

**SUPREME COURT OF INDIA**

State of West Bengal

Vs.

Brahmo Samaj Education Society

Review Petition (C.) Nos.1850-1851 of 2005

(K.G. Balakrishnan CJI., P. Sathasivam and J.M. Panchal JJ.)

31.07.2008

**ORDER**

1. These Review Petitions have been filed by the State of West Bengal seeking review of the judgment of this Court in *Brahmo Samaj Education Society & Ors. Vs. State of West Bengal & Ors.*<sup>1</sup>. The said decision was rendered in writ petition(c)nos.9683-9684 of 1983, filed by the petitioners therein i.e. Brahmo Samaj Education Society & ors. challenging some of the provisions contained in the *West Bengal College Service Commission Act, 1978* contending that they are violative of Articles 19(1)(g) and 19(1)(6) of the *Constitution of India*. The petitioners therein contended that they had got a right to appoint teachers of their choice, provided they satisfied the prescribed requisite qualification for appointment as teachers of the institution. In the said case, this Court had examined the said question, in view of an earlier decision of this Court in *T.M.A.Pai Foundation & Ors. Vs. State of Karnataka & Ors.*<sup>2</sup>, and has observed in paragraph 7 of the decision in *Brahmo Samaj Education Society & Ors.*(supra) as follows:

“.....Only a person who has qualified NET or SLET will be eligible for appointment as a teacher in an aided institution. This is the required basic qualification for a teacher. The petitioners' right to administer includes the right to appoint teachers of their choice among the NET/SLET-qualified candidates”.

A reference was also made to paragraph 72 of the decision in *T.M.A.Pai Foundation case* (supra).”

2. Learned counsel for the Review Petitioner-State contended that the West Bengal College Service Commission Act has laid down certain procedure for appointment of teachers and that is in conformity with the opinion laid down in *T.M.A.Pai Foundation case* (supra). On the other hand, learned counsel appearing for the respondent-Brahmo Samaj Education Society has contended that they have got a right to appoint teachers of their choice even though they are aided institutions. The observations made by this Court in Para 7 of *Brahmo Samaj Education Society* (supra) are contrary to what is held in para 72 of the *T.M.A.Pai Foundation case* (supra). There is a mistake and was apparent on the face of the record when

this Court in *Brahmo Samaj Education Society* (supra) observed that the petitioner's right to administer includes the right to appoint teachers of their choice from among the NET/SLET-qualified candidates. Further, the question of appointment of teachers is a larger question which was not primarily dealt with in the said Judgment. As it is affecting appointment of a large number of teachers, we feel that the decision in *Brahmo Samaj Education Society* deserves to be reviewed and the matter requires decision of a Constitution Bench.

3. We allow these review petitions accordingly and the Writ Petition (C) Nos.9683-9684/1983 are to be reheard by a Constitution Bench.

4. We make it clear that in the judgment of this Court in *Brahmo Samaj Education Society & Ors.*(supra) in the penultimate paragraph there was a direction to the effect that as an interim measure till such rules are framed in terms of the order made therein, the interim order passed by this Court on 2nd April, 1984 will continue. Learned counsel appearing for the respondent-Brahmo Samaj Education Society contends that so far the Commission has not given any panel of teachers since the last four years and the institution is not in a position to appoint any teachers. The State will take appropriate action in this regard. We make it clear that this interim order will continue until further orders.

5. Parties on either side would be at liberty to file their supplementary affidavits within four weeks.

<sup>1</sup>(2004) 6 SCC 224

<sup>2</sup>(2002) 8 SCC 481