



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK

&

HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

WRIT APPEAL No. 2405 of 2025

THE CHAIRMAN

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri MPS Raghuvanshi – learned Senior Counsel with Shri Amir Khan – learned counsel for appellant.

Shri Ankur Modi – learned Additional Advocate General for respondent/State.

Shri Prashant Sharma and Shri Pawan Raghuvanshi – learned counsel for respondent No.4.

With

WRIT APPEAL No. 2416 of 2025

DR. S.K.UPADHYAY AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

**Appearance:**

Shri Narottam Sharma – learned counsel for appellant.

Shri Ankur Modi – learned Additional Advocate General for respondent/State.

Shri Pawan Singh Raghuvanshi – learned counsel for respondent No.4.

Reserved on 16.3.2026

Pronounced on 30.4.2026

ORDER***As per Justice Anand Singh Bahrawat:***

Since the controversy involved in the present bunch of Writ Appeals, both these have been heard together and are being disposed of by this common order. However, for the sake of convenience, facts of W.A. No.2405 of 2025 are being taken for proper adjudication of the *lis* between the parties.

W.A. No.2405 of 2025:

By way of instant appeal, filed under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005, challenge is made to the order dated 5.8.2025 passed in W.P.No.21032 of 2025; whereby, writ petition was disposed of.

2. The facts, necessary for adjudication of the present writ appeal, are that the respondents No.4 is working as an Assistant Professor (Economics) in S.S.L. Jain P.G. College, Vidisha (M.P.), which is an aided institution funded by the State Government. One Dr. (Smt.) Shobha Jain was functioning as the In-charge



Principal of the said college and was due to retire with effect from 28.02.2025 upon attaining the age of superannuation. Rajmata Vijaya Raje Scindia Girls P.G. College, Vidisha is the lead college for S.S.L. Jain P.G. College, Vidisha. In view of the impending retirement of Dr. (Smt.) Shobha Jain, respondent No.7- The Principal Rajmata Vijaya Raje Scindia Government Girls (leading) P.G. College, Vidisha recommended the name of respondent No.4- Dr. Archana Jain for being assigned the charge of the post of Principal, considering that she is the senior-most Assistant Professor in the institution.

3. Learned counsel for appellant submits that respondent No.4- Dr. Archana Jain also submitted a representation to the State Government seeking grant of charge of the post of Principal. In response, the Under Secretary, Higher Education Department, vide communication dated 24.02.2025, directed appellant to initiate the process for assignment of charge of the post of Principal in accordance with the applicable rules. Pursuant thereto, the Regional Additional Director, Higher Education, Bhopal–Narmadapuram Division, Bhopal (Respondent No.3), passed an order dated 27.02.2025, directing that the charge of the post of Principal be handed over to respondent No.4- Dr. Archana Jain on account of the retirement of Dr. (Smt.) Shobha Jain. In compliance thereof, respondent No.4- Dr. Archana Jain submitted her joining on 28.02.2025. Furthermore, it is borne out from the record that a meeting of the Governing Body of the Society was held on 28.01.2025 wherein a resolution was passed to assign the charge of the post of Principal to respondent No.6-Dr. S.K. Upadhyay. The said resolution was passed in view of the punishment earlier imposed upon respondent No.4- Dr. Archana Jain on account of certain allegations of indecent



behaviour. In light of the said resolution, appellant vide letter dated 27.02.2025, requested respondent No.3- The Regional Additional Director to cancel the order dated 27.02.2025 on the ground that the same was contrary to the decision of the Governing Body. Consequently, appellant issued another order dated 27.02.2025, directing that the charge of the post of Principal be handed over to respondent No.6 Dr. S.K. Upadhyay. Piqued by the said order, respondent No.4- Dr. Archana Jain preferred the writ petition before Hon'ble Single Bench. The Hon'ble Single Bench, after hearing learned counsel for the parties and perusing the record, proceeded to pass the order impugned which is under challenge in the present writ appeal.

4. Learned counsel for appellant submits that the impugned order has been passed on the basis of letter dated 27.2.2025 but the said letter dated 27.2.2025 talks about the letter dated 15.2.2022 which is an order in respect of current charge in the Govt. colleges and not in private colleges. It is further submitted that the impugned order passed by the Hon'ble Single Bench is contrary to the law laid down by the Hon'ble Apex Court in ***State of Haryana v. S.M. Sharma and others*** reported in **1993 Supp. (3) SCC 252**. It is further submitted that subsequent to the passing of the impugned order, a fresh charge-sheet has been issued against the respondent/writ petitioner. Therefore, the direction issued by the Hon'ble Single Bench to reconsider the matter would prejudice and vitiate the rights of the appellant. It is further contended that the findings recorded by the Hon'ble Single Bench are self-contradictory and therefore, the impugned order is unsustainable in law. Learned counsel further submits that the Hon'ble Single Bench has failed to appreciate that a writ petition seeking grant of current



charge is not maintainable, as no enforceable legal right accrues from such a claim. It is further argued that the Hon'ble Single Bench has erred in holding that the orders issued by the Commissioner, Higher Education Department, are in the nature of a circular enforceable under Article 226 of the Constitution of India. It is further submitted that such orders do not have the force of law nor do they derive authority from any statutory source. Therefore, in the absence of any legal sanction or source of power, such orders cannot be enforced through a writ. It is further submitted that the Hon'ble Single Bench failed to consider that the charge-sheet issued against the respondent pertains to serious allegations of misconduct. In view of the liberty granted by the Hon'ble Division Bench, disciplinary proceedings have been initiated and in such circumstances, entrusting the respondent with the charge of Principal and permitting her to administrate the institution would not be in the interest of the institution. Therefore, it has been prayed that the impugned order be quashed and set aside. To strengthen his arguments, learned counsel for appellant placed reliance on the decision of Supreme Court in the case of **Manager, Corporate Educational Agency v. James Mathew and others** reported in (2017) 15 SCC 595, **Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation** (2011) 5 SCC 435.

5. *Per contra*, learned counsel for respondents submit that the petitioner/respondent No.4- Dr. Archana Jain in W.P. No. 21032/2025 is working as Assistant Professor (Economics) in S.S.L. Jain P.G. College, Vidisha, a grant-in-aid college. She is also the senior-most Assistant Professor of the institution. Petitioner/respondent No.4 challenged order dated 27.2.2025 before the Hon'ble



Single Bench in W.P. No. 21032/2025. The Hon'ble Single Bench, after considering the record and relevant circulars dated 25/08/2021 (modified 08/09/2021) held that the authority to pass orders in relation to grant of current charge of Principals in aided colleges vests with the Regional Additional Director. Accordingly, the order dated 27/02/2025 (Annexure P/1) was quashed to that extent and the matter was directed to be reconsidered by respondent No.3/Regional Additional Director within 45 days. The arrangement in favour of Dr. Upadhyay was permitted to be continued till fresh orders are passed. The appellants' reliance on the letter dated 24/02/2025 is misconceived. The said communication only forwarded the request of respondent No.4- Dr. Archana Jain and directed the Regional Additional Director to process the matter. It cannot be read as conferring any power on the Governing Body to appoint an In-charge Principal contrary to the circular dated 25/08/2021. The order dated 27.2.2025 was passed strictly in accordance with Clause-11 of the said circular, which vests the power in the Regional Additional Director. The Single Bench rightly held that in grant-in-aid institutions, the State is entitled to regulate through administrative circulars, including circular dated 25/08/2021 (as modified 08/09/2021). These circulars, though administrative in nature, are binding on aided institutions as a condition of grant and in the interest of uniformity in administration. The appellants' argument that such circulars are not statutory is misconceived. Administrative instructions regulating grant-in-aid institutions have consistently been upheld by this Hon'ble Court (placed reliance on **Kusum Bai Jain Girls College, Bhind Vs. State of M.P. and Others-W.P.No.2205/2017, order dated 24.08.2017**). The learned Single Judge did not issue direction for appointment of



any person as Principal but only directed the competent authority to reconsider the matter in accordance with law. The existing arrangement in favour of appellant was allowed to continue till then. Thus, no prejudice has been caused to the appellants. Continuation of stay granted in this appeal is wholly redundant. The Single Bench itself safeguarded the **appellants**' position by permitting them to continue till a fresh decision is taken. The stay order only delays the mandated reconsideration within 45 days, frustrating the object of the writ court's directions. The order of the Hon'ble Single Bench is a balanced and proportionate exercise of judicial review. It preserves administrative autonomy while correcting a jurisdictional error.

6. Heard the learned counsel for the parties and perused the record.

7. Perusal of record reveals that respondent No.4- Archana Jain, an Assistant Professor (Economics), was recommended for the post of In-charge Principal by Respondent No.7 on account of being the senior-most faculty member, following the retirement of the then In-charge Principal, Dr. (Smt.) Shobha Jain on 28.02.2025. Pursuant to a communication dated 24.02.2025 issued by the State Government, Respondent No.3 (Regional Additional Director) passed an order dated 27.02.2025 assigning the charge of Principal to Respondent No.4- Dr. Archana Jain, who accordingly joined on 28.02.2025. However, prior to this, the Governing Body of the Society had in its meeting dated 28.01.2025, resolved to assign the charge of Principal to respondent No.6 Dr. S.K. Upadhyay, in view of earlier allegations and punishment imposed upon Respondent No.4- Archana Jain. In light of the said resolution, the appellant requested cancellation of the



order dated 27.02.2025 and simultaneously another order was issued on the same date assigning charge to respondent No.6 Dr. S.K. Upadhyay. Irked thereby, respondent No.4- Dr. Archana Jain filed a writ petition. The Hon'ble Single Bench, after hearing the parties, passed the impugned order, which is under challenge in the present writ appeal.

8. This Court need not dwell into the aspect of the status of appellant -Institution because the appellant's status as minority institution is not in dispute. If that be the admitted position, whether prescription of the criteria as to who should be made In-charge Principal, will have to be left to the decision of the minority institution itself without restricting the said choice by imposition of any criteria of seniority. The freedom of choice of the minority institution to select Principal of the institution has been considered by the Hon'ble Supreme Court in the case of Secy. Malankara Syrian Catholic College Vs. T. Jose and Ors. (2007) 1 SCC 386, with specific reference to the fundamental rights guaranteed under Article 30 of the Constitution of India to minority institution in the matter of establishment and administration of such minority institution. The factual score depicted in the said decision were that the post of Principal of the College run by Malankara Syrian Catholic College Association of Archdiocese at Trivandrum fell vacant. The post was filled up by appointing a Lecturer in the College which was under challenge on the grounds that person appointed as Principal did not possess the required qualifications for the post and consequently that appointment was violative of Section 57 (3) of the Kerala Literacy, Scientific and Charitable Societies Registration Act, 1955. The relevant provision contained in Section 57 (3) of the said Act mandated appointment on the post of Principal



based on the criteria of seniority-cum-fitness. The Supreme Court, after surveying its earlier decision, summarized the general principles relating to establishment and administration of educational institution by minority as below:-

“19. The general principles relating to establishment and administration of educational institution by minorities may be summarized thus:

(i) The right of minorities to establish and administer educational institutions of their choice comprises the following rights :

a) To choose its governing body in whom the founders of the institution have faith and confidence to conduct and manage the affairs of the institution;

b) To appoint teaching staff (Teachers/Lecturers and Head-masters/Principals) as also non-teaching staff; and to take action if there is dereliction of duty on the part of any of its employees;

c) To admit eligible students of their choice and to set up a reasonable fee structure;

d) To use its properties and assets for the benefit of the institution;

(ii) The right conferred on minorities under Article 30 is only to ensure equality with the majority and not intended to place the minorities in a more advantageous position vis- a`-vis the majority. There is no reverse discrimination in favour of minorities. The general laws of the land relating to national interest, national security, social welfare, public order, morality, health, sanitation, taxation etc. applicable to all, will equally apply to minority institutions also.

(iii) The right to establish and administer educational institutions is not absolute. Nor does it include the right to maladminister. There can be regulatory measures for ensuring educational character and standards and maintaining academic excellence. There can be checks



on administration as are necessary to ensure that the administration is efficient and sound, so as to serve the academic needs of the institution. Regulations made by the State concerning generally the welfare of students and teachers, regulations laying down eligibility criteria and qualifications for appointment, as also conditions of service of employees (both teaching and nonteaching), regulations to prevent exploitation or oppression of employees, and regulations prescribing syllabus and curriculum of study fall under this category. Such regulations do not in any manner interfere with the right under Article 30(1).

(iv) Subject to the eligibility conditions/qualifications prescribed by the State being met, the unaided minority educational institutions will have the freedom to appoint teachers/Lecturers by adopting any rational procedure of selection.

(v) Extension of aid by the State, does not alter the nature and character of the minority educational institution. Conditions can be imposed by the State to ensure proper utilization of the aid, without however diluting or abridging the right under Article 30(1).” It was further held thus: “20. Aided institutions give instruction either in secular education or professional education. Religious education is barred in educational institutions maintained out of State fund. These aided educational minority institutions providing secular education or professional education should necessarily have standards comparable with non-minority educational institutions. Such standards can be attained and maintained only by having well qualified professional teachers. An institution can have the services of good qualified professional teachers only if the condition of service ensures security, contentment and decent living standards. That is why State can regulate the service conditions of the employees of the minority educational institutions to ensure quality of education. Consequently, any law intended to regulate the service conditions of employees of educational institutions will apply to minority institutions also, provided that such law does not interfere with the overall administrative control of the managements over the staff.



9. The decision rendered by the Constitution Bench of the Supreme Court in the case of **T.M. A. Pai Foundation Vs. State of Karnataka (2002) 8 SCC 481**, clarifying and crystallizing the extent of regulations by the State in respect of employee of minority educational institutions receiving aid from the State were also noticed as below:

“21. We may also recapitulate the extent of regulation by the State, permissible in respect of employees of minority educational institutions receiving aid from the State, as clarified and crystallised in TMA Pai. The State can prescribe :

- (i) the minimum qualifications, experience and other criteria bearing on merit, for making appointments,
- (ii) the service conditions of employees without interfering with the overall administrative control by the Management over the staff.
- (iii) a mechanism for redressal of the grievances of the employees.
- (iv) the conditions for the proper utilisation of the aid by the educational institutions, without abridging or diluting the right to establish and administer educational institutions.

In other words, all laws made by the State to regulate the administration of educational institutions, and grant of aid, will apply to minority educational institutions also. But if any such regulations interfere with the overall administrative control by the Management over the staff, or abridges/dilutes, in any other manner, the right to establish and administer educational institutions, such regulations, to that extent, will be inapplicable to minority institutions.”

10. The importance of the office of Principal of an educational institution and the role played by it was highlighted as below:



“22. The Principal or Headmaster of an educational institution is responsible for the functional efficiency of the institution, as also the quality of education and discipline in the institution. He is also responsible for maintaining the philosophy and objects of the institution.

23. In *State of Kerala vs. Very Rev. Mother Provincial* [1970 (2) SCC 417], this Court upheld the decisions of the Kerala High Court declaring subsections (1) (2) (3) of section 53 of the Kerala University Act, 1969 relating to appointment of Principals were ultra vires Article 30(1) in respect of minority institutions. This Court affirmed the following findings of the High Court (reported in 1969 Kerala Law Times 749) without independently considering the same :-

"The principal of a college is, as S.2(12) recognizes, the head of the college, and, the post of the principal is of pivotal importance in the life of a college; around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching; and the right to choose the principal is perhaps the most important facet of the right to administer a college. The imposition of any trammel thereon except to the extent of prescribing the requisite qualifications and experience or otherwise fostering the interests of the institution itself cannot but be considered as a violation of the right guaranteed by article 30(1) of the Constitution, and, for the reasons we have already given, by article 19(1)(f) as well. To hold otherwise would be to make the rights "a teasing illusion, a promise of unreality". Provision may, of course, be made to ensure that only proper persons are appointed to the post of principal; the qualifications necessary may be prescribed, and the mode of selection for the purpose of securing the best men may be laid down. But to go beyond that and place any further fetter on the choice would be an unreasonable interference with the right of management. Therefore, so far as the post of



principal is concerned, we think it should be left to the management to secure the services of the best person available. This, it seems to us, is of paramount importance, and the prospects of advancement of the staff must yield to it. The management must have as wide a field of choice as possible; yet sub- section (2) of Section 53 restricts the choice to the teachers of the colleges or of all the colleges, as the case may be, and enables the appointment of an outsider only if there is no suitable person in such college or colleges. That might well have the result of condemning the post to a level of dull mediocrity. A provision by which an outsider is to be appointed, or a junior member of the staff preferred to a senior member, only if he is of superior merit, the assessment of which must largely be left to the management, is understandable; but a provision which compels the management to appoint only a teacher of the college (or colleges) unless it pronounces all the teachers unsuitable, is clearly in derogation of the powers of the management, and not calculated to further the interest of the institution. But we might say that there can be no objection to the appointment of the principal as of any other member of the staff being subject to the approval of some authority of the University so long as disapproval can be only on the ground that the person appointed has not the requisite qualifications. Also that if disapproval is not to be only on some such stated ground, but is left entirely to the will and pleasure of the appointing authority, that would be to deprive the educational agency of its power of appointment and would be bad for offending article 19(1)(f) and article 30(1)."

(Emphasis supplied)

24. The importance of the right to appointment of Principals/Headmasters and teachers of their choice by minorities, as an important



part of their fundamental rights under Article 30 was highlighted in St. Xavier's thus (SCC pp. 815-16, para 182):

"182. It is upon the principal and teachers of a college that the tone and temper of an educational institution depend. On them would depend its reputation, the maintenance of discipline and its efficiency in teaching. The right to choose the principal and to have the teaching conducted by teachers appointed by the management after an overall assessment of their outlook and philosophy is perhaps the most important facet of the right to administer an educational institution. .. So long as the persons chosen have the qualifications prescribed by the University, the choice must be left to the management. That is part of the fundamental right of the minorities to administer the educational institution established by them."

[Emphasis supplied]

25. In N.Ammad (supra) the appellant contended that he being the senior-most graduate teacher of an aided minority school, he should be appointed as the Headmaster and none else. He relied on Rule 44A of the Kerala Education Rules which provided that appointment of Headmaster shall ordinarily be according to seniority, from the seniority list prepared and maintained under clauses (a) and (b) of Rule 34. This Court held:

"18. Selection and appointment of Headmaster in a school (or Principal of a college) are of prime importance in administration of that educational institution. The Headmaster is the key post in the running of the school. He is the hub on which all the spokes of the school are set around whom they rotate to generate result. A school is personified through its Headmaster and he is the focal point on which outsiders look at the school. A bad Headmaster can spoil the entire



institution, an efficient and honest Headmaster can improve it by leaps and bounds. The functional efficacy of a school very much depends upon the efficiency and dedication of its Headmaster. This pristine precept remains unchanged despite many changes taking place in the structural patterns of education over the years.

19. How important is the post of Headmaster of a school has been pithily stated by a Full Bench of the Kerala High Court in *Aldo Maria Patroni v. E.C. Kesavan* (AIR 1965 Ker 75). Chief Justice M.S. Menon has, in a style which is inimitable, stated thus :

"The post of the headmaster is of pivotal importance in the life of a school. Around him wheels the tone and temper of the institution; on him depends the continuity of its traditions, the maintenance of discipline and the efficiency of its teaching. The right to choose the headmaster is perhaps the most important facet of the right to administer a school, and we must hold that the imposition of any trammel thereon except to the extent of prescribing the requisite qualifications and experience cannot but be considered as a violation of the right guaranteed by Article 30(1) of the Constitution. To hold otherwise will be to make the right 'a teasing illusion, a promise of unreality'." Thereafter, this Court concluded that the management of minority institution is free to find out a qualified person either from the staff of the same institution or from outside, to fill up the vacancy; and that the management's right to choose a qualified person as the Headmaster of the school is well insulated by the protective cover of Article 30(1) of the Constitution and it cannot be chiselled out through any legislative act or executive rule except for fixing up the qualifications and conditions of service for the post; and that any such statutory or executive feat would be violative of the fundamental right enshrined in Article



30(1) and would therefore be void. This Court further observed that if the management of the school is not given the wide freedom to choose the person for holding the key-post of Principal subject, of course, to the restriction regarding qualifications to be prescribed by the State, the right to administer the School would get much diminished.

26. In Board of Secondary Education and Teachers Training (supra), this Court held :

"3. The decisions of this Court make it clear that in the matter of appointment of the Principal, the management of a minority educational institution has a choice. It has been held that one of the incidents of the right to administer a minority educational institution is the selection of the Principal Any rules which takes away this right of the management have been held to be interfering with the right guaranteed by Article 30 of the Constitution. In this case, both Julius Prasad selected by the management and the third respondent are qualified and eligible for appointment as Principal according to rules. The question is whether the management is not entitled to select a person of their choice. The decisions of this court including the decision in State of Kerala v. Very Rev. Mother Provincial [1970 (2) SCC 417] and Ahmedabad St. Xavier's College Society v. State of Gujarat make it clear that this right of the minority educational institution cannot be taken away by any rules or regulations or by any enactment made by the State. We are, therefore, of the opinion that the High Court was not right in holding otherwise. The State has undoubtedly the power to regulate the affairs of the minority educational institutions also in the interest of discipline and excellence. But in that process, the aforesaid right of



the management cannot be taken away, even if the Government is giving hundred per cent grant."

(Emphasis supplied)

11. The Hon'ble Supreme Court in the case of **James Mathew (supra)**, has held as under:

5. As far as the selection and appointment of the Headmaster or the Principal, as the case may be, is concerned, this Court in *Malankara Syrian Catholic College v. T. Jose* [*Malankara Syrian Catholic College v. T. Jose*, (2007) 1 SCC 386 : 5 SCEC 728] after referring to all the celebrated cases on minority rights, viz. *T.M.A. Pai Foundation v. State of Karnataka* [*T.M.A. Pai Foundation v. State of Karnataka*, (2002) 8 SCC 481 : 2 SCEC 1] , *P.A. Inamdar v. State of Maharashtra* [*P.A. Inamdar v. State of Maharashtra*, (2005) 6 SCC 537 : 2 SCEC 745] , *State of Kerala v. Very Rev. Mother Provincial* [*State of Kerala v. Very Rev. Mother Provincial*, (1970) 2 SCC 417] , *Ahmedabad St. Xavier's College Society v. State of Gujarat* [*Ahmedabad St. Xavier's College Society v. State of Gujarat*, (1974) 1 SCC 717 : 1 SCEC 125] , *Frank Anthony Public School Employees' Assn. v. Union of India* [*Frank Anthony Public School Employees' Assn. v. Union of India*, (1986) 4 SCC 707] , *Sidhrajibhai Sabhai v. State of Gujarat* [*Sidhrajibhai Sabhai v. State of Gujarat*, (1963) 3 SCR 837 : AIR 1963 SC 540] , *D.A.V. College v. State of Punjab* [*D.A.V. College v. State of Punjab*, (1971) 2 SCC 269] , *All Saints High School v. State of A.P.* [*All Saints High School v. State of A.P.*, (1980) 2 SCC 478] , *St. Stephen's College v. University of Delhi* [*St. Stephen's College v. University of Delhi*, (1992) 1 SCC 558 : 1 SCEC 404] , *N. Ammad v. Emjay High School* [*N. Ammad v. Emjay High School*, (1998) 6 SCC 674 : 1 SCEC 732] , *Board of Secondary Education & Teachers Training v. Director of Public Instructions* [*Board of Secondary Education & Teachers Training v. Director of Public Instructions*, (1998) 8 SCC 555] has held in Paras 27 to 29 that **the management of a minority aided educational institution is free to appoint the Headmaster or the Principal, as the case may be, of its**



own choice and has no obligation to appoint the available senior qualified member from the same community. Paras 27, 28 and 29 are quoted hereunder: (*Malankara Syrian case [Malankara Syrian Catholic College v. T. Jose, (2007) 1 SCC 386 : 5 SCEC 728]* , SCC p. 404)

“27. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognised as a vital facet of the right to administer the educational institution. This has not been, in any way, diluted or altered by T.M.A. Pai [T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : 2 SCEC 1] . Having regard to the key role played by the Principal in the management and administration of the educational institution, there can be no doubt that the right to choose the Principal is an important part of the right of administration and **even if the institution is aided, there can be no interference with the said right. The fact that the post of the Principal/Headmaster is also covered by State aid will make no difference.**

28. The appellant contends that the protection extended by Article 30(1) cannot be used against a member of the teaching staff who belongs to the same minority community. It is contended that a minority institution cannot ignore the rights of eligible lecturers belonging to the same community, senior to the person proposed to be selected, merely because the institution has the right to select a Principal of its choice. But this contention ignores the position that the right of the minority to select a Principal of its choice is with reference to the assessment of the person's outlook and philosophy and ability to implement its objects. **The management is entitled to appoint the person, who according to them is most suited to head the institution, provided he possesses the qualifications**



prescribed for the posts. The career advancement prospects of the teaching staff, even those belonging to the same community, should have to yield to the right of the management under Article 30(1) to establish and administer educational institutions.

29. Section 57(3) of the Act provides that the post of Principal when filled by promotion is to be made on the basis of seniority-cum-fitness. Section 57(3) trammels the right of the management to take note of merit of the candidate or the outlook and philosophy of the candidate which will determine whether he is supportive of the objects of the institution. Such a provision clearly interferes with the right of the minority management to have a person of their choice as head of the institution and thus violates Article 30(1). Section 57(3) of the Act cannot therefore apply to minority-run educational institutions even if they are aided.

(emphasis supplied)

6. The emerging position is that, once the management of a minority educational institution makes a conscious choice of a qualified person from the minority community to lead the institution, either as the Headmaster or Principal, the court cannot go into the merits of the choice or the rationality or propriety of the process of choice. In that regard, the right under Article 30(1) is absolute.

12. The Hon'ble Supreme Court in the case of **Joint Action Committee (supra)**, has held as under:

26. The contention was raised before the High Court that the Circular dated 29-5-2008 has been issued by the authority having no competence, thus cannot be enforced. It is a settled legal proposition



that the authority which has been conferred with the competence under the statute alone can pass the order. No other person, even a superior authority, can interfere with the functioning of the statutory authority. In a democratic set-up like ours, persons occupying key positions are not supposed to mortgage their discretion, volition and decision-making authority and be prepared to give way to carry out commands having no sanctity in law. **Thus, if any decision is taken by a statutory authority at the behest or on suggestion of a person who has no statutory role to play, the same would be patently illegal.** (Vide *Purtabpore Co. Ltd. v. Cane Commr. of Bihar* [(1969) 1 SCC 308 : AIR 1970 SC 1896] , *Chandrika Jha v. State of Bihar* [(1984) 2 SCC 41 : AIR 1984 SC 322] , *Tarlochan Dev Sharma v. State of Punjab* [(2001) 6 SCC 260 : AIR 2001 SC 2524] and *Manohar Lal v. Ugrasen* [(2010) 11 SCC 557 : (2010) 4 SCC (Civ) 524 : AIR 2010 SC 2210] .)

27. Similar view has been reiterated by this Court in *Commr. of Police v. Gordhandas Bhanji* [1951 SCC 1088 : AIR 1952 SC 16] , *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia* [(2004) 2 SCC 65 : AIR 2004 SC 1159] and *Pancham Chand v. State of H.P.* [(2008) 7 SCC 117 : AIR 2008 SC 1888] observing that an authority vested with the power to act under the statute alone should exercise its discretion following the procedure prescribed therein and interference on the part of any authority upon whom the statute does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme.

28. In view of the above, the legal position emerges that the authority who has been vested with the power to exercise its discretion alone can pass the order. Even a senior official cannot provide for any guideline or direction to the authority under the statute to act in a particular manner.

13. Article 30 of the Constitution which relates to rights of minorities to establish and administer educational institutions is quoted below for ready reference and convenience:



“Right of minorities to establish and administer educational institutions.—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.”

14. The management of a minority aided educational institution is free to appoint the Headmaster or the Principal, as the case may be, of its own choice and is under no obligation to appoint the available senior-most qualified member from the same community. It is thus clear that the freedom to choose the person to be appointed as Principal has always been recognized as a vital facet of the right to administer an educational institution. Even if the institution is aided, there can be no interference with this right. The fact that the post of Principal/Headmaster is also supported by State-aid makes no difference. The management is entitled to appoint the person who, in its opinion, is most suitable to head the institution, provided such person possesses the prescribed qualifications for the post. **Any restriction on the right of the minority management to appoint a person of its choice as the head of the institution would amount to a violation of Article 30(1) of the Constitution of India. Therefore, circulars dated 25/08/2021 (modified 08/09/2021) cannot be made applicable to minority-run educational institutions, even if they are aided.** The settled legal position is that once the management of a minority educational institution makes a conscious choice of a qualified person from the minority community to lead the institution, either as Headmaster or Principal, **the Court cannot examine the merits of such choice or the rationality or propriety of the decision-making process. In this regard, the right under Article 30(1) is**



absolute. Accordingly, if any decision is taken by a statutory authority at the behest of, or on the suggestion of, a person who has no statutory role to play, the same would be patently illegal.

15. In view of the settled legal position adumbrated by the Supreme Court in plethora of decisions dealing directly with the issue of appointment on the post of Principal, in the considered opinion of this Court, the executive instructions /circulars dated 25/08/2021 (modified 08/09/2021) restricting the choice of minority institution to give current charge assignment of the office of Principal only to senior most teacher is clearly violative of Article 30 (1) of the Constitution of India, as it completely takes away the right of the minority institution to choose a person whom it considers to be more suitable for the said appointment. The two circulars dated 25/08/2021 (modified dated 08/09/2021), therefore, to the extent they are intended to be made applicable to the minority institution are violative of Article 30 (1) of the Constitution and declared unconstitutional to that extent. It cannot be made applicable to minority institution in the matter of choice to appoint the Principal. Right of the minority institution guaranteed under Article 30 (1) of the Constitution of India would prevail on any such administrative instructions and minority institution would not be bound to give in-charge assignment only to the senior most one. The emerging position is that, once the management of a minority educational institution makes a conscious choice of a qualified person from the minority community to lead the institution, either as the Headmaster or Principal, the court cannot go into the merits of the choice or the rationality or propriety of the process of choice. In that regard, the right under Article 30(1) is absolute.



16. In view of the above considerations, the order dated 5.8.2025 passed in writ petition No.21032/2025 by the learned Single Bench directing the Regional Additional Director, Higher Education Department to pass a fresh order keeping into account the recommendation made by Chairman Governing Body, S.S.L. Jain, PG College and Principal Rajmata Vijay Raje Scindia Girls (Leading) PG College is hereby set aside and these writ appeals are allowed.

17. Consequently, order dated 27.2.2025 passed by appellants giving in-charge of Principal to Dr. S.K. Upadhyay is hereby upheld.

18. No orders as to costs.

(Anand Pathak)
Judge

(Anand Singh Bahrawat)
Judge