SUPREME COURT OF INDIA

G.Vallikumari

Vs.

Andhra Education Society

C.A.No.5508 of 2003

(G.S. Singhvi and Dr. B.S. Chauhan JJ.)

02.02.2010

JUDGEMENT

G.S.Singhvi, J.

1. This appeal is directed against order dated 10.4.2002 passed by the Division Bench of Delhi High Court whereby it allowed the writ petition filed by respondent Nos.1 and 2 and declared Section 12 of the Delhi School Education Act, 1973 (for short, `the Act') ultra vires the provisions of the Constitution and in so far applicability of the exclusion clause contained therein is restricted to unaided minority institutions, that Section 8(2) of the Act is not applicable to minority institutions and set aside the direction given by Delhi School Tribunal (for short, `the Tribunal') for reinstatement of the appellant with all consequential benefits.

2. Respondent No.1 is a registered society formed with the primary object of imparting education to the children belonging to Andhra community living in Delhi. Respondent No.2 is a private linguistic minority school established by respondent No.1 and is aided by the Government of Delhi to the extent of 95%. The appellant was appointed as Upper Division Clerk (UDC) by respondent Nos. 1 and 2 w.e.f. 25.1.1988. Her appointment was approved by the Director of Education, Delhi (hereinafter referred to as `the Director'). In January, 1992, the appellant was granted permission by the management for doing Postgraduate Diploma in Human Resources Development Programme. After some time, the appellant applied for study leave for attending the training programme and also for preparing for the examination. She reported for duty after three days of the expiry of leave period, but the management of respondent No.2 refused to accept her joining and initiated an inquiry against her on the charges of neglecting duties as UDC, availing leave without prior permission, absence from duty, misplacing the office records, failure to submit important office records/registers to the superiors and flouting the directions given by the management of the school. Shri Y.S. Rao, who was appointed as inquiry officer, submitted report dated 4.7.1995 with the findings that all the charges except charge No.4 have been proved against the appellant. A copy of the inquiry report was supplied to the appellant along with notice dated 9.11.1995 proposing her removal from service. She filed reply dated 20.11.1995. After

considering the same, the disciplinary committee recommended the appellant's removal from service. The Managing Committee accepted the same and sent letter dated 24.1.1996 to the Director seeking his approval in terms of Rule 120(2) of the Delhi School Education Rules, 1973 (for short, `the Rules'). The latter declined to approve the proposal. This was conveyed to the management vide letter dated 4.11.1996. Thereupon, the Managing Committee informed the Directorate of Education that its request for approval of the decision to remove the appellant may be treated as withdrawn. As a follow up, the Chairman of the Managing Committee passed order dated 30.11.1996 removing the appellant from service.

3. The appeal filed by the appellant against her removal from service was allowed by the Tribunal vide order dated 24.7.2001 mainly on the ground of violation of Section 8(2) of the Act and Rule 120(2) of the Rules.

> "The Tribunal referred to the judgments of this Court in *Lily Kurian v. Sr. Lewina and others*[1], *Frank Anthony Public School Employees' Association v. Union of India*[2] *and Y. Theclamma v. Union of India*[3], and held that the management of the school could not have removed the appellant from service without obtaining permission of the Director."

4. Respondent Nos. 1 and 2 challenged the order of the Tribunal in W. P. No.5088/2001 and made the following prayers:

> "(a) Declare Section 8(2) of the Delhi School Education Act, 1973 being not applicable to the aided religious/linguistic minority institutions, established under Article 30(1) of the Constitution of India.
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> (b) Declare Section 12 of the Delhi School Education Act, 1973 in so far as it restricts its applicability to unaided minority schools, to be ultra vires of Article 30(1) of the Constitution of India.
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> (c) Issue a Writ, order or direction thereby quashing the impugned judgment dated 24th July, 2001, passed by the Respondent No.1 and declare that even in the case of aided minority school established under Article 30(1) of the Constitution of India, no prior approval within the meaning of Section 8(2) of the Delhi School Education Act, 1973, is required or contemplated and as such quash/set aside the order dated 24.7.2001 passed by Respondent No.1 in the appeal filed on behalf of Respondent No.3 and uphold the decision of petitioners thereby terminating the services of the respondent No.3."

5. The Division Bench of the High Court briefly noticed the factual matrix of the case and the provisions of the Act, referred to the judgments of this Court in *State of Kerala v. Very Rev. Mother Provincial Etc.*[4], *DAV College Etc. Etc. v. State of Punjab and others*[5], *Ahmedabad St. Xavier's College Society and another v. State of Gujarat and another*[6], *Lily Kurian v. Sr. Lewina and others (supra), All Saints High School, Hyderabad and others v.*

Government of Andhra Pradesh and other[7]*, Frank Anthony Public School Employee's Association v. Union of India and others (supra), Y. Theclamma v. Union of India (supra), Anjuman- e-Mishbul Muslemin v. State of Bihar*[8]*, Association of Teachers in Anglo-Indian School v. The Association Aids Anglo-Indian School in India and others*[9]*, All Bihar Christian Schools Association and another v. State of Bihar and others*[10]*, Bihar State Madarasa Education Board, Patna v. Madarsa Hanfia Arabic College, Jamalia and others*[11]*, Manohar Harries Walters v. Basel Mission Higher Education Center, Dharwad and others*[12]*, St. Johns Teachers Training Institute (For Women), Madurai and others v. State of Tamil Nadu and others*[13] and held that any provision which seeks to take away the right of the managing committee to pass any order of dismissal, removal or reduction in rank, would be violative of Article 30(1) of the Constitution of India. Such a provision may, however, be upheld if an independent Tribunal wholly unconnected with the affairs of the institution as in the case of Delhi Act, or a provision is made to over-see that the governing body complies with the principles of natural justice.

> "The Division Bench then considered the questions whether Section 8(2) of the Act read with Rule 120(2) of the Rules confers unguided powers upon the Director to refuse to approve the action proposed to be taken by the management of the recognized private educational institutions against its employee and whether the direction given by the Tribunal for reinstatement of the appellant was legally correct and answered the same in the following words:
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> "It is further incorrect to contend that sub section (2) of Section 8 does not suffer from unbridled power. As to what are the matters which are to be taken into consideration for grant or refusal of approval are not specified. In terms of Rule 120 no guidelines have been provided. Even no time limit has been provided within which such order should be passed. Such unbridled and unguided power, in our opinion, cannot be upheld.
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> In the instant case, the Tribunal has not found fault with the management in the matter of holding of domestic enquiry or disciplinary proceedings against the respondent. It was clearly held that not only the principles of natural justice have been complied with but also the provisions of Section 8 and Rule 120 have been complied with. No reason has been assigned as to why the approval was refused. It clearly goes to show that the Director of Education did not follow any principle which could tantamount to arbitrary exercise of power for exercising his statutory function. We, therefore, are of the opinion that sub- section (2) of Section 8 cannot be held to have any application so far as minority institutions are concerned. In the instant case, no guidelines have also been provided by reason of Rule 120 of the Rules."
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> The Division Bench finally declared that Section 12 of the Act insofar as it restricts the applicability of the Act to unaided minority institutions is ultra vires and set aside the order passed by the Tribunal."

6. Shri P.P. Rao, learned senior counsel appearing for the appellant argued that negative declaration made by the High Court on the constitutionality of Section 12 was totally uncalled for because this Court has already held in Frank Anthony Public School Employees' Association's case that Section 12, which excludes the applicability of Chapter IV of the Act to unaided minority institutions except Section 8(2), is violative of Article 14 of the Constitution. Learned senior counsel submitted that even though in Frank Anthony Public School Employees' Association's case, the two-Judge Bench did not notice an earlier Constitution Bench judgment in Lily Kurian's case, the legal position has been clarified in Y. Theclamma's case. Shri P.P. Rao submitted that in view of the law laid down in Frank Anthony Public School Employees' Association's case and Y. Theclamma's case, it was neither necessary nor there was any justification for the Division Bench of the High Court to have pronounced upon the vires of Section 12 of the Act. Learned senior counsel extensively referred to the provisions of the Act and the Rules as also the judgment of the larger Bench in *T.M.A. Pai Foundation v. State of Karnataka*[14] and submitted that when the ratio of the judgment in Frank Anthony Public School Employees' Association's case has been approved by the larger Bench, the Division Bench of the High Court was not justified in nullifying Section 12 of the Act. Learned counsel submitted that even though Section 8(3) does not, in terms provide for an appeal by the management of the recognized private school, the same should be read as implicit in the language of that section, else it may be argued that the provision is discriminatory and violative of doctrine of equality. Shri P.P. Rao then argued that the High Court committed serious error by setting aside the reinstatement of the appellant without even adverting to the issue relating to legality of the action taken by the management of respondent Nos.1 and 2. Learned senior counsel also invoked the doctrine of proportionality and submitted that the extreme penalty of removal from service imposed upon the appellant may be substituted with a lesser penalty. In support of this argument, Shri P.P. Rao relied upon the judgments of this Court in *Ashok Kumar v. Union of India*[15], *Union of India v. M.B. Patnaik*[16], *Dev Singh v. Punjab Tourism Corporation Limited and another*[17], *Shri Bhagwan Lal Arya v. Commissioner of Police, Delhi and others*[18].

7. Learned counsel appearing for the NCT of Delhi adopted the arguments of Shri P.P. Rao and emphasized that the Tribunal did not commit any error by setting aside the appellant's removal from service because management of respondent Nos.1 and 2 had acted in clear violation of mandate of Section 8(2) read with Rule 120 (2) of the Rules.

8. Shri L.N. Rao, learned senior counsel appearing for respondent Nos.1 and 2 supported the impugned order and argued that in view of the judgment in Frank Anthony Public School Employees' Association's case, Section 8(2) cannot be treated applicable to aided minority institutions and Section 8(3) cannot be read as providing an effective remedy to the management of the school against an order passed by the Director. He submitted that if Section 8(2) is not applicable to unaided minority institutions then its applicability to aided minority institutions would result in violation of Article 14. Shri L.N. Rao also relied upon the larger Bench judgment in T.M.A. Pai Foundation's case and submitted that right of the private aided minority institutions to regulate the discipline cannot be curtailed by a provision like one contained in Section 8(2) of the Act.

9. We have considered the respective submissions. Sections 8 and 12 of the Act and Rule 120 of the Rules which have bearing on the decision of this appeal read as under:

> "8. Terms and conditions of service of employees of recognised private schools.- (1) The Administrator may make rules regulating the minimum qualifications for recruitment, and the conditions of service, of employees of recognised private schools:
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> Provided that neither the salary nor the rights in respect of leave of absence, age of retirement and pension of an employee in the employment of an existing school at the commencement of this Act shall be varied to the disadvantage of such employee:
>
> Provided further that every such employee shall be entitled to opt for terms and conditions of service as they were applicable to him immediately before the commencement of this Act.
>
> (2) Subject to any rule that may be made in this behalf, 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.
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> (3) Any employee of a recognised private school who is dismissed, removed or reduced in rank may, within three months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Tribunal constituted under section 11.
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> (4) Where the managing committee of a recognised private school intends to suspend any of its employees, such intention shall be communicated to the Director and no such suspension shall be made except with the prior approval of the Director:
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> Provided that the managing committee may suspend an employee with immediate effect and without the prior approval of the Director if it is satisfied that such immediate suspension is necessary by reason of the gross misconduct within the meaning of the Code of Conduct prescribed under section 9, of the employee:
>
> Provided further that no such immediate suspension shall remain in force for more than a period of fifteen days from the date of suspension unless it has been communicated to the Director and approved by him before the expiry of the said period.
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> (5) Where the intention to suspend, or the immediate suspension of an employee is communicated to the Director, he may, if he is satisfied that there are adequate and reasonable grounds for such suspension, accord his approval to such suspension.

12. Chapter not to apply to unaided minority schools.- Nothing contained in this Chapter shall apply to an unaided minority school.

The Delhi School Education Rules, 1973 120. Procedure for imposing major penalty.- (1) No order imposing on an employee any major penalty shall be made except after an inquiry, held, as far as may be, in the manner specified below:

(a) the disciplinary authority shall frame definite charges on the basis of the allegation on which the inquiry is proposed to be held and a copy of the charges together with the statement of the allegations on which they are based shall be furnished to the employee and he shall be required to submit within such time as may be specified by the disciplinary authority, but not later than two weeks, a written statement of his defense and also to state whether he desires to be heard in person;

(b) on receipt of the written statement of defence, or where no such statement is received within the specified time, the disciplinary authority may itself make inquiry into such of the charges as are not admitted or if considers it necessary so to do, appoint an inquiry officer for the purpose;

(c) at the conclusion of the inquiry, the inquiry officer shall prepare a report of the inquiry regarding his findings on each of the charges together with the reasons therefor;

(d) the disciplinary authority shall consider the record of the inquiry and record its findings on each charge and if the disciplinary authority is of opinion that any of the major penalties should be imposed, it shall- (i) furnish to the employee a copy of the report of the inquiry officer, where an inquiry has been made by such officer;

(ii) give him notice in writing stating the action proposed to be taken in regard to him and calling upon him to submit within the specified time, not exceeding two weeks, such representation as he may wish to make against the proposed action;

(iii) on receipt of the representation, if any, made by the employee, the disciplinary authority shall determine what penalty, if any, should be imposed on the employee and communicate its tentative decision to impose the penalty to the Director for his prior approval;

(iv) after considering the representation made by the employee against the penalty, the disciplinary authority shall record its findings as to the penalty which it proposes to impose on the employee and send its findings and decision to the Director for his approval and while sending the case to the Director, the disciplinary authority shall furnish to him all relevant records of the case including the statement of allegation charges framed against the employee, representation made by the employee, a copy of

the inquiry report, where such inquiry was made, and the proceedings of the disciplinary authority.

(2) No order with regard to the imposition of a major penalty shall be made by the disciplinary authority except after the receipt of the approval of the Director.

(3) Any employee of a recognised private school who is aggrieved by any order imposing on him the penalty of compulsory retirement or any major penalty may prefer an appeal to the Tribunal."

10. In Frank Anthony Public School Employees' Association's case the petitioner challenged the vires of Section 12 of the Act on the ground that the same is violative of Article 14 of the Constitution. The two-Judge Bench noticed the scheme of the Act, referred to Article 30(1) and (2) and various judgments of this Court including Very Rev. Mother Provincial's case, Ahmedabad St. Xavier's College Society's case and observed:

"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 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 provision would introduce an area of litigious controversy in educational institutions and displace 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 institution by providing for arbitration in petty disputes also. Keeping in-mind the views 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 a District Judge or any equivalent judicial office. The appeal is not to any departmental official but to a Tribunal manned by a person who has held office as a District Judge 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 of 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 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 provision for an appeal to the Syndicate was considered objectionable in State of Kerala v. Very Rev. Mother Provincial as it conferred the right on the University.

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 a 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 regard to this provision is directly covered by the decision in All Saints High School 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 example 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, something which would have never happened if all the provisions of Section 8 were applicable to the institution.

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 inapplicable 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."

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) inapplicable 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 orders of suspension passed against the members of the staff.”

(emphasis added)

11. In Y. Theclamma's case, the issue considered by this Court was whether the suspension of the appellant pending departmental inquiry was legally correct and justified. The Court referred to earlier judgments including the Constitution Bench judgment in Lily Kurian's case and observed:

“It is not necessary to go through all the cases relied upon by the Court in Frank Anthony Public School case for the view taken that the provisions of Chapter IV of the Act were of a regulatory nature and therefore did not have the effect of abridging the fundamental right guaranteed to the minorities under Article 30(1). It is enough to say that although there is no reference in the judgment to Lily Kurian case the observations made by the court with regard to the applicability of sub-section (4) of Section 8 of the Act which relates to the exercise of the power of suspension by the management, fall in line with the view expressed by the majority in All Saints High School case where such power was held to be, on consideration of all the decisions starting from In re the Kerala Education Bill, 1957, a permissible restriction being regulatory in character.

Presumably the court in Frank Anthony Public School case felt that it was not necessary to refer to Lily Kurian case as the extent of the regulatory power of the State had been dealt with by the court in In re the Kerala Education Bill, 1957 and reaffirmed in the subsequent decisions, including that in All Saints High School case. In Lily Kurian case one of us (Sen, J.,) speaking for a Constitution Bench had occasion to observe:

(SCC p. 137, para 36) "Protection of the minorities is an article of faith in the Constitution of India. The right to the administration of institutions of minority's choice enshrined in Article 30(1) means `management of the affairs' of the institution. This right is, however, subject to the regulatory power of the State. Article 30(1) is not a charter for maladministration; regulation, so that the right to administer may be better exercised for the benefit of the institution, is permissible;"

(emphasis supplied) In that case, the question was whether the conferment of a right of appeal to an external authority like the Vice-Chancellor of the University under Ordinance 33(4) framed by the Syndicate of the University of Kerala under Section 19(j) of the Kerala University Act, 1957 against any order passed by the management of a minority educational institution in respect of penalties including that of suspension was an abridgement of the right of administration conferred on the minorities under Article 30(1). The question was answered in the affirmative and it was held that the conferral of the power of appeal to the Vice- Chancellor under Ordinance 33(4) was not only a grave encroachment on such institution's right to enforce and ensure discipline in its administrative affairs but it was uncanalised and unguided in the sense that no restrictions were placed on the exercise of the power. It was further said that in the absence of any guidelines it could not be held that the power entrusted to the Vice-Chancellor under Ordinance 33(4) was merely a check on maladministration."

The Court rejected the argument that the decision in Frank Anthony Public School Employees' Association's case was in conflict with the Constitution Bench judgment

in Lily Kurian's case. Paragraphs 11 and 12, which contain discussion on this issue, read thus:

"11. It would be seen that the decision of the Court in Frank Anthony Public School case with regard to the applicability of sub-section (4) of Section 8 of the Act to the unaided minority educational institutions is based on the view taken by the majority in All Saints High School case which, on its turn, was based on several decisions right from In re the Kerala Education Bill, 1957 down to St. Xavier, including that in Lily Kurian. It is therefore difficult to sustain the argument of learned counsel for the respondents that the decision in Frank Anthony Public School case holding that sub-section (4) of Section 8 of the Act was applicable to such institutions was in conflict with the decision of the Constitution Bench in Lily Kurian case and therefore required reconsideration. The contention of learned counsel for the respondents that sub-section (4) of Section 8 of the Act requiring the prior approval of the Director for the suspension of a teacher was a flagrant encroachment upon the right of the minorities under Article 30(1) of the Constitution to administer educational institutions established by them is answered in all the earlier decisions of this Court right from In re the Kerala Education Bill, 1957 down to that in All Saints High School case which have been referred to by the Court in Frank Anthony Public School case.

These decisions unequivocally lay down that while the right of the minorities, religious or linguistic, to establish and administer educational institutions of their choice cannot be interfered with, restrictions by way of regulations for the purpose of ensuring educational standards and maintaining excellence thereof can validly be prescribed.

12. It cannot be doubted that although disciplinary control over the teachers of a minority educational institution is with the management, regulations can be made for ensuring proper conditions of service for the teachers and also for ensuring a fair procedure in the matter of disciplinary action. As the court laid down in Frank Anthony Public School case the provision contained in sub-section (4) of Section 8 of the Act is designed to afford some measure of protection to the teachers of such institutions without interfering with the Managements' right to take disciplinary action. Although the court in that case had no occasion to deal with the different ramifications arising out of sub-section (4) of Section 8 of the Act, it struck a note of caution that in a case where the management charged the employee with gross misconduct, the Director is bound to accord his approval to the suspension. It would be seen that the endeavour of the court in all the cases has been to strike a balance between the constitutional obligation to protect what is secured to the minorities under Article 30(1) with (sic and) the social necessity to protect the members of the staff against arbitrariness and victimisation."

12. The prepositions which can be culled out from the above noted two judgments are:

"(i) Section 8(1), (3), (4) and (5) of the Act do not violate the right of the minorities to establish and administer their educational institutions. However, Section 8(2) interferes with the said right of the minorities and is, therefore, inapplicable to private recognized aided/unaided minority educational institutions.

(ii) Section 12 of the Act, which makes the provisions of Chapter IV of the Act inapplicable to unaided private recognized minority educational institutions is discriminatory except to extent of Section 8(2). In other words, Chapter IV of the Act except Section 8(2) is applicable to private recognized aided as well as unaided minority educational institutions and the concerned authorities of the education department are bound to enforce the same against all such institutions."

13. We shall now deal with the question whether the Division Bench of the High Court was justified in setting aside the direction given by the Tribunal for reinstatement of the appellant with consequential benefits. Shri Y. S. Rao, who conducted inquiry against the appellant submitted report dated 4.7.1999 with the findings that all the charges except charge No.4 have been proved against the appellant. She was given a copy of the inquiry report along with show cause notice to which she filed reply dated 20.11.1995. In his order, the Chairman of the Managing Committee did refer to the allegations leveled against the appellant and representation submitted by her in the light of the findings recorded by the inquiry officer but without even adverting to the contents of her representation and giving a semblance of indication of application of mind in the context of Rule 120(1)(iv) of the Rules, he directed her removal from service. Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant statutory rule and the principles of natural justice. The requirement of recording reasons by every quasi judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to the affected person is one of the recognized facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the concerned authority.

14. A careful reading of the Tribunal's order shows that though it did not find any procedural infirmity in the inquiry against the appellant, the order passed by the Chairman of the Managing Committee was nullified only on the ground of violation of Section 8(2) of the Act read with Rule 120(2) of the Rules inasmuch as permission of the Director was not obtained before removing the appellant from service. The High Court set aside the order of the Tribunal and indirectly restored the order passed by the Chairman of the Managing Committee because it was of the view that Section 8(2) is not applicable to the minority institutions. Neither the Tribunal nor the Division Bench of the High Court dealt with and decided the appellant's challenge to the findings recorded by the inquiry officer and her plea that the extreme penalty of removal from service imposed on her was not justified because she was not found guilty of any serious misconduct.

15. Since the order of punishment passed by the Chairman of the Managing Committee is vitiated due to violation of the statutory rules and the principles of natural justice, we may

have remitted the matter to the Tribunal with a direction to consider whether or not the penalty of removal from service imposed upon the appellant was disproportionate to the misconduct found against her or the action taken by the management was wholly arbitrary or unjust but keeping in view the fact that the appellant was removed from service more than 13 years ago, we do not consider it proper to adopt that course. In *Superintendent (Tech.I) Central Excise I.D.D. Jabalpur and others v. Pratap Rai*[19], this Court held that if an order passed by the disciplinary authority is annulled on a technical ground, the concerned authority is free to pass fresh order but, at the same time, the Court declined to give such liberty to the administration on the ground that a period of 15 years had elapsed since the framing of charge. In Shri Bhagwan Lal Arya's case, a somewhat similar approach was adopted by this Court by recording the following observations:

> "Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated up to the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spent on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside.
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> The appellant must report on duty within a period of six weeks from today to take benefit of this judgment."
> (emphasis supplied)

16. In Dev Singh's case, the two-Judge Bench held that punishment of dismissal on the ground of misplacement of file without any ulterior motive was too harsh and totally disproportionate to the misconduct alleged and the same would certainly shock the court's judicial conscience.

17. In view of the above noted judgments, we feel that ends of justice will be met by substituting the punishment of removal from service imposed on the appellant with the penalty of stoppage of three increments without cumulative effect and directing that she shall be paid only 20% of back wages during the intervening period.

18. In the result, the appeal is allowed. The impugned order of the High Court is set aside. The punishment of removal from service imposed on the appellant is substituted with the penalty of stoppage of three increments without cumulative effect. We also direct that instead of full back wages, the appellant shall be entitled to 20% of the salary and allowances for the period between the dates of removal from service and this order.

Respondent Nos.1 and 2 are directed to reinstate the appellant without delay.

The parties are left to bear their own costs.

[1]*(1979) 2 SCC 124*
[2]*(1986) 4 SCC 707*
[3]*(1987) 2 SCC 516*
[4]*1970 (2) SCC 417*
[5]*1971 (2) SCC 269*
[6]*1974 (1) SCC 717*
[7]*1980 (2) SCC 478*
[8]*1988 PLJR 1107*
[9]*AIR 1995 Calcutta 194*
[10]*1988 (1) SCC 206*
[11]*1990 (1) SCC 428*
[12]*1992 Supp. (2) SCC 301*
[13]*1993 (3) SCC 595*
[14]*(2002) 8 SCC 481*
[15]*1988 (2) L.L.J. 344*
[16]*1981 (2) SCC 159*
[17]*2003 (8) SCC 9*
[18]*2004 (4) SCC 560*
[19]*1978 (3) SCC 113*