under Article 30(1) is evident from the fact that Chapter IV applies to aided minority institutions and it cannot for a moment be suggested that surrender of the right under Article 30(1) is the price which the aided minority institutions have to pay to obtain aid from the government.

21. The result of our discussion is that Section 12 of the Delhi School Education Act which makes the provisions of Chapter IV inapplicable to unaided minority institutions is discriminatory and void except to the extent that it makes Section 8(2) in applicable to unaided minority institutions. We,

therefore, grant a declaration to that effect and direct the Union of India and the Delhi Administration and its officers, to enforce the provisions of Chapter IV [except Section 8(2) in the manner provided in the chapter in the case of the Frank Anthony Public School. The management of the school is directed not to give effect to the order of suspension passed against the members of the staff.

22. After the arguments of the both sides were fully heard, Shri Sushil Kumar who appeared for the institutions along with Mr Anthony submitted that according to the instructions of the Council for the Indian School Certificate Examination, "the staff must be paid salaries and allowances not lower than those paid to comparable government schools in the State in which the school is located" and in view of this instruction it was not necessary for us to go into the question of the applicability of Section 10 to minority institution. We do not attach any significance to this last minute, desperate submission. It is not clear whether the instruction is a condition imposed by the Council pursuant to Section 19 of the Delhi School Education Act. There is no way by which the staff can seek to enforce the instructions. Nor is the instructions of any relevance since it is not the case of the respondents that the institutions is paying or is agreeable to pay the scales of pay stipulated in the instruction.

23. We must refer to the submission of Mr Frank Anthony regarding the excellence of the institution and the fear that the institution may have to close down if they have to pay higher scales of salary and allowances to the members of the staff. As we said earlier the excellence of the institution is largely dependent on the excellence of the teachers and it is no answer to the demand of the teachers for higher salaries to say that in view of the high reputation enjoyed by the institution for its excellence, it is unnecessary to seek to apply provisions like Section 10 of the Delhi School Education Act to the Frank Anthony Public School. On the other hand, we should think that the very contribution made by the teachers to earn for the institution the high reputation that it enjoys should spur the management to adopt at least the same scales of pay as the other institutions to which Section 10 applies. Regarding the fear expressed by Shri Frank Anthony that the institution may have to close down we can only hope that the management will do nothing to the nose to spite the face, merely to 'put the teachers in their proper place'. The fear expressed by the management here has the same ring as the fear expressed invariably by the management of every industry that disastrous results would follow which may even lead to the closing down of the industry if wage scales are revised.

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